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Free **Electronic Bulletin Board** service for Public Law numbers and **Federal Register** finding aids is available on 202–275–1538 or 275–0920.

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Title 3—

The President

Proclamation 6663 of April 6, 1994

National Former Prisoner of War Recognition Day, 1994

By the President of the United States of America

A Proclamation

The Armed Forces of the United States of America have faced hostile actions in every decade of this century. Over 200,000 American service members are currently serving overseas, many in situations where armed conflict is an ever-present possibility. Recent events in Somalia and continuing peacekeeping operations in Bosnia and elsewhere keep us fully mindful of the high risks that even humanitarian missions entail.

Over the more than two hundred years of our Independence, thousands of Americans have fallen into the hands of our enemies. Many did not survive the ordeal. Many who did return from captivity had suffered unrelenting indignities, physical and psychological abuse, and unspeakable torture.

Despite deprivation and suffering inflicted by their captors, these brave Americans persevered, maintained their honor, and kept faith with each other and with the American people. In the Congress, in State and local government, and in civic organizations across the Nation, former prisoners of war still keep faith with America through their continued service in positions of leadership and trust.

These men and women rank with our greatest patriots; no group of citizens is more deserving of remembrance and special recognition than our former prisoners of war.

The Congress, by Public Law 103–60, has designated April 9, 1994, as "National Former Prisoner of War Recognition Day" and has authorized and requested the President to issue a proclamation in observance of the occasion.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim April 9, 1994, as National Former Prisoner of War Recognition Day. I urge all American citizens to join in honoring members of the Armed Forces of the United States who have been held as prisoners of war. I also call upon Federal, State, and local government officials and private organizations to observe this day with appropriate ceremonies and activities.

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

William J. Clinton

[FR Doc. 94–8675
Filed 4–6–94; 4:15 pm]
Billing code 3195–01–P

Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1941, 1943, and 1945

RIN 0575–AB72

Revisions to the Direct Emergency Loan Instructions To Implement Administrative Decisions Pertaining to the Applicant Loan Eligibility Calculation, Appraisals, and Crop Insurance

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its emergency loan (EM) regulations to revise the applicant eligibility calculation and appraisal requirements and to require crop insurance. The Agency also amends its Operating (OL), Farm Ownership (FO) and Soil and Water (SW) regulations to revise appraisal requirements. This action is necessary to ease the EM eligibility requirements, to expedite EM, OL, FO, and SW application processing time, and to reduce losses to family-size farmers and the Government. The intended effect is to provide assistance to a greater number of farmers affected by major disasters in a timely manner.

EFFECTIVE DATE: April 8, 1994.

FOR FURTHER INFORMATION CONTACT: David R. Smith, Senior Loan Officer, Farmer Programs Loan Making Division, Farmers Home Administration, USDA, room 5428, South Building, 14th Street and Independence Avenue SW., Washington, DC 20250, telephone (202) 720–5114.

SUPPLEMENTARY INFORMATION:

Classification

We are issuing this final rule in conformance with Executive Order 12866, and the Office of Management and Budget (OMB) has determined that it is a "significant regulatory action." Based on information compiled by the Department, OMB has determined that this final rule: (1) Would alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (2) is a significant public policy issue as related to the direction of the EM loan program.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice, 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Farm Ownership Loans, Farm Operating Loans, and Emergency Loans are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loan Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Programs Affected

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

10.404—Emergency Loans
10.406—Farm Ownership Loans
10.407—Farm Ownership Loans
10.416—Soil and Water Loans

Environmental Impact Statement

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

Civil Justice Reform

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

Paperwork Reduction Act

The information collection requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control numbers 0575–0141, 0575–0085, 0575–0083, and 0575–0090, in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This final rule does not revise or impose any new information collection or recordkeeping requirements from those approved by OMB.

Discussion of Comments and Final Rule

The Agency published a proposed rule in the **Federal Register** (59 FR 5737–40) on February 8, 1994, which provided for a 15-day comment period ending on February 23, 1994. At that time, EM loan regulations stated that all financial disaster assistance/compensation would be considered in determining the applicant's eligibility for EM assistance and again in calculating the maximum amount of loss loan entitlement. Once eligibility was established, then all single enterprises showing a production loss would be considered in the calculation to determine the maximum loss loan entitlement.

The regulations also required two complete real estate appraisals to establish the two required asset values, the value on the day before the Governor's request and the value one year and one day before such a request. Section 324(d) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et. seq.*) (CONACT) states in part, that farm security, including land, livestock, and equipment, for EM loans will be valued based on the higher of the value of the assets on the day before the Governor requests assistance and the value of the assets one year before such day. While the two values must be considered, the values do not have to be based on two complete appraisals.

The February 8, 1994, proposed rule included a revision to the EM loan eligibility calculation to not consider disaster related assistance/compensation in the eligibility calculation. This change would allow the Agency to assist more family-size farmers. In addition, it was proposed to allow for the use of a second abbreviated appraisal when the first

appraisal (to establish the asset value for one day before the Governor's request) reflected adequate security for the loan. The proposed rule also required, instead of encouraged, the applicant to carry multi-peril crop insurance on next year's crops as a condition of receiving an EM production loss loan.

In response to the proposed rule, 6 comments were received. Four respondents made the following general comments. The timing of the final rule will come too late to help most borrowers, as deadlines for filing applications will expire before the regulations become effective. The Agency should immediately adopt the regulations on an interim basis. The period for filing applications should be extended. Applicants rejected under the prior eligibility calculation should be reconsidered under the revised calculation, and FmHA must widely publicize the proposed rule changes to reach farmers that did not apply, including non-FmHA borrowers.

In response, the Agency agrees that the regulation changes would assist more applicants, had they been implemented at an earlier date. Interim regulations must go through the same clearance process as final regulations. Interim regulations, therefore, could not be published any sooner than this final rule, so the comment is not being adopted. The 8-month timeframe from the date of the disaster designation for filing of EM applications is statutory; thus, any extension of this timeframe would require Congressional action. The Agency is making every effort to assist those applicants who would benefit from the new eligibility calculation. In the last several months, the Agency has worked closely with FmHA State offices in the flood and drought-affected States to assure that potential applicants are aware of the EM program. FmHA field offices have encouraged applicants to apply prior to the 8-month deadline and have held EM applications in abeyance, where administratively possible, until the revised EM calculation changes are implemented.

Two respondents made further comments regarding the proposed revisions to the EM appraisal requirements, stating that the present appraisal process and proposed rule were confusing. The Agency agrees and has attempted to clarify the process in the final rule.

Three respondents recommended that the EM collateral value be based on a current market value appraisal, that an abbreviated appraisal does not meet current appraisal standards under the Uniform Standards of Professional Appraisal Practices (USPAP), and that the first value to be established for chattels be the same as for real estate, one day before the Governor's disaster designation request. The Agency agrees in part with the current market value approach and adopts this in principle. A real estate appraisal reflecting the Recommended Market Value (RMV) and meeting USPAP standards will be used as a bench-mark in arriving at the two required asset values. The two statements of value established by the County Supervisor need not meet USPAP appraisal standards. The Agency has eliminated the reference to an abbreviated appraisal in the final rule. The Agency does not adopt the recommendation that the first value established for chattels represent the value one day before the Governor's request. With respect to chattels, generally, the value one year and one day before the Governor's request will be the higher value ultimately chosen and should be the first value established.

One respondent recommended that the County Supervisor establish the two required values after receipt of a real estate appraisal. The Agency adopts this recommendation in the final rule.

This final rule specifically amends § 1941.25(a) of subpart A of part 1941, § 1943.25(c) of subpart A of part 1943, and § 1943.75(c) of subpart B of part 1943 to allow the use of appraisals completed by State-certified general appraisers, providing such appraisals meet the guidelines of the USPAP and have had an acceptable desk review completed by an FmHA designated review appraiser. If such an acceptable appraisal is provided by the borrower, FmHA will not need to perform one. References to contract appraiser qualifications have been updated accordingly to require the contractor/appraiser to be State-certified general. These sections also are changed to not require a new real estate appraisal if the latest appraisal report is not over one year old, unless the approval official requests a new appraisal, or unless significant changes in the market value of the real estate have occurred in the area within the 1-year period. These changes are intended to result in a more flexible consistent, timely, and less costly loan making process. Emergency loan applicants often also request other types of Farmer Programs loans, so these changes will indirectly benefit disaster victims.

The Agency also amends § 1945.163, as proposed, to no longer consider disaster related assistance/compensation in determining eligibility for EM loans. The section has been further clarified to refer to existing provisions for considering costs not incurred in determining eligibility. Such costs will be subtracted from the amount of actual production losses.

The Agency adopts as final the proposed changes to § 1945.169 requiring applicants to purchase multi-peril crop insurance when receiving EM loan assistance.

The Agency also amends § 1945.175 by revising the requirement for two complete real estate appraisals to establish the two required asset values. The County Supervisor will establish the two required values upon receipt of a real estate appraisal denoting the RMV. The RMV will be used by the County Supervisor as a bench-mark in arriving at a statement of value for each of the required dates. The use of appraisals completed by State Certified General Appraisers is allowed providing such appraisals meet the guidelines of the USPAP, and have had an acceptable desk review completed by an FmHA designated review appraiser. Changes proposed to § 1945.175 concerning chattel appraisals are adopted without change.

List of Subjects

7 CFR Part 1941

Crops, Livestock, Loan programs—agriculture, Rural areas, Youth.

7 CFR Part 1943

Credit, Loan programs—agriculture, Recreation, Water resources.

7 CFR Part 1945

Agriculture, Disaster assistance, Loan programs—agriculture.

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

PART 1941—OPERATING LOANS

1. The authority citation for part 1941 continues to read as follows:

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

Subpart A—Operating Loan Policies, Procedures, and Authorizations

2. Section 1941.25 is amended by revising the introductory text of paragraph (a) and paragraph (b) and adding new paragraphs (a)(5) and (a)(6) to read as follows:

§ 1941.25 Appraisals.

(a) Except as provided in paragraph (a)(5) of this section, real estate appraisals will be completed by an FmHA employee, or a contractor authorized to make farm appraisals. Chattel and real estate appraisals will be

made on Forms FmHA 440–21, "Appraisal of Chattel Property," FmHA 1922–1, "Appraisal Report—Farm Tract," and FmHA 1922–11, "Appraisal for Mineral Rights," respectively, to determine market value and borrower equity in the following instances:

* * * * *

(5) Other real estate appraisals completed by other State-certified general appraisers may be used providing such appraisals meet the ethics, competency, departure provisions, etc., and Sections I and II of the Uniform Standards of Professional Appraisal Practices, and contain a mineral rights appraisal as set out in paragraph (a) of this section. Prior to acceptance, the appraisal must have an acceptable desk review (technical) completed by an FmHA designated review appraiser.

(6) A new real estate appraisal is not required if the latest appraisal report available is not over 1 year old, unless the approval official requests a new appraisal, or unless significant changes in the market value of real estate have occurred in the area within the 1-year period.

(b) *Real estate appraiser qualifications.* The contractor, when he/she is not the appraiser, is responsible for substantiating the appraiser's qualifications. The contractor will obtain FmHA's concurrence that the appraiser has the necessary qualifications and experience before the contractor will utilize the appraiser in any appraisal work. The contractor/appraiser completing the report must be State-certified general.

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

3. The authority citation for part 1943 continues to read as follows:

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

Subpart A—Direct Farm Ownership Loan Policies, Procedures, and Authorizations

4. Section 1943.25 is amended by redesignating current paragraphs (c)(2) through (c)(4) as paragraphs (c)(4) through (c)(6) respectively, revising paragraph (c)(1) and newly redesignated paragraph (c)(4), and adding new paragraphs (c)(2) and (c)(3) to read as follows:

§ 1943.25 Options, planning and appraisals.

* * * * *

(c) *Appraisals.* (1) Except as provided in paragraph (c)(2) of this section, real estate appraisals will be completed on Forms FmHA 1922–1 or FmHA 1922–8, "Uniform Residential Appraisal Report," for farm real estate or residential farm real estate, respectively, by a designated FmHA real property appraiser, or FmHA State-certified general contract real property appraiser. Appraisals are necessary when real estate is taken as primary security, as defined in § 1943.4 of this subpart, and when loans are serviced in accordance with subpart S of part 1951 of this chapter. Real estate appraisals are not required when real estate is taken as additional security, as defined in § 1943.4 of this subpart. However, the County Supervisor will document in the running record the estimated market value of the additional security and the basis for the estimate.

(2) Other real estate appraisals completed by other State-certified general appraisers may be used providing such appraisals meet the ethics, competency, departure provisions, etc., and sections I and II of the Uniform Standards of Professional Appraisal Practices, and contain a mineral rights appraisal as set out in paragraph (c)(4) of this section. Prior to acceptance, the appraisal must have an acceptable desk review (technical) completed by an FmHA designated review appraiser.

(3) A new real estate appraisal is not required if the latest appraisal report available is not over 1 year old, unless the approval official requests a new appraisal, or unless significant changes in the market value of real estate have occurred in the area within the 1-year period.

(4) Real estate appraisals will be completed as provided in subpart E of part 1922 of this chapter. The rights to mining products, gravel, oil, gas, coal, or other minerals will be considered a portion of the security for Farmer Programs loans and will be specifically included as a part of the appraised value of the real estate securing the loans using Form FmHA 1922–11, "Appraisal for Mineral Rights."

* * * * *

Subpart B—Direct Soil and Water Loan Policies, Procedures and Authorizations

5. Section 1943.75 is amended by redesignating current paragraphs (c)(2) through (c)(4) as paragraphs (c)(4) through (c)(6) respectively, revising paragraphs (c)(1) and newly redesignated paragraph (c)(4), and adding new paragraphs (c)(2) and (c)(3) to read as follows:

§ 1943.75 Options, planning, and appraisals.

* * * * *

(c) *Appraisals.* (1) Except as provided in paragraph (c)(2) of this section, real estate appraisals will be completed on Forms FmHA 1922–1 or FmHA 1922–8, "Uniform Residential Appraisal Report," for farm real estate or residential farm real estate, respectively, by a designated FmHA real property appraiser, or FmHA State-certified general contract real property appraiser. Appraisals are necessary when real estate is taken as primary security, as defined in § 1943.4 of this subpart, and when loans are serviced in accordance with subpart S of part 1951 of this chapter. Real estate appraisals are not required when real estate is taken as additional security, as defined in § 1943.4 of this subpart. However, the County Supervisor will document in the running record the estimated market value of the additional security and the basis for the estimate.

(2) Other real estate appraisals completed by other State-certified general appraisers may be used providing such appraisals meet the ethics, competency, departure provisions, etc., and sections I and II of the Uniform Standards of Professional Appraisal Practices, and contain a mineral rights appraisal as set out in paragraph (c)(4) of this section. Prior to acceptance, the appraisal must have an acceptable desk review (technical) completed by an FmHA designated review appraiser.

(3) A new real estate appraisal is not required if the latest appraisal report available is not over 1 year old, unless the approval official requests a new appraisal, or unless significant changes in the market value of real estate have occurred in the area within the 1-year period.

(4) Real estate appraisals will be completed as provided in subpart E of part 1922 of this chapter. The rights to mining products, gravel, oil, gas, coal, or other minerals will be considered a portion of the security for Farmer Programs loans and will be specifically included as a part of the appraised value of the real estate securing the loans using Form FmHA 1922–11, "Appraisal for Mineral Rights."

* * * * *

PART 1945—EMERGENCY

6. The authority citation for part 1945 continues to read as follows:

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

Subpart D—Emergency Loan Policies, Procedures, and Authorizations

7. Section 1945.163 is amended by revising paragraphs (a)(2)(v), (a)(2)(xx) and (d) to read as follows:

§ 1945.163 Determining qualifying losses, eligibility for EM loan(s) and the maximum amount of each.

* * * * *

(a) * * *

(2) * * *

(v) In determining eligibility, the amount of actual production loss will be calculated for the single enterprise, which is a basic part of the farming operation (see § 1945.154(a) of this subpart), by subtracting any costs not incurred as explained in paragraphs (a)(2)(xii) and (a)(2)(xiv) of this section from the gross dollar amount of production losses for that enterprise as determined in paragraph (a)(2)(iv) of this section.

* * * * *

(xx) When an applicant's farming operation(s) is conducted in a designated county(ies) and nondesignated county(ies), eligibility will be established based on losses to a single enterprise as explained in paragraph (a)(2)(v) of this section, which constitutes a basic part of the total farming operation, without regard to whether the single enterprise is located in the designated county. The disaster year's actual yields, both in the designated and nondesignated county(ies) only, will be used to determine losses. Costs not incurred (if applicable) will be subtracted as explained in paragraphs (a)(2)(xii) and (a)(2)(xiv) of this section. The amount of the production loss loan, however, will be limited to the production loss sustained in the designated county(ies) only minus any compensatory payments received or to be received for that portion of the farming operation located in the designated county(ies).

* * * * *

(d) *Compensation for losses.* All financial assistance provided through any disaster relief program and all compensation for disaster losses received from any source (*i.e.*, crop insurance indemnity payments, ASCS disaster program payments, etc.) by an EM loan applicant will reduce the applicant's loss by the amount of such compensation. All such compensation will be considered in determining the maximum amount of loss loan entitlement. Disaster related assistance/compensation will not be considered in the EM eligibility calculation. The amount of any disaster program benefits received from ASCS, including the Emergency Feed Assistance Program (EFAP), Emergency Conservation Program (ECP), and Disaster Program payments will be considered as compensation for losses. (ASCS Deficiency Payments are not to be considered as compensation).

* * * * *

8. Section 1945.169 is amended by revising paragraph (j) to read as follows:

§ 1945.169 Security.

* * * * *

(j) *Crop insurance.* All recipients of EM loans must agree, as a condition of the loan, to obtain multi-peril crop insurance under the Federal Crop Insurance Act for the coming year's crop. When one of the conditions of paragraph (j)(1) of this section exists, the approval official will document in the applicant's file the basis for not requiring crop insurance.

(1) Applicants will not be required to obtain crop insurance when any one of the following conditions exists:

(i) Crop insurance is not available for the crop, *i.e.*, there is no open season and no opportunity to acquire crop insurance.

(ii) The financial projections on which the loan approval is based indicate that the premium cost of the required insurance would prevent the applicant from projecting a feasible plan, and thus disqualify the applicant for loan assistance.

(2) When crops are the primary source of repayment for EM loans, FmHA will require an "Assignment of Indemnity" on the borrower's crop insurance policy(ies).

(3) When EM loans are based on physical losses only, crop insurance will only be required when loan funds will be used for annual production expenses. In such cases, the same conditions will apply as stated in paragraph (j)(1) of this section.

(4) When the payment of crop insurance premiums is not required until after harvest, the premiums may be paid by releasing insured crop(s) sale proceeds, notwithstanding the limits of §§ 1962.17 and 1962.29(b) of subpart A of part 1962 of this chapter. If the borrower's crop losses are sufficient to warrant an indemnity payment, the premium due will be deducted by the insurance carrier from such payment. The FmHA County Office will maintain a record on Form FmHA 1905–12, "Monthly Expirations," of the dates which each borrower's crop insurance premium(s) is due. This is in accordance with FmHA Instruction 1905–A, a copy of which is available in any FmHA office.

(5) When an applicant purchases the necessary crop insurance as a condition to receiving an EM loan and, after the EM loan is closed, allows the policy(ies) to lapse or be cancelled before completion of the production year, the borrower will become immediately liable for full repayment of all principal and interest outstanding on any EM loan made on the condition of obtaining crop insurance. The loan approval official will insert this requirement in item 44 of Form FmHA 1940–1, "Request for Obligation of Funds," which is signed by the applicant and the FmHA loan approval official.

* * * * *

9. Section 1945.175 is amended by revising paragraph (c) to read as follows:

§ 1945.175 Options, planning and appraisals.

* * * * *

(c) *Appraisals.* (1) Except as provided in paragraph (c)(1)(i) of this section, real estate appraisals will be completed on Forms FmHA 1922–1 or FmHA 1922–8, "Uniform Residential Appraisal Report," for farm real estate or residential farm real estate, respectively, by a designated FmHA real property appraiser, or FmHA State-certified general contract real property appraiser. Appraisals are necessary when real estate is taken as primary security, as defined in § 1945.154 (a) of this subpart, for the EM loan or when loans are serviced in accordance with subpart S of part 1951 of this chapter.

(i) Other real estate appraisals completed by other State-certified general appraisers may be used providing such appraisals meet the ethics, competency, departure provisions, etc., and sections I and II of the Uniform Standards of Professional Appraisal Practices, and contain a mineral rights appraisal as set out in paragraph (c)(1)(ii) of this section. Prior to acceptance, the appraisal must have an acceptable desk review (technical) completed by an FmHA designated review appraiser.

(ii) The rights to mining products, gravel, oil, gas, coal, or other minerals will be considered a portion of the security and will be specifically included as a part of the appraised value of the real estate securing the loans using Form FmHA 1922–11, "Appraisal for Mineral Rights."

(iii) When FLB stock is to be used in establishing the recommended market value (RMV) of the real estate being appraised, see § 1945.169 (n)(1) of this subpart.

(iv) A new real estate appraisal is not required if the latest appraisal report available is not over 1 year old, unless

the approval official requests a new appraisal, or unless significant changes in the market value of real estate have occurred in the area within the 1-year period.

(v) Real estate appraisals are not required when real estate is taken as additional security, as defined in § 1945.154 (a) of this subpart. However, the County Supervisor will document in the running record the estimated market value of the additional security and the basis for the estimate.

(2) The value of assets that secure EM loans associated with a disaster having any portion of its incidence period occurring on or after May 31, 1983 must be based on the higher of two values, all of which must be part of the file. These values will show:

(i) The asset value on the day before a State Governor's Indian Tribal Council's or an FmHA State Director's first EM designation request, which is associated with the naming of one or more counties in a State as a disaster area where eligible farmers may qualify for EM loans; or

(ii) The asset value 1 year (365 days) before the date set in paragraph (c)(2)(i) of this section.

(3) The County Supervisor will establish the two values as stated in paragraph (c)(2) of this section upon receipt of a real estate appraisal denoting the RMV on the day the property was visited and inspected for appraisal purposes, as follows:

(i) A statement of value will be completed for each date, reflecting the basis for any variations from the RMV denoted in the real estate appraisal.

(ii) Parts 2 and 3 of Form FmHA 1922–1 may be used as a guide to reflect any variation from the established RMV and any additional documentation necessary in arriving at the statement of value for each date.

(iii) When the existing real estate appraisal is not over 1 year old, and reflects the value either 1 day before the Governor's request or 1 year and 1 day before the Governor's request, the County Supervisor can so document the applicable statement of value.

(iv) The County Supervisor will sign and date the statement of values and file it directly on top of the real estate appraisal.

(4) Chattel appraisals will be completed on Form FmHA 1945–15, "Value Determination Worksheet (EM loans only)," when chattels are taken as security. The property which will serve as security will be described in sufficient detail so it can be identified. Sources such as livestock market reports and publications reflecting values of farm machinery and equipment will be used as appropriate. The value of assets that secure EM loans associated with a disaster having any portion of the incidence period occurring on or after May 31, 1983 must be based on the higher of two values, all of which must be made part of the file. These values will be based on the same time period contained in paragraphs (c)(2)(i) and (ii) of this section.

(i) In those cases where the value 1 year and 1 day before the Governor's request reflects adequate security, the appraiser or County Supervisor will reasonably estimate the value 1 day before the Governor's request.

(ii) Chattels owned by the applicant, and nonfarm chattel property offered as security (such as planes, house trailers, boats, etc.) will be appraised at the present market value only. Chattels that the applicant/borrower did not own on the dates set forth in paragraphs (c)(2)(i) and (ii) of this section will be appraised at the present market value only.

Dated: March 31, 1994.

Bob J. Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 94–8348 Filed 4–7–94; 8:45 am]

BILLING CODE 3410–07–U

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 500, 505, 520

Foreign Assets Control, Transaction Control, and Foreign Funds Control Regulations; Civil Penalties

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: This rule amends the Foreign Assets Control, Transaction Control, and Foreign Funds Control Regulations (collectively, the "Regulations") to add procedures for administering civil penalty authority. An interpretive section is added concerning certain statutory limitations on civil penalty authority. A statement of Office of Management and Budget authorization for the collection of information pursuant to this rule is also added to the Regulations.

EFFECTIVE DATE: October 23, 1992.

FOR FURTHER INFORMATION CONTACT: Betsy Sue Scott, Civil Penalties Officer (tel.: 202/622–2480), or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem dial 202/512–1387 or call 202/512–1530 for disks or paper copies. This file is available in Postscript, WordPerfect 5.1 and ASCII.

Background

The Office of Foreign Assets Control is amending the Foreign Assets Control Regulations, 31 CFR part 500 (the "FACR"), to reflect new civil penalty authority provided by the enactment, on October 23, 1992, of section 1710(c) of the Cuban Democracy Act of 1992, 22 U.S.C. 6001–6010 (the "CDA"). Because the CDA amends section 16 of the Trading with the Enemy Act, 50 U.S.C. App. 16 ("TWEA"), to permit the imposition of civil monetary penalties and civil forfeiture, Subpart G is extensively revised to establish the procedures governing the imposition of civil penalties. In addition, § 500.413 is added to the FACR to provide an interpretation of the limitations contained in the CDA on the use of civil penalties. Section 500.901 is amended to reflect Office of Management and Budget approval of the information collection contained in this rule.

The Transaction Control Regulations, 31 CFR part 505 (the "TCR"), and the Foreign Funds Control Regulations, 31 CFR part 520 (the "FFCR"), which were promulgated pursuant to TWEA, are also amended to incorporate by reference the regulatory sections on civil penalty procedures being added to the FACR.

Because this rule involves a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601–612, does not apply.

The collections of information contained in §§ 500.703 and 500.704 have been submitted to and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, and have been assigned control number 1505–0147. Comments concerning the collection of information and the accuracy of estimated average annual burden and suggestions for reducing this burden should be directed to OMB, Paperwork Reduction Project (1505–0147), Washington, D.C. 20503, with

copies to the Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Avenue, N.W.—Annex, Washington, D.C. 20220. Any such comments should be submitted no later than June 7, 1994.

This information is required by the Office of Foreign Assets Control for civil penalty purposes to determine whether and to what extent a civil penalty is appropriate. The likely respondents are individuals and business organizations. Estimated total annual reporting burden for §§ 500.703 and 500.704: 100 hours.

The estimated annual burden per respondent varies from one to four hours, depending on individual circumstances, with an estimated average of 2 hours.

Estimated number of respondents: 50.

Estimated annual frequency of response: 1.

List of Subjects in 31 CFR Parts 500, 505, and 520

Administrative practice and procedure, Banks, Banking, Finance, Foreign investments in U.S., Foreign trade, International organizations, North Korea, Penalties, Reporting and recordkeeping requirements, Securities, Services, Telecommunications, Travel restrictions, Vietnam

For the reasons set forth in the preamble, 31 CFR part 500 is amended as set forth below:

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1. The authority citation for part 500 continues to read as follows:

Authority: 50 U.S.C. App. 1–44; E.O. 9193, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 3 CFR, 1943–1948 Comp., p. 748.

2. Subpart G of part 500 is revised to read as follows:

Subpart G—Penalties

500.701 Penalties.
500.702 Prepenalty notice.
500.703 Presentation responding to prepenalty notice.
500.704 Hearing.
500.705 Penalty notice.
500.706 Judicial Review.
500.707 Referral to United States Department of Justice; administrative collection measures.

Subpart G—Penalties

§ 500.701 Penalties.

(a) Attention is directed to section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16), which provides that:

(1) Whoever shall willfully violate any provision of that act or any license, rule, or regulation issued thereunder, and whoever shall willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of that act shall, upon conviction, be fined not more than $1,000,000 or, if a natural person, be fined not more than $100,000 or imprisoned for not more than 10 years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall, upon conviction, be fined not more than $100,000 or imprisoned for not more than 10 years, or both.

(2) Upon conviction, any property, funds, securities, paper, or other articles or documents, or any vessel, together with its tackle, apparel, furniture, and equipment, concerned in a violation of the act may be forfeited to the United States.

(3) The Secretary of the Treasury may impose a civil penalty of not more than $50,000 on any person who violates any license, order, or regulation issued under that act;

(4) Any property, funds, securities, papers, or other articles or documents, or any vessel, together with its tackle, apparel, furniture, and equipment, that is the subject of a violation subject to a civil penalty issued pursuant to paragraph (a)(3) of this section shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States Government.

(5) The penalties described in paragraphs (a)(3) and (4) of this section may not be imposed for:

(i) newsgathering, research, or the export or import of, or transmission of information or informational materials; or

(ii) for clearly defined educational or religious activities, or activities of recognized human rights organizations, that are reasonably limited in frequency, duration, and number of participants. Persons who engage in prohibited transactions related to the activities described in this paragraph may be subject to criminal penalties or other penalties as appropriate.

(6) The penalties provided in the Trading with the Enemy Act are subject to increase pursuant to 18 U.S.C. 3571.

(b) Attention is directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representation or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both.

§ 500.702 Prepenalty notice.

(a) *When required:* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Trading with the Enemy Act, and the Director determines that further proceedings are warranted, he shall issue to the person concerned a notice of his intent to impose a monetary penalty and/or forfeiture. The prepenalty notice shall be issued whether or not another agency has taken any action with respect to this matter.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty and/or forfeiture.

(2) *Right to make presentation or request a hearing.* The prepenalty notice also shall inform the person of his right to make a written presentation within 30 days of mailing of the notice as to why a monetary penalty and/or forfeiture should not be imposed, or, if imposed, why it should be in a lesser amount than proposed. In addition or alternatively, within 30 days of mailing of the notice, the person may request an agency hearing conducted pursuant to 5 U.S.C. 554–557 to present his defenses to the imposition of a penalty or forfeiture and to offer any other information that he believes should be included in the agency record prior to a final determination concerning the imposition of a penalty or forfeiture.

(3) *Right to discovery.* The prepenalty notice also shall inform the person of his right prior to a hearing to review documents relied on by the agency in making its determination to issue the prepenalty notice. The availability of such documents is subject to the agency's assertion of privileges normally available to the agency.

§ 500.703 Presentation responding to prepenalty notice.

(a) *Time within which to respond.* The named person shall have 30 days from the date of mailing of the prepenalty notice to make a written presentation to the Director.

(b) *Form and contents of written presentation.* The written presentation need not be in any particular form, but

shall contain information sufficient to indicate that it is in response to the prepenalty notice. It should contain responses to the allegations in the prepenalty notice and set forth the reasons why the person believes the penalty or forfeiture should not be imposed or, if imposed, why it should be in a lesser amount than proposed.

§ 500.704 Hearing.

(a) The named person shall have 30 calendar days from the date of mailing of the prepenalty notice to request a hearing.

(b) The hearing shall be conducted in a manner consistent with 5 U.S.C. 554–557.

§ 500.705 Penalty notice.

(a) *No violation.* If, after considering any presentations made in response to the prepenalty notice and any relevant facts, or the record of the hearing and the determination of the hearing officer, the Director determines that there was no violation by the person named in the prepenalty notice, he promptly shall notify the person in writing of that determination and that no monetary penalty or forfeiture pursuant to this part will be imposed.

(b) *Violation.* If, after considering any presentations made in response to the prepenalty notice and any relevant facts, or the record of the hearing and the determination of the hearing officer, the Director determines that there was a violation by the person named in the prepenalty notice, he promptly shall issue a written notice of the imposition of the monetary penalty and/or forfeiture to that person.

§ 500.706 Judicial Review.

Any person may seek judicial review as provided under 5 U.S.C. 702 for a penalty imposed pursuant to this part.

§ 500.707 Referral to United States Department of Justice; administrative collection measures.

In the event that the person named does not pay the penalty imposed pursuant to this part within 30 days of the mailing of the written notice of the imposition of the penalty, the matter may be referred for administrative collection measures or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

3. Section 500.901 is amended by adding a sentence at the end of the paragraph to read as follows:

§ 500.901 Paperwork Reduction Act notice.

* * * The information collection requirements in §§ 500.703 and 500.704 have been approved by the Office of Management and Budget and assigned control number 1505–0147.

PART 505—TRANSACTION CONTROL REGULATIONS

1. The authority citation for part 505 is revised to read as follows:

Authority: 50 U.S.C. App. 1–44; E.O. 9193, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 3 CFR, 1943–1948 Comp., p.748.

2. Section 505.50 is revised to read as follows:

§ 505.50 Penalties.

For provisions relating to penalties, see §§ 500.701 through 500.707 of this chapter.

PART 520—FOREIGN FUNDS CONTROL REGULATIONS

1. The authority citation for part 520 is revised to read as follows:

Authority: 50 U.S.C. App. 1–44; E.O. 8389, 3 CFR, 1938–1943 Comp., p. 645; as amended by E.O. 8785, 3 CFR, 1938–1943 Comp., p. 948; E.O. 8832, 3 CFR, 1938–1943 Comp., p. 969; E.O. 8963, 3 CFR, 1938–1943 Comp., p. 1033; E.O 8998, 3 CFR, 1938–1943 Comp., p. 1053; E.O. 9193, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 10348, 3 CFR, 1949–1953 Comp., p. 871; E.O. 11281, 3 CFR, 1966–1970 Comp., p. 546.

2. Section 520.701 is revised to read as follows:

§ 520.701 Penalties.

For provisions relating to penalties, see §§ 500.701 through 500.707 of this chapter.

Dated: March 25, 1994.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: March 29, 1994.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff, and Trade Enforcement).

[FR Doc. 94–8366 Filed 4–4–94; 2:54 pm]

BILLING CODE 4810–25–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

41 CFR Chapter 51

Nomenclature Change

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Final rule.

SUMMARY: This final rule changes the name, office address, and telephone number of the Committee for Purchase From People Who Are Blind or Severely Disabled wherever they appear in its regulations. The changes are necessary because the Committee's name has been statutorily changed and its office has moved. The changes will incorporate the Committee's current legal name in its regulations and enable persons having business with the Committee to contact it at the correct location.

EFFECTIVE DATE: April 8, 1994.

FOR FURTHER INFORMATION CONTACT: Beverly L. Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: Section 911 of the Rehabilitation Act Amendments of 1992, Public Law 102–569, amended section 1 of the Javits-Wagner-O'Day Act, 41 U.S.C. 46, by changing the name of the Committee for Purchase from the Blind and Other Severely Handicapped to Committee for Purchase From People Who Are Blind or Severely Disabled, effective October 30, 1992. This change applies to all official uses of the Committee's name, including references to the Committee in its regulations, 41 CFR chapter 51, parts 51–1 through 51–10, and notices concerning additions or deletions of commodities and services on the Committee's Procurement List published pursuant to the Committee's authority, 41 U.S.C. 47. In addition, the Committee's office address and telephone number have changed since its regulations were last amended in 1991.

Accordingly, under the Committee's authority, 41 U.S.C. 47, 41 CFR chapter 51 is amended as follows:

1. The address, "Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509" is removed and the new address "Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461" is added in its place wherever it appears.

2. The telephone number "(703) 557–1145" is removed and the new telephone number "(703) 603–7740" is added in its place wherever it appears.

3. The Committee name "Committee for Purchase from the Blind and Other Severely Handicapped" is removed and the new Committee name "Committee for Purchase From People Who Are Blind or Severely Disabled" is added in its place wherever it appears.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–8487 Filed 4–7–94; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 35, 78 and 97

[CGD 91–023]

RIN 2115–AE38

Authorization for NTSB Officials To Be Allowed in the Pilothouse or on the Navigation Bridge of Merchant Vessels While Underway

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the National Transportation Safety Board (NTSB), the Coast Guard is amending its regulations prescribing the officials that may be allowed in the pilothouse or on the navigation bridge of vessels while underway to include NTSB personnel. This access is necessary for marine accident investigations and familiarization of vessels, navigation procedures, and waterways.

EFFECTIVE DATE: May 9, 1994.

ADDRESSES: Unless otherwise indicated, documents referenced in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street, SW., room 3406, Washington, DC 20593 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mrs. Justine Bunnell, Merchant Vessel Personnel Division, at (202) 267–0238.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mrs. Justine Bunnell, Project Manager, Office of Marine Safety, Security and Environmental Protection, and Ms. Helen Boutrous, Project Counsel, Office of Chief Counsel.

Regulatory History

On November 5, 1992, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Authorization for NTSB Officials to be Allowed in the Pilothouse or on the Navigation Bridge of Vessels While Underway" in the **Federal Register** (57 FR 52748). The Coast Guard received eight letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

Currently, 46 CFR 78.10–1 and 46 CFR 97.10–5 require masters and pilots to exclude all persons not connected with the navigation of a vessel from the pilothouse and navigation bridge while underway. However, certain officials, including those from the United States Coast Guard, United States Navy, United States Coast and Geodetic Survey, United States Army Corps of Engineers and Maritime Administration personnel, may be allowed in the pilothouse or upon the navigation bridge upon appropriate authorization. NTSB personnel are not among the officials that may be allowed in the pilothouse or upon the navigation bridge while underway. The NTSB has requested that the regulations be amended to allow NTSB access to the pilothouse and navigation bridge of a vessel while underway, in order to enhance the investigation of marine accidents. NTSB asserts that allowing NTSB access to the pilothouse and navigation bridge while underway would aid in waterway and vessel familiarization relating to the investigation of specific marine accidents and would aid in NTSB studies of vessels, navigation procedures, and waterways.

Discussion of Comments and Changes

Eight comments were received during the comment period. Several of the comments supported the rulemaking as proposed.

One individual was opposed to allowing anyone on the navigation bridge other than those engaged in operation of the vessel. However, it is the Coast Guard's position that it is necessary to allow the personnel specified in these regulations access to the navigation bridges of vessels to ensure effective performance of inspections and accident investigations, as well as other educational and safety related duties.

The Board of Commissioners of Pilotage of the State of New Jersey requested that the regulations include State Pilotage Commissioners in the list of officials that may be allowed on the bridge of a vessel while underway. The Coast Guard agrees that certain State officials and others involved in the training, regulating, or evaluating of pilots should be included in the list of those officials who may be allowed on the navigation bridge in accordance with these regulations. Therefore, each of the provisions issued in this final rule include not only those regularly engaged in learning the profession of pilot, but those regularly engaged in training, regulating, or evaluating the profession of pilot, in the list of officials that may be allowed upon the navigation bridge while underway.

Two of the comments, including one submitted by the NTSB, requested that this rulemaking include vessels regulated by other parts of title 46 of the Code of Federal Regulations. The NPRM included passenger vessels over 100 gross tons, regulated by 46 CFR part 78, subchapter H, and cargo and miscellaneous vessels regulated by 46 CFR part 97, subchapter I. The Coast Guard agrees that restricting access to the bridges of vessels while underway would be appropriate for tank vessels. Therefore, the Coast Guard is amending subchapter D by adding provisions identical to the regulations being added to subchapters H and I by this final rule.

Regulatory Assessment

This final rule is not a significant regulatory action under Executive Order 12866 and is not significant under the "Department of Transportation regulatory policies and procedures" (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact to be so minimal that a full Regulatory Assessment is unnecessary. This final rule will allow NTSB officials and others to more effectively perform their duties. The amendments will have no economic impact on the maritime industry.

Small Entities

This final rule will allow NTSB officials and others to more effectively perform their duties. The amendments will have no economic impact on the maritime industry. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and had determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The authority to regulate the operations of vessels subject to these regulations is committed to the Coast Guard by Federal statutes. The purpose of these regulations is to set forth uniform

minimum requirements for covered vessels operating on the navigable waters of the United States. Therefore, the Coast Guard intends that this final rule preempt State action that conflicts with these regulations.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this action is categorically excluded from further environmental documentation. The amendment involves only operational procedures regarding officials that may be allowed in the pilothouse or upon the navigation bridge while underway and clearly would have no environmental impact. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects

46 CFR Part 35

Cargo vessels, Marine safety, Navigation (water), Occupational Safety and health, Reporting and recordkeeping requirements, seaman.

46 CFR Part 78

Marine safety, Navigation (water), Passenger vessels, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 97

Cargo vessels, Marine safety, Navigation (water), Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR parts 35, 78 and 97 as follows:

PART 35—OPERATIONS

1. The authority citation for part 35 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. App. 1804; E.O. 11735; 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp. p. 277; 49 CFR 1.46.

2. Section 35.01–60 is added to read as follows:

§ 35.01–60 Person excluded.

Masters and pilots shall exclude from the pilothouse and navigation bridge while underway, all persons not connected with the navigation of the vessel. However, licensed officers of vessels, persons regularly engaged in training, regulating, evaluating, or learning the profession of pilot, officials of the United States Coast Guard, United States Navy, United States Coast and Geodetic Survey, United States Army Corps of Engineers, Maritime Administration, and National Transportation Safety Board may be allowed in the pilothouse or upon the navigation bridge upon the responsibility of the master or pilot.

PART 78—OPERATIONS

3. The authority citation for part 78 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243; 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

4. Section 78.10–1 is revised to read as follows:

§ 78.10–1 Persons excluded.

Masters and pilots shall exclude from the pilothouse and navigation bridge while underway, all persons not connected with the navigation of the vessel. However, licensed officers of vessels, persons regularly engaged in training, regulating, evaluating or learning the profession of pilot, officials of the United States Coast Guard, United States Navy, United States Coast and Geodetic Survey, United States Army Corps of Engineers, Maritime Administration, and National Transportation Safety Board may be allowed in the pilothouse or upon the navigation bridge upon the responsibility of the master or pilot.

PART 97—OPERATIONS

5. The authority citation for part 97 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

6. Section 97.10–5 is revised to read as follows:

§ 97.10–5 Persons excluded.

Masters and pilots shall exclude from the pilothouse and navigation bridge while underway, all persons not connected with the navigation of the vessel. However, licensed officers of vessels, persons regularly engaged in training, regulating, evaluating, or learning the profession of pilot, officials of the United States Coast Guard, United States Navy, United States Coast and Geodetic Survey, United States Army Corps of Engineers, Maritime Administration, and National Transportation Safety Board may be allowed in the pilothouse or upon the navigation bridge upon the responsibility of the master or pilot.

Dated: April 1, 1994.

A.E. Henn,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–8372 Filed 4–7–94; 8:45 am]

BILLING CODE 4910–14–M

Proposed Rules

Federal Register
Vol. 59, No. 68
Friday, April 8, 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 704

Commodity Credit Corporation

7 CFR Part 1410

RIN 0560–AD54

Non-Emergency Haying and Grazing on Conservation Reserve Program Grasslands

AGENCY: Agricultural Stabilization and Conservation Service, and Commodity Credit Corporation, USDA.

ACTION: Advance notice of proposed rulemaking; notice of withdrawal.

SUMMARY: The Commodity Credit Corporation (CCC) gives notice that it is withdrawing the Advance Notice of Proposed Rulemaking considering the revision of Conservation Reserve Program (CRP) regulations to allow limited and periodic non-emergency haying and grazing of CRP grasslands under specified conditions.

Because of the divergence of strongly held opinions expressed by respondents on the issue, CCC believes that the deliberations on the 1995 farm bill will provide the appropriate forum for considering appropriate uses to be made of CRP acres both when under contract and after contract expiration; therefore, the Advance Notice of Proposed Rulemaking published on December 20, 1993 (58 FR 66308) is hereby withdrawn. In the meantime, USDA plans to develop an information and education program to encourage greater utilization of currently authorized management practices on CRP acreage that would be beneficial to both the environment and the contract holder.

FOR FURTHER INFORMATION CONTACT: Thomas L. Browning, Director, Natural Resources Analysis Division, Agricultural Stabilization and Conservation Service (ASCS), P.O. Box 2415, Washington, DC 20013–2415; Telephone 202–720–9685.

SUPPLEMENTARY INFORMATION:

I. Background

The CRP is provided for in Subtitle D of Title XII of the Food Security Act of 1985, as amended (the Act). The CRP is administered on behalf of CCC by ASCS. In the CRP, CCC makes annual rental payments to persons who convert cropland to a conservation cover for a 10- or 15-year period. Generally, sections 1232(a)(3) and 1232(a)(7) of the Act require that no commercial use may be made of the CRP ground and that, in particular, no haying or grazing will be permitted except as allowed by the Secretary in response to a drought or similar emergency or in other specialized cases identified in section 1232(a)(7). However, section 1235(c)(1) allows contract modifications that serve the overall goals of the program.

An Advance Notice of Proposed Rulemaking was published in the **Federal Register** on December 20, 1993 (58 FR 66308), stating that CCC was considering issuing a proposed rule that would allow approved participants, under strict conditions, to hay or graze in non-emergency situations in order to provide for better maintenance of the cover crop and to allow for better conditions for wildlife. The purpose of the Advance Notice of Proposed Rulemaking was to solicit public comments on the acceptability of a non-emergency haying and grazing program and on issues to be addressed if such a program were implemented.

II. Public Comments

Fifty-seven written responses were received from a variety of sources, including producer groups, environmental and wildlife groups, State wildlife and natural resource agencies, and other organizations and individuals. Thirty-four respondents indicated support for restricted non-emergency haying and grazing on CRP grasslands. However, even among these respondents there was a wide divergency in views relative to the type of restriction that would be considered appropriate, e.g., frequency of harvesting and compensation offsets for haying and grazing privileges. Sixteen respondents opposed any such activity on the CRP. The position of seven respondents was not apparent.

III. Decision

Upon consideration of the public comments received on the Advance Notice of Proposed Rulemaking, CCC has decided to terminate the rulemaking process regarding limited and restricted non-emergency haying and grazing of CRP grasslands. The comments indicated a clear and strong lack of consensus among the respondents concerning whether such a program should be implemented. In addition, the numerous substantive comments by the respondents indicated a significant lack of agreement on the specific issues related to program implementation even among those supporting some type of non-emergency haying and grazing.

In view of the divergence of opinions expressed by respondents on the issue, CCC believes that the deliberations on the 1995 farm bill will provide the appropriate forum for considering appropriate uses to be made of CRP acres both when under contract and after contract expiration. In the meantime, CCC plans to develop an information and education program to encourage greater utilization of currently authorized management practices on CRP acreage that would be beneficial to both the environment and the contract holder.

Signed at Washington, DC, on April 4, 1994.

Bruce R. Weber,

Acting Administrator, Agricultural Stabilization and Conservation Service, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 94–8467 Filed 4–7–94; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 26 and 162

[CGD 93–072]

RIN 2115–AE66

Vessel Bridge-to-Bridge Radiotelephone Regulations: Inland Waterways Navigation Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the Vessel Bridge-to-Bridge Radiotelephone Regulations to correct

an inconsistency between the statutory and regulatory language; and to amend the Inland Waterways Navigation Regulations to remove regulatory language that contradicts the Inland Navigation Rules.

DATES: Comments must be received on or before June 7, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 93–072), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to Room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477 for information concerning the submission of comments.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Epstein, Navigation Rules and Information Branch, Office of Navigation Safety and Waterway Services, (202) 267–0352 or (202) 267–0357.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD 93–072) and the specific section of this proposal to which each comment applies, and give a reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound materials is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES.** The request should include reasons why a hearing would be beneficial.

If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are Jonathan Epstein, Project Manager, Office of Navigation Safety and Waterway Services, and LT Ralph L. Hetzel, Project Counsel, Office of Chief Counsel.

Background and Purposes

This proposed rulemaking will correct two conflicts between statutory law and existing navigation safety regulations. Although both corrections directly affect navigation safety, the two subject matters are distinct. Therefore, this proposal will address the proposed changes to the Vessel Bridge-to-Bridge Radiotelephone Regulations (33 CFR 26) in section one and the proposed changes to the Inland Waterways Navigation Regulations (33 CFR 162) in section two.

1. Vessel Bridge-to-Bridge Radiotelephone Regulations

The Vessel Bridge-to-Bridge Radiotelephone Regulations, specifically 33 CFR 26.05, differs in wording and meaning from the corresponding statutory authority, the Vessel Bridge-to-Bridge Radiotelephone Act, 1972, (33 U.S.C. 1204). The particular statutory language is important because it determines who may maintain the watch on the designated bridge-to-bridge calling channel (VHF–FM Channel 13 in U.S. territorial waters, except in the approaches to the lower Mississippi River where VHF–FM Channel 67 is the designated channel). Section 26.05 provides that, "The radiotelephone required by this act is for the exclusive use of the master or person in charge of the vessel, *or the person designated by the master or person in charge of the vessel* [emphasis added], or the person designated by the master or person in charge to pilot or direct the movement of the vessel, who shall maintain a listening watch on the designated frequency." This highlighted clause does not appear in the statutory language, but was added in the regulatory language. This additional clause implies that any person designated by the master or licensed officer may maintain the watch on the designated channel. This differs from the statutory construction which requries the master or person piloting the vessel to maintain the radio listening watch and communicate with other vessels on the prescribed channel.

This discrepancy dates back to the enactment of the Vessel Bridge-to-Bridge Radiotelephone Act in 1972. The implementing final rule, (37 FR 12719, June 28, 1972) contained the additional phrase without explanation even though it is directly contrary to the intent of Congress. The history of the Vessel Bridge-to-Bridge Act (Pub. L. 92–63) addresses this, pointing out that the radiotelephone equipment should be operated by the master, mate, or person in charge of the vessel in the wheelhouse. It specifically notes that if another person were added to the crew to monitor the radio, that would defeat the purpose of the legislation.

Discussion

The Coast Guard proposes to remove the additional language in § 26.05 to make the language and meaning of the regulation consistent with the Vessel Bridge-to-Bridge Radiotelephone Act.

The history and purpose of the Vessel Bridge-to-Bridge Radiotelephone Act show that the intent was to provide one radio frequency where the person "conning" a vessel could communicate directly with the person "conning" an approaching vessel about proposed maneuvers to avoid collision. The current regulation implies that the "watch" on the designated frequency can be maintained by some other person that the officer or pilot controlling the movement of the vessel. The danger of having a person other than the person or persons charged with maneuvering the ship maintain the watch was illustrated in a recent near collision:

A small ship (vessel A) and a large tanker (tanker B) were both approaching the channel north of Alcatraz Island in San Francisco Bay from near opposite directions and both headed for sea. The vessels had agreed via bridge-to-bridge radio that vessel A would take the lead into the channel, however vessel A was forced to slow to avoid a crossing ferry. Due to this delay, the tanker B's pilot proposed that this vessel take the lead into the channel. An officer on the bridge of vessel A assigned as "radio watch", assented to this new passage arrangement. However, this modification of the agreement was never passed to vessel A's captain or conning officer, who increased speed to attempt to pass ahead of tanker B. The result was a near collision averted only by radical maneuver by vessel A. Either vessel A's captain or conning officer should have been monitoring VHF–FM Channel 13. If temporarily on the bridge wing, communications directed to the vessel should have been relayed by the "radio watch".

Since removal of this language serves only to bring the regulatory language in § 26.05 into conformity with the

statutory language, there will be no change in the meaning or effect of the statutory language. The impact on the mariner should be negligible because the publication "Navigation Rules: International-Inland," which includes the text of the Vessel Bridge-to-Bridge Radiotelephone Regulations, contains the statutory rather than the regulatory language. In addition, the Federal Communications Commission regulations originally mirrored the statutory language and continue to do so in 47 CFR 80.309.

The following further clarifies the Coast Guard's interpretation of the bridge-to-bridge radiotelephone watch requirements. The Vessel Bridge-to-Bridge Radiotelephone Act is clear that the master or person piloting the vessel is required to maintain the listening watch and to make all communications on the designated channel. This means that the person in charge of the vessel, regardless of designation as commanding officer, master, or person in charge; and in addition, the person(s) conning the vessel, whether an embarked pilot, licensed mate, or the deck watch officer who is "conning" the vessel or responsible for the ship's movement should conduct all passing arrangements on the prescribed channel. The practice of using another person to "relay" messages should be discouraged as it is inconsistent with the intent of the statute. However, if circumstances required, the use of a person solely to relay or amplify radio communications would not be a violation *per se*.

It is also incumbent on the master or person piloting the vessel to maintain a listening watch on the designated channel. The listening watch was imposed to ensure that the person maneuvering the vessel hears proposed passing signals or other safety related communications from other vessels. While the watch should be continuous, FCC regulations (47 CFR 80.309) specifically allow that the person maintaining the watch may perform other duties. This is consistent with the Coast Guard view that the VHF radio and the bridge-to-bridge calling channel are tools to aid the person piloting the vessel in collision avoidance. It is not unusual for Coast Guard and Naval vessels to designate an officer or crewman to the "radio watch" on the bridge. While this person may provide an additional factor of safety on a crowded, noisy bridge, this does not relieve the master or person piloting the vessel of the duty to maintain the listening watch. Under no circumstances should the bridge-to-bridge channel be patched to headphones for the designated "radio-watch". The master or person conning the vessel needs to be aware of communications directed at their vessel as well as other communications, such as vessel movements elsewhere on a waterway that may pose a future hazard to the vessel. Thus any filtering by a designated "radio watch" person may defeat the purpose of the statute.

2. Inland Waterways Navigation Regulations

Title 33 CFR 162 contains the Inland Waterways Navigation Regulations for 43 different waterways in the United States ranging in size and significance from Lake Tahoe to the entire Atlantic seacoast south of the Chesapeake Bay.

The regulations in 33 CFR 162.65 were promulgated by the Army Corps of Engineers on April 30, 1938 and were transferred without change to the Coast Guard in 1977 (42 FR 5178). The particular section, which is now 33 CFR 162.65(b)(3), has never been amended. This regulation predates the Inland Navigation Rules Act of 1980 (33 U.S.C. 2001 *et seq*). There is no evidence in the legislative history of the Inland Navigation Rules Act that the drafters addressed potential conflicts with part 162. This is understandable, because the Inland Waterways Navigation Regulations in part 162 address local navigation issues unrelated to the Inland Navigation Rules.

Discussion

The Coast Guard proposes to remove 33 CFR 162.65(b)(3)(iv) because it contradicts statutory provisions in the Inland Navigation Rules Act. While generally the regulations in part 162 provide restrictions for a specific body of water, the regulations in § 162.65 apply broadly on all navigable waters of the United States between the Chesapeake Bay and St. Marks, Florida, on the Gulf of Mexico. Section 162.65(b)(3)(iv) provides that a vessel being overtaken by another shall slacken speed sufficiently to permit the passage to be effected with safety to both vessels. This regulation directly conflicts with Inland Navigation Rule 13 which places the responsibility for keeping clear on the overtaking vessel and Inland Rule 17 which requires the overtaken vessel to maintain course and speed.

Because this regulation is contradictory to the statutory provisions of the Inland Navigation Rules, and is applicable to a wide range of navigable waters it should be removed. The Coast Guard does not believe that this particular regulation is widely used or even generally known to the average mariner. In contrast, the Inland Navigation Rules are widely available, specifically tested as part of the licensing of mariners, and required to be carried on all vessels 12 meters or more in length.

Removal of this regulation will have little or no practical effect on the mariner. As a practical matter, vessels being overtaken in narrow channels sometimes slacken speed or maneuver to assist the overtaking vessel, thereby appearing to violate Inland Navigation Rule 17 which requires the overtaken vessel to maintain course and speed. However, where specifically agreed to by VHF radio or other means, the overtaken vessel may slacken speed or maneuver to assist in the passage consistent with Inland Rule 2 (Good Seamanship). Thus the Inland Navigation Rules provide both flexibility and consistency that the mariner can rely on. First, if a vessel agrees to be overtaken by whistle signal or other means, that vessel will maintain course and speed. Second, if some action by the overtaken vessel, such as slowing or maneuvering to the outer edge of the channel, is specifically agreed to, then the overtaken vessel does not violate the Navigation Rules by maneuvering as agreed.

Regulatory Evaluation

This proposal is not a significant regulatory action under Executive Order 12866 and not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Full Regulatory Assessment is unnecessary. Since this rulemaking basically corrects inconsistencies and places no new requirements on the maritime community further Regulatory Evaluation was deemed unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Under Federal law, authority to issue regulations to amend the Inland Waterways Navigation Regulations and the Vessel Bridge-to-Bridge Radiotelephone Regulations is vested in the Secretary of Transportation and delegated to the Coast Guard. Therefore, if this rule becomes final, the Coast Guard intends it to preempt State action addressing this subject matter.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation as this administrative action clearly has no environmental effect. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 26

Communications Equipment, Navigation (water), Marine safety, Radio, Telephone, Vessels.

33 CFR Part 162

Navigation (water), Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 26 as follows:

PART 26—[AMENDED]

1. The authority citation for part 26 is revised to read as follows:

Authority: 33 U.S.C. 1207; 49 CFR 1.46.

2. Section 26.05 is revised to read as follows:

§ 26.05 Use of Radiotelephone.

Section 5 of the Act states that the radiotelephone required by this Act is for the exclusive use of the master or person in charge of the vessel, or the person designated by the master or person in charge to pilot or direct the movement of the vessel, who shall maintain a listening watch on the designated frequency. Nothing herein shall be interpreted as precluding the use of portable radiotelephone equipment to satisfy the requirements of this act.

PART 162—[AMENDED]

1. The authority citation for part 162 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

§ 162.65 [Removed]

2. Section 162.65(b)(3)(iv) is removed.

* * * * *

Dated: March 8, 1994.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 94–8375 Filed 4–7–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Parts 110, 126, and 160

46 CFR Parts 38, 78, 97, and 194

[CGD 92–050]

RIN 2115–AE27

Classifying and Handling Class 1 (Explosive) Materials

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend its regulations concerning the carriage and handling of explosives. These amendments are necessary because the United States has adopted a new system for classifying and labeling explosives. These amendments would align terminology in existing Coast Guard regulations with that used in the new system and update references to address the new system.

DATES: Comments must be received on or before June 7, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA) (CGD 92–050), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–6234.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: LCDR Mark O'Malley, Port Safety and Security Division, (202) 267–0493.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 92–050) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES.** The request should include reasons why a hearing would be beneficial.

If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are LCDR Mark O'Malley, Project Manager, Port Safety and Security Division, and Mr. Stephen H. Barber, Project Counsel, Office of Chief Counsel.

Background and Purpose

On December 21, 1990, the Research and Special Programs Administration (RSPA) published a final rule revising the Hazardous Material Regulations contained in 49 CFR parts 171 through 180 (December 21, 1990, 55 FR 55402). This final rule also revised the requirements previously found in 46 CFR part 146 concerning the transportation of military explosives by vessel and relocated them in 49 CFR part 176. Under this final rule, there is only one regulatory system common to all explosives. Therefore, the shipment of military explosives by vessel now must comply with the requirements of 49 CFR part 176. Furthermore, the old classification system for explosives was replaced by the United Nations system.

These comprehensive rules for commercial and other explosives treat military explosives as belonging to Division 1.1, 1.2, 1.3, and 1.4 of Class 1 (explosive) materials, as defined in 49 CFR 173.50. Under the old system, military explosives were categorized as Class A, B, or C. (For a comparison of old versus new classification schemes, see 49 CFR 173.53.)

Sections 78.80–10 and 97.70–10 of 46 CFR are being revised to align with the more recently revised 49 CFR 176.78. Section 176.78 of 49 CFR was revised to provide for the use of a power operated truck designated EE or EX to handle Class 1 (explosive) materials or other cargo in an area near Class 1 (explosive) materials on board a vessel. Additionally, paragraph (d) of 46 CFR 176.78 states that a power operated truck designated LPS, GS, D, or DS may be used under conditions acceptable to the Captain of the Port (COTP) rather than requiring Commandant approval. These sections are being revised to consolidate current regulations for the use of power operated vehicles on board vessels transporting hazardous materials.

Furthermore, on January 29, 1991, after consultation with the Coast Guard, RSPA published a final rulemaking revoking 46 CFR part 146 (January 29, 1991; 56 FR 3334).

The purpose of this rulemaking is to update terminology and cross-references throughout Coast Guard regulations to reflect this new classification system.

Discussion of Proposed Amendments

This proposal would revise 33 CFR parts 100, 126, and 160 and 46 CFR parts 38, 78, 97, and 194. It would remove references to provisions in 46 CFR part 146 or replace them with applicable provisions in 49 CFR part 176. The term "military explosives" would be replaced with the term "Class 1 (explosive) materials" or refer to the appropriate division of Class 1 explosives.

Regulatory Assessment

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040 February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full evaluation is unnecessary. This proposal would conform terminology and cross references throughout Coast Guard regulations with a new, already established classification system. It would have no economic impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)*, the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

This proposal is administrative in nature and would conform existing regulations to a new system for classifying and labeling the explosives. It would have no economic impact on entities large or small.

Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. This proposal involves administrative changes in terminology and clearly does not have any environmental impact. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 110

Anchorage grounds.

33 CFR Part 126

Explosives, Harbors, Hazardous substances, Reporting and recordkeeping requirements.

33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety, Navigation (water), Vessels, Waterways, Reporting and recordkeeping requirements.

46 CFR Part 38

Cargo vessels, Fire prevention, Gases, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 78

Marine safety, Navigation (water), Passenger vessels, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 97

Cargo vessels, Marine safety, Navigation (water), Reporting and recordkeeping requirements.

46 CFR Part 194

Explosives, Hazardous materials transportation, Marine safety, Oceanographic research vessels.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR parts 110, 126, and 160 and 46 CFR parts 38, 78, 97, and 194 as follows:

TITLE 33—[AMENDED]

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 is revised to read as follows:

Authority: 33 U.S.C. 471, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in it are also issued under 33 U.S.C. 1223 and 1231.

§ 110.157 [Amended]

2. In § 110.157, in paragraph (c)(1), remove the words ", Title 46 Code of Federal Regulations, Part 146, or" and the words "46 CFR part 146, and" and, in paragraph (c)(7), remove the words "or 'Subchapter N—Dangerous Cargoes' (42 CFR Part 146)".

3. In § 110.168, revise the section heading and paragraphs (b)(2), (c)(1), (d)(1) through (5) and (d) (7) and (8), (f)(4)(iv), and (f)(4)(v) to read as follows and, in paragraph (f)(6), remove the words "military explosives" wherever they appear and add, in their place, the words "Class 1 (explosive) materials":

§ 110.168 Hampton Roads, Virginia, and adjacent waters.

* * * * *

(b) * * *

(2) *Class 1 (explosive) materials* means Division 1.1, 1.2, 1.3, and 1.4 explosives, as defined in 49 CFR 173.50.

(c) *General regulations.* (1) Except as otherwise provided, this section applies to vessels over 20 meters long and vessels carrying or handling dangerous cargo or Class 1 (explosive) materials while anchored in an anchorage ground described in this section.

* * * * *

(d) *Regulations for vessels handling or carrying dangerous cargoes or Class 1 (explosive) materials.* (1) This paragraph (d) applies to every vessel, except a naval vessel, handling or carrying dangerous cargoes or Class 1 (explosive) materials.

(2) Unless otherwise directed by the Captain of the Port, each vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials must be anchored or moored within Anchorage Berth E–1.

(3) Each vessel, including each tug and stevedore boat, used for loading or unloading dangerous cargoes or Class 1 (explosive) materials in an anchorage, must carry a written permit issued by the Captain of the Port.

(4) The Captain of the Port may require every person having business aboard a vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials while in an anchorage, other than a member of the crew, to hold either a pass issued by the Captain of the Port or another form of identification prescribed by the Captain of the Port.

(5) Each person having business aboard a vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials while in an anchorage, other than a member of the crew, shall present the pass or other form of identification prescribed by paragraph (d)(4) of this section to any Coast Guard boarding officer who requests it.

(6) * * *

(7) Each non-self-propelled vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials must have a tug in attendance at all times while at anchor.

(8) Each vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials while at anchor must display by day a red flag in a prominent location and by night a fixed red light.

* * * * *

(f) * * *

(4) * * *

(iv) A vessel may not anchor in Anchorage Berth E–1, unless it is handling or carrying dangerous cargoes or Class 1 (explosive) materials.

(v) A vessel may not anchor within 500 yards of Anchorage Berth E–1 without the permission of the Captain of the Port, if the berth is occupied by a vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials.

* * * * *

4. In § 110.214, revise the section heading, paragraph (b)(12) introductory text and, in the note to paragraph (b)(12), paragraphs (b)(12) (ii), (iii), and (iv) as follows:

§ 110.214 Los Angeles and Long Beach Harbors, California.

* * * * *

(b) * * *

(12) No vessel, while carrying, loading, or unloading Division 1.1, 1.2, 1.3, or 1.4 (explosive) materials as defined in 49 CFR 173.50 or cargoes of particular hazard as listed by § 126.10 of this chapter, may be anchored in an anchorage without permission from the Captain of the Port.

Note: * * *

* * * * *

(ii) Division 1.1 or 1.2 (explosive) materials (as defined in 49 CFR 173.50), any amount.

(iii) Division 1.3 (explosive) materials (as defined in 49 CFR 173.50), in excess of 1 net ton at any one time.

(iv) Division 1.4 (explosive) materials (as defined in 49 CFR 173.50), in excess of 10 net tons at any one time.

* * * * *

5. The heading to part 126 is revised to read as follows:

PART 126—HANDLING OF CLASS 1 (EXPLOSIVE) MATERIALS OR OTHER DANGEROUS CARGOES WITHIN OR CONTIGUOUS TO WATERFRONT FACILITIES

6. The authority citation for part 126 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

§ 126.05 [Amended]

7. In § 126.05(a), remove the words "parts 146 and" and add, in their place, the word "part".

§ 126.07 [Amended]

8. In § 126.07(a), remove the words "parts 146 and" and add, in their place, the word "part".

9. Section 126.09 is revised to read as follows:

§ 126.09 Designated dangerous cargo.

The term *designated dangerous cargo* means Division 1.1 and 1.2 explosives, as defined in 49 CFR 173.50.

10. In § 126.10, paragraph (a) is revised to read as follows:

§ 126.10 Cargo of particular hazard.

* * * * *

(a) Division 1.1 or 1.2 explosives, as defined in 49 CFR 173.50.

* * * * *

§ 126.19 [Amended]

11. In § 126.19, remove the paragraph designation from paragraph (a) introductory text and redesignate paragraphs (a)(1), (a)(2), and (a)(3) as paragraphs (a), (b), and (c), respectively, and remove the words "military explosives" wherever they appear and add, in their place, the words "Class 1 (explosive) materials".

§ 126.21 [Amended]

12. In § 126.21(b), remove the words "military explosives" wherever they appear and add, in their place, the words "Class 1 (explosive) materials".

13. In § 126.27, paragraphs (b)(1), (b)(2), and (c) are revised to read as follows:

§ 126.27 General permit for handling dangerous cargo.

* * * * *

(b) * * *

(1) Division 1.3 (explosive) materials (as defined in 49 CFR 173.50), in excess of 1 net ton at any one time.

(2) Division 1.4 (explosive) materials (as defined in 49 CFR 173.50), in excess of 10 net tons at any one time.

* * * * *

(c) No Class 1 (explosive) materials (as defined in 49 CFR 173.50) or other dangerous cargoes prohibited from, or not permitted for, transportation by 46 CFR part 148 or 49 CFR parts 171 through 179 may be present on the waterfront facility.

* * * * *

PART 160—PORTS AND WATERWAYS SAFETY

14. The authority citation for part 160 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

15. Section 160.203 is amended by revising the heading and paragraph (a) of the definition of *Certain dangerous cargo* to read as follows:

§ 160.203 Definitions.

* * * * *

Certain dangerous cargo includes any of the following:

(a) Division 1.1 or 1.2 (explosive) materials, as defined in 49 CFR 173.50.

* * * * *

TITLE 46—[AMENDED]

PART 38—LIQUEFIED FLAMMABLE GASES

16. The authority citation for part 38 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

17. In § 38.01–2, revise paragraph (a)(9)(i) to read as follows:

§ 38.01–2 Transportation of portable cylinders or portable tanks containing or having previously contained liquefied flammable gases in dry cargo spaces—TB/ALL.

(a) * * *

(9) * * *

(i) Division 1.1, 1.2, 1.3, or 1.4 (explosive) materials, as defined in 49 CFR 173.50.

* * * * *

PART 78—OPERATIONS

18. The authority citation for part 78 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243; 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

19. Section 78.80–10 is revised to read as follows:

§ 78.80–10 Use of power-operated industrial trucks in various locations.

(a) *Spaces containing hazardous materials.* The use of power-operated industrial trucks in spaces containing hazardous materials must be in accordance with 49 CFR 176.78.

(b) *Other spaces.* Any standard commercial type power-operated industrial truck in safe operating condition and having the minimum safety features of § 78.80–7(c) may be used in spaces, and for handling cargo in spaces, not otherwise prohibited by this subpart.

PART 97—OPERATIONS

20. The authority citation for part 97 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243; 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

21. Section 97.70–10 is revised to read as follows:

§ 97.70–10 Use of power-operated industrial trucks in various locations.

(a) *Spaces containing hazardous materials.* The use of power-operated industrial trucks in space containing hazardous materials must be in accordance with 49 CFR 176.78.

(b) *Other spaces.* Any standard commercial type power-operated industrial truck in safe operating condition and having the minimum safety features of § 97.70–7(c) may be used in spaces, and for handling cargo in spaces, not otherwise prohibited by this subpart.

22. The heading to part 194 is revised to read as follows:

PART 194—HANDLING, USE, AND CONTROL OF EXPLOSIVES AND OTHER HAZARDOUS MATERIALS

23. The authority citation for part 194 is revised to read as follows:

Authority: 46 U.S.C. 2103, 2113, 3306; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

24. In § 194.05–7, paragraphs (a), (b), and (d) introductory text are revised to read as follows:

§ 194.05–7 Explosives—Detail requirements.

(a) Except as otherwise provided by this part, Division 1.1 and 1.2 (explosive) materials (as defined in 49 CFR 173.50) and blasting-caps must be carried in magazines specifically fitted for that purpose as described by subpart 194.10 of this part.

(b) Class 1 (explosive) materials (as defined in 49 CFR 173.50) must be identified by their appropriate DOT classification.

* * * * *

(d) On-deck stowage of unfused depth-charges or other unfused-case-type Class 1 (explosive) materials (as defined in 49 CFR 173.50) is authorized as follows:

* * * * *

Dated: March 8, 1994.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–8376 Filed 4–7–94; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 111

Revisions to Standards for Detached Address Cards

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes changes in the Domestic Mail Manual (DMM) standards concerning use of detached address cards (DACs). The proposed revisions are intended to standardize the rules for the different uses of DACs (second-, third-, and fourth-class flats, and third-class merchandise samples).

DATES: Comments must be received by May 23, 1994.

ADDRESSES: Written comments should be mailed or delivered to Manager, Mailing Standards, USPS Headquarters, 475 L'Enfant Plaza SW., Washington, DC 20260–2419. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 5610 at the above address.

FOR FURTHER INFORMATION CONTACT: Leo F. Raymond, (202) 268–5199.

SUPPLEMENTARY INFORMATION: The proposed changes to Domestic Mail Manual (DMM) standards described below arose from suggestions presented during the 1993 DMM redesign project.

In previous issues of the Domestic Mail Manual (DMM), the regulations for each class of mail were presented in separate chapters, and topics that were present in two or more chapters appeared in essentially duplicate form. When combined into subject-based modules in DMM 47, differences between the classes' rules for the same services or mailing methods became apparent, and these instances were identified for eventual revision to eliminate the regulatory complexity and confusion for DMM readers that consequently existed. Among those where this situation occurred were the standards in A060 for detached address cards (DACs). The revisions below propose to eliminate as much as possible the distinctions between how second-, third-, and fourth-class flats, and third-class merchandise samples can each be mailed using DACs. This proposal does not introduce significantly new requirements or options for existing uses (other than occurs from standardization across classes), nor does it permit new uses of DACs.

To avoid wordiness, the term item is used instead of second-class flat, third-class flat or merchandise sample, or fourth-class bound printed matter when discussing that which is distributed with the DAC.

Existing part 1.0 is reorganized to present an overview of the uses of DACs; basic instructions formerly contained in 1.0 have been relocated elsewhere. New section 1.1 establishes a clear definition of "saturation" in the context of DAC use as opposed to its definition for purposes of other standards. It also makes clear that alternative addressing formats can be used for DAC mailings when otherwise available.

Revised part 2.0 remains focused on the standards for preparation of the DACs themselves. Most changes involve rewording and reorganization of material. The most significant revisions propose consistent information for the recipient on all DACs. A notice, which

reads "USPS regulations require that this address card be delivered with its accompanying postage-paid mail. If you should receive this card without its accompanying mail, please notify your local postmaster." is currently required on DACs used with second- or third-class matter; other information describing the material being distributed with the DAC is required only for third-class samples; and existing standards for second- and third-class prohibit the presence on the address side of the DAC of anything other than the information required above, postage, and matter provided by the National Center for Missing and Exploited Children (NCMEC). The Postal Service believes that the use of DACs is simpler and more consistent for the mailer when the standards for the information that must or may appear on them is the same regardless of the class of mail to be used. Similarly, the Postal Service believes that the interests of the recipient are better served when this information is provided uniformly regardless of what is mailed with a DAC. Therefore, this revision would require all DACs to bear the italicized notice cited above as well as the title or brand name of the item accompanying the DAC, and would limit other content to the postage indicium, NCMEC material, and other required information.

Existing parts 3.0 and 4.0, which contain class-specific information, are replaced, respectively, with information about preparing a DAC mailing and the disposition of excess or undeliverable DACs or items. Part 3.0, which contains existing standards relocated from other current locations, standardizes the content of the label on the package of DACs or the carton or pallet of items. Existing standards are somewhat different for each. Part 4.0 proposes consistent standards for handling excess or undeliverable DACs and items, regardless of class. DAC mailers should note that the proposed rule states that undeliverable DAC material would be handled exclusively as prescribed under 4.0 (rather than under the standards in F010), and that the ancillary service endorsements otherwise required by F010 are neither required nor permitted for DAC matter. Generally, under the proposed rule, the mailer would be obligated to inform the delivery office if notice is required concerning excess or undeliverable DACs or items; other mailer actions would be required following such notice. Absent any request, undeliverable or excess DACs or items would be disposed of as waste. Existing standards are inconsistent in discussing excess or undeliverable DACs or items and the treatment available for each. As with the information requirements above, the Postal Service believes that mailers' use of DACs and their ability to understand the corresponding standards are improved by making those standards uniform regardless of class. To the extent that such standardization causes consistent rules to apply where none now exists, or where differences now exist, the Postal Service does not believe that they are burdens to the mailer that are more significant than the benefits of simpler, consistent procedures for mailing.

As in the existing standards, part 5.0 discusses postage payment. Revisions to this part are basically organizational.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions of the DMM, incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. Replace Domestic Mail Manual A060 with the following:

A060 Detached Address Cards

1.0 USE

1.1 Second- or Third-Class Flats

Saturation mailings of unaddressed second- or third-class flats may be mailed with detached address cards (DACs) (labels). For purposes of this standard, a saturation mailing is one sent to at least 75% of the total addresses within each carrier route or 90% of the residential addresses within the route, whichever is less. Deliveries are not required to every carrier route of a delivery unit.

1.2 Third-Class Merchandise Samples

Merchandise samples more than 5 inches wide (high) or ¼ inch thick, or nonuniform in thickness, mailed at bulk third-class rates for general distribution on city delivery routes, must be mailed with DACs. For this standard, "general distribution" means distribution of samples to at least 25% of the addresses in a 5-digit ZIP Code delivery area. Merchandise samples may be mailed with DACs for general distribution on other routes (e.g., rural routes) and for the residual portion of a general distribution mailing (i.e., those 5-digit delivery areas for which samples are prepared to less than 25% of the addresses).

1.3 Fourth-Class Bound Printed Matter

DACs may also be used to mail unaddressed pieces of bound printed matter for delivery in the local zone of the post office of mailing.

1.4 Alternative Address Formats

The addresses on DACs may be prepared using an alternative address format, subject to the applicable eligibility, volume, density, and preparation standards.

1.5 Definition

For purposes of the standards below, the term "item[s]" refers inclusively to the types of mail described in 1.1 through 1.3.

2.0 PREPARING DETACHED ADDRESS CARDS

2.1 Construction

Each DAC must be made of paper or cardboard stock that is not folded, perforated, or creased, and that is:

a. Between 3½ and 5 inches high (perpendicular to the address label).

b. Between 5 and 9 inches long (parallel to the address label).

c. At least 0.007 inch thick.

2.2 Addressing

The address for each item must be placed on a DAC, parallel to the longest dimension of the DAC, and may not appear on the item it accompanies. The DAC must contain the recipient's delivery address and the mailer's return address. A ZIP+4 code or 5-digit ZIP Code is required unless an alternative address format is used. The delivery address may include the correct delivery point barcode.

2.3 Ratio

Only one DAC may be prepared for each accompanying item, and only one item may be identified for delivery per DAC (i.e., one DAC may not be prepared to deliver with one each of multiple different accompanying items or with multiples of the same item).

2.4 Required Information

The following words must appear in bold type at least ⅛ inch high on the front of each DAC: "USPS regulations require that this address card be

delivered with its accompanying postage-paid mail. If you should receive this card without its accompanying mail, please notify your local postmaster." The title or brand name of the item (or equivalent identifying information, which may include an illustration of the item) must also appear on the front or back of the DAC to associate it with the accompanying item.

2.5 Other Information

Nothing may appear on the front of a DAC except the information described above, an indicium of postage payment, and official pictures and data circulated by the National Center for Missing and Exploited Children. Ancillary service endorsements are not permitted; undeliverable material is treated under 4.0.

30. PREPARING THE MAILING

3.1 Notice to Delivery Office

Each delivery office to receive a DAC mailing must be notified in writing at least 10 days in advance of the requested delivery period. A copy of that letter must be enclosed with the DACs to the corresponding destination. The letter must show:

a. Name and telephone number of mailer or representative.
b. Origin post office of mailing.
c. Expected mailing date.
d. Description of mailing.
e. Number of addressees for each 5-digit ZIP Code.
f. Number of DACs per carton or package.
g. Number of items per carton or package.
h. Expected delivery period (range of dates).
i. Requested disposition of any excess or undeliverable DACs or items (see 4.0).

3.2 Preparing the DACs

The DACs must be presorted, counted, and packaged by 5-digit ZIP Code delivery area. DAC mailings claimed at carrier route or walk-sequence rates must be further prepared under the corresponding standards. Each package of DACs must bear a label showing the information in 3.4. Multiple containers of DACs must be numbered sequentially (1 of ____, 2 of ____, etc.).

3.3 Items

Subject to the standards applicable to the rate claimed, items to be distributed with the DACs must be placed in full cartons or prepared in packages placed in sacks or on pallets; a label bearing the content description information in 3.4 must be affixed to each carton, package, or pallet. Containers of items (including those on pallets) must not weigh more than 40 pounds each.

3.4 Label Information

Sacks, cartons, or pallets of DAC mail must be labeled under the preparation standards applicable to the rate claimed. Subject to 3.2 or 3.3, another label must be affixed to each carton, package, or pallet to provide this information:

a. Delivery post office name and 5-digit ZIP Code delivery area.
b. Title, brand name, or other description of the items.
c. Name and telephone number of the mailer or representative.
d. Number of cards in the package, or items in the carton (or package), as applicable.
e. Instructions to open and distribute either the DACs with matching items or the items with matching DACs, as appropriate.

3.5 Bound Printed Matter

Bound printed matter distributed with DACs must be deposited at the acceptance point specified by the postmaster. Local zone rates are available subject to G030.

3.6 Mailing Statement

The mailer must complete and provide the appropriate mailing statement with each mailing.

3.7 Available Rates

Mailings prepared with DACs are not eligible for any automation rate, but may qualify for carrier route or walk-sequence rates subject to the applicable standards.

4.0 DISPOSITION OF EXCESS OR UNDELIVERABLE MATERIAL

4.1 Mailer Request

If requested by the mailer in the letter required under 3.1, the delivery office notifies the mailer (or representative) of excess or undeliverable material, as follows:

a. In case of excess DACs, additional items must be supplied to the delivery office within 15 days or the excess DACs are returned to the mailer at the third-class single-piece rate.
b. In case of excess or undeliverable items, they are returned to (or picked up by) the mailer or disposed of as waste by the USPS, based on the mailer's instructions. If the mailer picks up any excess or undeliverable items, there is no charge if the mailer does so within 15 days of being notified. After that time, the material is returned to the mailer with postage due at the applicable single-piece rate.
c. DACs with incorrect, nonexistent, or otherwise undeliverable addresses, which are not handled under the standards in F010, but are corrected or endorsed to show why they are undeliverable, placed in an envelope, and returned "postage due" to the mailer.

4.2 No Request

If the mailer has not requested notification of excess or undeliverable DACs or items, such material is disposed of as waste by the USPS.

5.0 POSTAGE

Postage is computed based on the combined weight of the item and the accompanying DAC. In addition, postage for:

a. Second-class flats must be prepaid and show a notice of entry in the upper right corner of the DAC.
b. Third-class flats and samples must be paid by permit imprint, which appears on each DAC. Postage is computed at the applicable nonletter rates.
c. Bound printed matter must be paid by permit imprint, which appears on each DAC.
d. Excess or undeliverable cards is computed at the applicable single-piece third- or fourth-class rate and collected upon their return to the mailer. The total amount due for the cards includes both the return postage and the applicable address-correction fee for each DAC.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–8445 Filed 4–7–94; 8:45 am]

BILLING CODE 7710–12–U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 94–23; Notice 1]

RIN 2127–AE97

Federal Motor Vehicle Safety Standards Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes an amendment to the Federal motor vehicle safety standard on lighting that would relieve design restrictions that may inadvertently prevent the implementation of certain new-technology light sources in signal lamps. These are light emitting diodes (LEDs) and miniature halogen bulbs. This action responds in part to a petition for rulemaking from Hewlett-Packard, a manufacturer of LEDs. NHTSA also seeks comment on performance requirements that would be appropriate for long and short arc discharge bulb systems so that Standard No. 108 can be amended in a manner that does not inhibit their introduction on motor vehicles.

DATES: The comment closing date for the proposal is June 7, 1994. The proposed effective date for the final rule is 30 days after its publication in the **Federal Register**. Any request for an extension of time to comment must be received not later than 10 days before the published expiration date of the comment period.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours are from 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Richard Van Iderstine, Office of Rulemaking (202–366–5280).

SUPPLEMENTARY INFORMATION: The requirements of Federal Motor Vehicle Safety Standard No. 108, Lamps, Reflective Devices and Associated Equipment, for signal lamps are based upon SAE Standards and Recommended Practices that were developed to accommodate incandescent bulbs, i.e., those with filaments. Four new technologies have arisen that are being or will be used in signal lamps subject to Standard No. 108. These new signal lamp technologies are light-emitting diodes (LEDs), miniature halogen bulbs, long arc discharge bulb systems (e.g., neon and other gas filled tubular lamps), and short arc discharge bulb systems. It is likely that the latter will be used in headlamps, too. In some instances, the specifications of Standard No. 108 have created ambiguities and inconsistencies with the design and method of performance of the new technologies. NHTSA seeks to resolve these through rulemaking that would amend Standard No. 108 to adopt equivalent performance specifications for the new light source technologies as used in signal lamps and headlamps. This notice is a response, also, to a petition for rulemaking to amend Standard No. 108 in a manner to accommodate LEDs, submitted by Hewlett-Packard Corporation. The technologies, associated problems, and suggested resolutions are discussed below.

I. LEDs and Miniature Halogen Bulbs

The advent of the center high mounted stop lamp (CHMSL) in 1985 has resulted in some creative solutions of the problem of integration of the lamp into the overall vehicle design. To reduce the size and obtrusiveness of the lamp while maintaining the photometric conformance called for by the standard, manufacturers began to resort to smaller light sources. For example, the 1986 Chevrolet Corvette used a low profile lamp incorporating four miniature halogen bulbs 7.5 mm in diameter and 25 mm long. Other CHMSLs have used similar bulbs since. LEDs appeared as CHMSL light sources shortly after the first miniature halogen bulbs. Typically, a single LED is 6 mm in diameter and less than 25 mm long. Because Standard No. 108 contains no light source specifications for CHMSLs, LEDs and miniature light sources were permissible.

However, certain terminology of Standard No. 108 is not entirely appropriate for the new technologies. For example, paragraph S5.1.1.27(a)(5) still contains the original requirement that the CHMSL "shall provide for convenient replacement of the bulb without the use of special tools." Since an LED is not a "bulb," a more appropriate phrase would be "light source(s)" as a substitute for "bulb." Accordingly, NHTSA is proposing this modification for both subparagraphs (a)(5) and (b)(5).

Manufacturers have been puzzled by the status of LEDs and miniature bulbs under Standard No. 108's requirements. Since August 1990, NHTSA has provided six interpretations to Hella AG, Stanley Electric Co. Ltd., Koito Mfg. Co. Ltd., and Valeo of France. In view of these interpretations, NHTSA has concluded that ameliorative rulemaking is desirable.

In the first of these letters, dated August 22, 1990, NHTSA responded to Hella's desire to use miniature bulbs in a lamp that was the size of a conventional lamp with one lighted section. Hella asked how the requirements for multiple compartment lamps were to be met when more than three light sources were provided. Hella appeared to assume that Standard No. 108 is to be interpreted in a manner that equates the number of lighted sections specified in Figure 1b (one, two, or three sections) with the number of bulbs providing the light. NHTSA implicitly agreed with Hella's assumption, but "concluded that any device that contains more than three lighted sections need only comply with the requirements prescribed for three lighted sections." NHTSA confirmed this interpretation to Valeo on July 7, 1992.

On August 29, 1990, NHTSA responded to a request from Stanley for an interpretation regarding a lamp with three light sources. Stanley's letter seemed to assume that requirements for three lighted sections were to be met, but the lamp consisted of a compartment in which all three bulbs contributed to the illumination of the lens, without interruption by a divider or other light-directing feature. NHTSA advised that this was a lamp with a single lighted section, even though it contained three light sources.

Late in 1990, Koito requested an interpretation with respect to procedures for photometric measurements of a CHMSL with LEDs. It pointed out that LEDs decrease in photometric output after they are activated such that after 20 minutes, the output is only slightly more than 60 per cent of its original output. On December 17, 1990, NHTSA advised that the CHMSL should conform upon each application of the brake pedal, regardless of the length of the previous brake application and the interval between brake applications. When Stanley reported that it would energize a LED CHMSL for 5 minutes before testing, NHTSA replied on December 1, 1992, that this was unnecessarily severe.

In 1993, Stanley asked for an interpretation of a design in which a panel of LEDs was flanked by two incandescent bulbs. NHTSA advised on April 23, 1993, that the requirements for three lighted sections would apply when the panel was operated alone, or in conjunction with one or both of the incandescent bulbs.

NHTSA has also been asked about the appropriateness of following for compliance purposes SAE Recommended Practice J1889 JUN88, L.E.D. Lighting Devices, now revised as of OCT93. The agency has replied that this would be inappropriate because the SAE J1889 is not incorporated by reference into Standard No. 108.

In addition to allowing the use of lamps of smaller size, LEDs offer substantial power efficiency over filament lamps, thus reducing the amount of wire in the lighting circuits. The major impediment to introducing new technology for signal lamps is that Standard No. 108's SAE specifications for signal lamps reference SAE Technical Reports. Since those Reports are based upon filament-type light sources and the expectation that only one light source is needed for a viable lamp, they are inappropriate as a basis for requirements for light sources such as LEDs and miniature bulbs where many are necessary in a lamp. As indicated above in the discussion of past interpretations, the performance of a single incandescent bulb can be matched by a cluster of LEDs or miniature bulbs. However, the standard appears to equate lighted sections of lamps with single light sources. Therefore, in designing a signal lamp to use LEDs or miniature light sources which typically need more than three each to achieve sufficient intensity, the manufacturer must design to the "three

or more" compartment requirement, even though the lamp may be the size of a single bulb (compartment) lamp, or even smaller. This can result in a lamp that is larger (and more costly) than is necessary for safety.

SAE J1889 addresses this problem. Paragraph 4.1.5.1 notes that LED arrays "typically cannot be defined in terms of lighted sections like those in incandescent lighting devices with multiple bulb compartments." What SAE J1889 does is to divide the LED-equipped lamp into equivalent lighted sections in terms of its maximum projected linear dimension. A dimension of 150 mm or less becomes the equivalent of a single lighted section, 151 mm to 300 mm, the equivalent of two, and anything greater than 300 mm, the equivalent of three. There appears to be no technical reason why this concept cannot be applied to miniature halogen bulbs as well. Thus, NHTSA's adoption of the SAE specification would appear to relieve an unintended design restriction.

While NHTSA was deliberating this matter, Hewlett-Packard, a manufacturer of LEDs, petitioned the agency for rulemaking to amend Standard No. 108 in a manner that would accommodate LEDs but in a substantially different way than the SAE. The petition argued that section 4.1.5.1 of SAE J1889 is far too limiting from standpoints of cost and styling. Under this section, LED-equipped lighting devices are considered to have more than one lighted section if either the maximum horizontal or vertical lighted linear dimensions exceeds 150 mm. Instead, Hewlett-Packard would adopt exceptions to the SAE specifications incorporated by reference in Standard No. 108 for signal lamps that use LED light sources. New language would clarify multiple compartment specifications for LED-equipped lamps. With respect to the number of lighted sections in such lamps, the petition suggested the following language:

> Photometric requirements specified in SAE technical reports which are based on the number of lighted sections shall exempt LED lighting devices from considerations as multiple compartment lamps because of the number of light sources employed in the design. Instead, all LED lighting devices shall meet the intensity specifications for single compartment lamps provided: (a) The LED lamp is designed such that the maximum horizontal or vertical distance between the apparent optical centers of the closest adjacent LEDs within a lighted section of the lamp is no greater than 2.0 cm, (b) if there is more than one lighted section, there shall be no more than 2.0 cm from the edge of the closest adjacent lighted sections.

Hewlett-Packard's rationale for this language was:

> SAE's higher intensity requirements for multiple compartment lighting devices stems from the fact that the apparent "brightness" of any light emitting area is not solely dependent on the intensity measured, but also the area of the emitter. Any two light sources can exhibit the same intensity measurement, while the source with the smaller light emitting area will appear brighter to the human eye. This is due to the nature of the human eye's perception of light, and is frequently taken into account in the design of "sterance matched" displays in the information display industry. This effect is also demonstrated by the response of consumers who mention that LED high mount stop lamps are very bright, when in fact they are designed to meet the same intensity requirements as incandescent high mount stop lamps. The difference is in the light emitting area. The smaller the light emitting area for a given intensity, the brighter the appearance to the human eye.
>
> With this in mind, the proposed change to FMVSS 571.108 will guarantee that at least a minimum level of brightness, or sterance, will be maintained regardless of the length, area, or shape of the lighting device. This will allow lighting designers to fully realize all of the benefits of styling and flexibility of LED lighting and provide a conspicuous and understandable signal device whether it be in tail, stop, or turn mode.

NHTSA believes that a responsive amendment to Standard No. 108 must take into consideration the views of both SAE J1889 and Hewlett-Packard, whether the amendment be based on either, or both, or some third way. Therefore, the agency invites comment on the appropriateness of the SAE and Hewlett-Packard viewpoints for resolving the apparent design restrictions as they relate to LEDs and other miniature light sources.

As noted also in the interpretations, the luminous flux of LED light sources, unlike filament light sources, drops rapidly as their temperature increases. NHTSA stated that photometric conformance should be judged immediately upon application of the LED signal lamp. Left unstated, but implied, is that conformance should be demonstrated at any temperature in the motoring environment.

Paragraphs 3.1.5.2 and 3.1.5.3 of SAE J1889, respectively, state a temperature condition for testing to photometric maxima and minima. For measurements to the maximum requirements, the test device, unenergized, is stabilized at the laboratory's ambient temperature, 23+/5 degrees C. It is then energized and the maximum values within 60 seconds of the initial "on" time are recorded. For measurements to the minimum requirements, the device is also stabilized within the same temperature range but in an energized condition until either heat buildup saturation has occurred, or 30 minutes has elapsed, whichever first occurs. Measurements are then taken of the already energized lamp. Although this demonstration procedure is clear, it does not replicate the environment in which real lamps must produce correct signals for the transmission of safety information. However, it may be the only practicable demonstration procedure given the characteristics in use of LEDs. The question for NHTSA is whether it should adopt a procedure that does not directly correlate to the real world use of a lamp with LEDs.

NHTSA has decided not to propose the adoption of paragraphs 3.1.5.2 and 3.1.5.3 in the hope that industry will adopt a more representative procedure. Arguably, the point in time at which it is most important that a signal lamp convey its message is upon its activation. Further, NHTSA believes that activation of a stop signal is likely to be momentary in nature, that is to say, less than a minute per brake application, and that of a turn signal, less than two minutes. NHTSA is concerned, however, about the effect of photometric degradation upon hazard warning signals and other signal lamps that remain energized for long periods. Hazard warning lamps are frequently operated for extended periods of time, some State laws requiring their use to indicate vehicles moving at speeds less than 40 mph. Of course, they are used to indicate as well the presence of a vehicle which may have been disabled in the roadway or adjacent to it. NHTSA has tentatively concluded that, until there is further rulemaking on the subject, LED-equipped lamps (other than those used for hazard warning signals) and those required to be energized during headlamp use are to be tested for photometrics in the same manner as conventional ones, that is to say, at ambient laboratory temperature and upon activation of the signal. With respect to LEDs used to provide the hazard warning signal, NHTSA is following the procedure of J1889 and proposing that such lamps meet photometric requirements of the SAE standards on turn signals that are incorporated by reference in Standard No. 108 when the lamp is stabilized at 23+/−5 degrees C and allowed to operate continuously until either the internal heat buildup has stabilized or for 30 minutes, whichever occurs first.

II. Long and Short Arc Discharge Systems

Long and short arc discharge light sources will soon become part of the

design of future lighting systems. Long arc light sources, such as neon tubes, appear to be intended for signal lamp use, initially as a CHMSL that will surround the rear window glazing or be within it. These sources are permitted because Standard No. 108 does not specify requirements for signal light sources. Short arc light sources will be used initially in headlamp systems, and NHTSA anticipates their eventual use in signal lamps.

Arc light sources do not operate at voltages specified in Standard No. 108 for compliance testing, those normally found on contemporary vehicles. This incompatibility with Standard No. 108 must be resolved before arc light sources are introduced on motor vehicles.

Specifically, long arcs operate at a hundred volts or more, depending on the arc length and the gas employed. For battery-powered lamps, such as those on motor vehicles, this means that the lamps must have electronic ballasts that provide electric power in accordance with the needs of the lamp. There is no standardized manner in which to test the light sources, absent the ballasts. Thus, to establish a compliance test for lamps using long arcs will be difficult, if not impossible.

Some time ago, NHTSA amended Standard No. 108 to adopt specifications for integral beam headlamps. Short arcs (including their ballast systems) are permissible non-replaceable light sources for this type of headlighting-system. For short arc lamps, the light source, and its necessary electronic ballast and high voltage wiring are an integral part of the headlamp assembly, and the lamp can be tested for photometrics at the 12.8 volts specified by the Standard. However, this is the only part of Standard No. 108 that has been developed and promulgated with short arc-type lighting in mind. To allow short arcs for other lamp applications, NHTSA believes that industry must codify interchangeability taking into account the desire of the industry to have replaceable ballasts. The SAE appears to be close to beginning this effort, as it is nearing completion of a Recommended Practice for use of short arc light sources on motor vehicles.

With the thought of developing appropriate amendments to Standard No. 108 to facilitate the introduction of long and short arc discharge technology, NHTSA would like to have comments on the following:

A. Identification of the performance requirements and/or test procedures specified, or incorporated by reference, in Standard No. 108 that should be modified to accommodate the installation of arc discharge light sources in lamps required by the standard.

B. Specification of the performance requirements and/or test procedures that should be added to Standard No. 108 to accommodate the installation of arc discharge light sources while maintaining the present level of safety achieved by incandescent filament light sources.

C. Identification of any special considerations that should be made to accommodate the concept of a single light source whose light is distributed to the vehicle's lamps by lamp pipes, and an opinion as to whether it is premature to consider regulation of this concept.

D. An opinion of when Standard No. 108 should be amended to accommodate the use of arc light sources in production motor vehicles.

Proposed Effective Date

Because the proposed amendments would not impose any additional burden and are intended to clarify application of existing requirements, it is hereby tentatively found that an effective date earlier than 180 days after issuance of the final rule would be in the public interest. The final rule would be effective 30 days after its publication in the **Federal Register**.

Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures

The Office of Management and Budget has informed NHTSA that it will not review this rulemaking action under Executive Order 12866. It has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. The effect of the rulemaking action would be to adopt terminology more suitable to new technologies, and would not impose any additional burden upon any person. Impacts of the proposal would, therefore, be so minimal as not to warrant preparation of a full regulatory evaluation.

Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action would not have a significant economic effect upon a substantial number of small entities. Motor vehicle and lighting equipment manufacturers are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions would not be significantly affected as the price of new motor vehicles should not be impacted. Accordingly, no Regulatory Flexibility Analysis has been prepared.

Executive Order 12612 (Federalism)

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

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The rulemaking action would not have a significant effect upon the environment as it does not affect the present method of manufacturing motor vehicle lighting equipment.

Civil Justice Reform

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Comments

Interested persons are invited to submit comments on the proposal and questions presented. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential

information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, it is proposed that 49 CFR part 571 be amended as follows:

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

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. Section 571.108 would be amended by revising paragraphs S5.1.1.27(a)(5) and S5.1.1.27(b)(5), and by adding paragraphs S5.1.1.33 and S5.1.1.34 to read as follows:

§ 571.108 Motor Vehicle Safety Standard No. 108 Lamps, Reflective Devices, and Associated Equipment.

* * * * *

S5.1.1.27(a) * * *

(5) Shall provide for convenient replacement of the light source(s) without special tools.

* * * * *

(b) * * *

(5) Shall provide for convenient replacement of the light source(s) without special tools.

* * * * *

S5.1.1.33 Instead of being designed to conform to photometric requirements based on the number of lighted sections (compartments), each stop lamp and turn signal lamp that is equipped with light-emitting diodes or other miniature light sources where more than one light source is necessary for achieving photometric compliance shall be designed to conform to photometric requirements based on the dimension of the function of the lamp that is tested. The equivalent of one lighted section is a maximum horizontal or vertical linear dimension of the effective projected luminous lens area that is less than 150 mm; of two lighted sections, 150 mm–300 mm; and of three lighted sections, more than 300 mm.

or

S5.1.1.33 Instead of being designed to conform to photometric requirements based on the number of lighted sections (compartments), each stop lamp and turn signal lamp that is equipped with light-emitting diodes or other miniature light sources where more than one light source is necessary for achieving photometric compliance with this standard shall be considered to be a single compartment provided that the lamp is designed such that the maximum horizontal or vertical distance between the apparent optical centers of the closest adjacent light sources within a lighted section of the lamp is not greater than 2.0 cm, and that if there is more than one lighted section, there shall be not more than 2.0 cm between the edge of the closest adjacent lighted section and the apparent optical center.

* * * * *

S5.1.1.34 Each lamp that provides a hazard warning signal, and, if equipped with light-emitting diodes, each tail, license plate, side marker, backup, identification, clearance, and parking lamp, shall be designed to conform to the photometric requirements appropriate for its type when the lamp is stabilized at 23+/−5 degrees C and allowed to operate continuously until either the internal heat buildup has stabilized or for 30 minutes, whichever occurs first.

Issued on: April 4, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–8347 Filed 4–7–94; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing and Reopening of the Public Comment Period on Proposed Endangered Status for the California Red-legged Frog (Rana Aurora Draytonii)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed Rule; Notice of Public Hearing and Reopening of Public Comment Period.

SUMMARY: The U.S. Fish and Wildlife Service (Service), under the Endangered Species Act (Act), gives notice that a public hearing will be held on the proposed endangered status for the California red-legged frog (*Rana aurora draytonii*). The hearing will allow all interested parties to submit oral or written comments on the proposal. In addition, the Service reopens the public comment period from April 8, 1994 to May 27, 1994.

DATES: The public hearing will be held from 6 p.m. to 8 p.m. on Thursday, May 12, 1994, in Sacramento, California. Comments from all interested parties must be received by May 27, 1994. Any comments received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: The public hearing will be held at the Radisson Hotel, 500 Leisure Lane, Sacramento, California. Written comments and materials should be sent directly to the Acting Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, room R–1803, Sacramento, California 95825–1846. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Karen J. Miller, Sacramento Field Office, at the above address (telephone (916) 967–4866).

SUPPLEMENTARY INFORMATION:

Background

The historical range of the California red-legged frog extended from the vicinity of Point Reyes National Seashore, Marin County, California, coastally and from the vicinity of Redding, Shasta County, California, inland southward to northwestern Baja California, Mexico. Today, the

California red-legged frog is found primarily in wetlands and streams in coastal drainages of central California. It has been extirpated from 75 percent of its former range. Seventy-seven percent of remaining subpopulations currently are threatened by one or more factors, including: (1) Introduction of exotic predators and competitors, (2) urban encroachment, (3) construction of large and small reservoirs, water diversions and well development, (4) flood control maintenance, (5) grazing, and (6) timber harvest. Only 44 drainages, with the majority being in Monterey, Santa Barbara, and San Luis Obispo Counties, currently provide habitat free from the above threats. Fragmentation of habitat, however, renders these subpopulations vulnerable to random extinction (stochastic) events. Only three areas currently support over 350 adults. A rule proposing to list the California red-legged frog as an endangered species was published in the **Federal Register** (59 FR 4886) on February 2, 1994.

Subsection 4(b)(5)(E) of the Act, as amended (16 U.S.C. *et seq.*), requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. The Service received 6 written requests for a public hearing from various agencies, organizations, and individuals. As a result, the Service has scheduled a public hearing for May 12, 1994, from 6 p.m. to 8 p.m. at Sacramento, California.

Parties wishing to make statements for the record should bring a copy of their statements to the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. There are, however, no limits to the length of written comments or materials presented at the hearing or mailed to the Service. The comment period closes on May 27, 1994. Written comments should be submitted to the Service in the **ADDRESSES** section.

Author

The primary author of this notice is Ms. Karen J. Miller, Sacramento Field Office, at the above address.

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.)

List of Subject in 50 CFR Part 17

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

Dated: April 4, 1994.

Don Weathers,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

Notice of Public Hearing on Proposed Endangered Status for the California red-legged frog (*Rana aurora draytonii*).

[FR Doc. 94–8417 Filed 4–7–94; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 59, No. 68
Friday, April 8, 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

Soil Conservation Service

Elkhorn Slough Watershed, Monterey and San Benito Counties, CA

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Soil Conservation Service Regulations (7 CFR 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Elkhorn Slough Watershed Project, Monterey and San Benito Counties, California.

FOR FURTHER INFORMATION CONTACT: Henry C. Wyman, Acting State Conservationist, Soil Conservation Service, 2121–C Second Street, Davis, CA 95616, telephone (916) 757–8200.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Henry C. Wyman, Acting State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is watershed protection to reduce non-point source pollution in Elkhorn and Moro Cojo Sloughs. The plan proposes establishment of a technical assistance team to work with growers and landowners on the development of practices to reduce erosion, sediment yield, and pesticide transport from land in the drainage basin above the two sloughs. The plan envisions treating approximately 5,390 acres of cropland over a period of about 8 years.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Henry C. Wyman.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: March 29, 1994.

M.J. Collins,

Assistant State Conservationist.

[FR Doc. 94–8397 Filed 4–7–94; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 13–94]

Foreign-Trade Zone 9—Honolulu, HI; Request for Manufacturing Authority, Pacific Allied Products (Plastic Containers)

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Department of Business, Economic Development & Tourism of the State of Hawaii, grantee of FTZ 9, requesting authority on behalf of Pacific Allied Products, Ltd., to manufacture plastic food/beverage containers under zone procedures within FTZ 9, which includes a general-purpose site at the Campbell Industrial Park. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 25, 1994.

Pacific Allied operates a manufacturing facility at the Campbell Industrial Park site. The facility (10 employees) is used to produce recyclable plastic containers for food and beverage products. The primary inputs are generally sourced abroad, including polyethylene terythalate (HTS 3907.60.0010, duty rate 9%+3.1/kilo) and high density polyethylene (HTS 3901.20.0000, duty rate 12.5%). The finished containers produced under zone procedures would be sold to Hawaiian food and beverage processors, whose products are targeted for Hawaiian and foreign markets.

The application requests authority to allow Pacific Allied to conduct certain manufacturing under zone procedures. This would allow Pacific Allied to choose the duty rate that applies to the plastic containers (3%) for the foreign components noted above (duty rates 9.0–12.5%). The application indicates that the savings from zone procedures would help improve the international competitiveness of the Pacific Allied facility, and because this would reduce costs for food processors located in Hawaii it would also help them compete with foreign producers.

In accordance with the Board's regulations, a member of the FTZ Staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 7, 1994. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to June 22, 1994).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 4106 Federal Building, 300 Ala Moana Blvd., Honolulu, Hawaii 96813

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Constitution Avenue NW., Washington, DC 20230.

Dated: April 1, 1994.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–8490 Filed 4–7–94; 8.45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–570–824]

Preliminary Affirmative Determination of Critical Circumstances; Silicon Carbide From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

EFFECTIVE DATE: April 8, 1994.

FOR FURTHER INFORMATION CONTACT: Edward Easton or Steve Alley, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1777 or (202) 482–5288, respectively.

PRELIMINARY CRITICAL CIRCUMSTANCES DETERMINATION: The Department of Commerce (DOC) published its preliminary determination of sales at less than fair value in this investigation on December 8, 1993 (58 FR 64549). On March 1, 1994, petitioner in this investigation alleged that critical circumstances exist with respect to imports of silicon carbide from the People's Republic of China (PRC).

Since this allegation regarding critical circumstances was filed later than 20 days before the scheduled date of the preliminary determination, 19 CFR 353.16(b)(2)(ii) requires that we issue our preliminary critical circumstances determination not later than 30 days after the allegation was filed.

Section 733(e)(1) of the Tariff Act of 1930, as amended (the "Act"), provides that the Department will determine that there is a reasonable basis to believe or suspect that critical circumstances exist if:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

History of Dumping

In this investigation, the first criterion of analysis is addressed in Petitioner's March 1, 1994 submission. Petitioner established that there is a history of dumping of silicon carbide by the PRC by providing documentation concerning both a 1986 finding of dumping and a 1993 review of antidumping measures in the European Community. (See Exhibits 1–3 of petitioner's March 1, 1994 submission).

Inasmuch as we have determined that there is a history of dumping of the subject merchandise, the Department does not need to determine whether the importers of this merchandise knew, or should have known, that the merchandise was being sold at less than fair value.

Massive Imports

Having preliminarily found that there is a history of dumping of the subject merchandise, we need to consider whether the imports of the merchandise have been massive.

Pursuant to 19 CFR 353.16(f) and 353.16(g), the Department considers the following when determining whether imports have been massive over a relatively short period of time:

(1) Volume and value of the imports;

(2) Seasonal trends (if applicable); and

(3) The share of domestic consumption accounted for by the imports.

When examining volume and value data, the Department typically compares the export volume for equal periods immediately preceding and following the filing of the petition (the "pre-filing period" and the "post-filing period"). Under 19 CFR 353.16(f)(2), unless the imports in the comparison period have increased by at least 15 percent over the imports during the base period, the imports will not be considered to be "massive."

To determine whether there have been massive imports over a relatively short period of time, the Department examines shipment information submitted by the respondent or import statistics, when respondent-specific shipment information is not available. On March 4, 1994, the Department sent letters to respondents requesting information regarding shipments of silicon carbide for the period of January 1991 to December 1993. All six participating respondents in this investigation submitted the requested shipment information.

Our analysis is based on the company-specific information supplied by respondents. Because the timing of the allegation (after the completion of verification and close to the scheduled date for the final determination) precluded on-site verification of this information, the Department also referred to U.S. Customs IM–115 entry data to corroborate respondents' reported shipment information, pursuant to section 771(18)(E) of the Act.

To determine whether there have been massive imports of silicon carbide, we compared export volumes for the five months subsequent to the filing of the petition (July through November 1993) to the five months prior to the filing of the petition (February through June 1993). This period of review was selected on the basis of the Department's practice of using the longest period for which information is available up until the effective date of the preliminary determination (which in this investigation was December 8, 1993). We were unable to consider changes in import penetration, pursuant to 19 CFR 353.16(f)(1)(iii), because the available data did not permit an analysis of the post-filing period. Nevertheless, based on respondents' shipment information and U.S. Customs entry data, we find that imports of silicon carbide from the PRC have been massive over a relatively short period for two of the respondents in this investigation—Shaanxi Minmetals (Shaanxi) and Xiamen Abrasives Company (Xiamen). Our finding is based on determining that imports from Shaanxi and Xiamen increased more than 15% during the five month post-filing period. The other four respondents in this investigation—Seventh Grinding Wheel Factory Import and Export Corporation, Import/Export Trading Corporation of Inner Mongolia Autonomous Region, Qinghai Metals and Minerals Import and Export Corporation, and Hainan Feitian Electrontech Company, Limited—were not responsible for massive imports. (For a summary of our calculations, see memo to the file of March 28, 1994). For the Chinese exporters that did not respond to the Department's questionnaire, we find that imports of silicon carbide from the PRC were massive, based on the best information otherwise available (BIA).

In conclusion, given that (1) there has been a history of dumping, and (2) imports from certain respondents have been massive, we preliminarily find that critical circumstances exist for two respondents in this investigation—Shaanxi and Xiamen. We also preliminarily find that critical circumstances exist for all exporters who did not participate in this investigation.

FINAL CRITICAL CIRCUMSTANCES DETERMINATION: We will make a final determination concerning critical circumstances when we make our final determination in this investigation, i.e., by April 22, 1994.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination.

Public Comment

Since this preliminary critical circumstances determination is being made after the due date for case briefs in this investigation, we will accept written comments on this preliminary determination of critical circumstances until April 4, 1994; rebuttal comments must be submitted no later than April 5, 1994.

This determination is published pursuant to section 733(f) of the Act.

Dated: March 31, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–8491 Filed 4–7–94; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

ACTION: Notice of issuance of an export trade certificate of review, application No. 94–00001.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to the Northeast Florida Export Trading Company, Inc. ("NEFETC"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Friedrich R. Crupe, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1993).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Products and Services

All products and services.

2. Export Trade Facilitation Services (as They Relate to the Export of Products and Services)

All Export Trade Facilitation Services in connection with the export of Products and Services, including consulting, international market research, advertising, marketing, insurance, product research and design, legal assistance, transportation, trade documentation, freight forwarding, communication and processing of foreign orders, warehousing, foreign exchange and financing.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands) and the Republic of South Africa.

Export Trade Activities and Methods of Operation

NEFETC may:

1. Require that exporters using its Export Trade Facilitation Services sign exclusive dealing contracts allowing NEFETC to be their sole Export Intermediary for sales to specified markets.

2. Require exporters using its Export Trade Facilitation Services to export through the Jacksonville Port Authority Aviation and Marine Facilities.

3. Sign exclusive distributorship agreements with other Export Intermediaries which require such other Export Intermediaries not to handle competing Products and Services.

4. Sign exclusive arrangements with its clients that require NEFETC not to represent competing companies.

Definitions

Export Intermediary means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

Terms and Conditions of Certificate

(a) NEFETC will not intentionally disclose, directly or indirectly, to any supplier of Products and Services any information about any other supplier's costs, production, capacity, inventories, domestic prices, domestic sales, terms of domestic marketing or sale, or U.S. business plans, strategies, or methods, unless such information is already generally available to the trade or public.

(b) NEFETC will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate of Review. The Secretary of Commerce will request such information or documents when either the Secretary or the Attorney General believes that the information or documents are required to determine that the Export Trade, Export Trade Activities, and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: April 5, 1994.

Friedrich R. Crupe,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 94–8493 Filed 4–7–94; 8:45 am]

BILLING CODE 3510–DR–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Slovak Republic

April 4, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: April 11, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, 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) 927–5350. 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 current limits for certain categories are being adjusted, variously, for swing and carryover.

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 33259, published on June 16, 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.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 4, 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 June 10, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in the Slovak Republic and exported during the twelve-month period which began on June 1, 1993 and extends through May 31, 1994.

Effective on April 11, 1994, you are directed to amend the directive dated June 10, 1994 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Slovak Republic:

Category	Adjusted twelve-month limit [1]
410	434,807 square meters.
433	11,346 dozen.
435	18,344 dozen.
443	107,853 numbers.

[1] The limits have not been adjusted to account for any imports exported after May 31, 1993.

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,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94-8492 Filed 4-7-94; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletion from the procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a service previously furnished by such agencies.

EFFECTIVE DATE: May 9, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: On October 22, 1993, February 11 and 18, 1994 the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (58 FR 54559, 59 FR 6622 and 8170) of proposed additions to and deletion from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Commissary Shelf Stocking and Custodial, Naval Air Station, Moffett Field, San Jose, California

Grounds Maintenance, U.S. Army Reserve Center, 2800 Crestline Road, Fort Worth, Texas

Grounds Maintenance, U.S. Army Reserve Center, 3315 9th Street, Wichita Falls, Texas.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Deletion

After consideration of the relevant matter presented, the Committee has determined that the service listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

Accordingly, the following service is hereby deleted from the procurement list: Janitorial/Custodial, U.S. Army Reserve Facility, 14631 S.E. 192nd Street, Renton, Washington.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94-8479 Filed 4-7-94; 8:45 am]

BILLING CODE 6820-33-P

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: May 9, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Bedpan, Plastic
6530–00–014–1018
6530–00–494–8121
6530–00–049–0428
NPA: The Association for Retarded Citizens of St. Clair County Port Huron, Michigan
Original and Duplicate Microfiche, Program 1566–S 7690–00–NSH–0018
(Requirements for Wright-Patterson Air Force Base, Ohio)
NPA: Ohio Valley Goodwill Rehabilitation Center, Inc., Cincinnati, Ohio

Services

Janitorial/Custodial
Basewide
Fort Sheridan, Illinois
NPA: Ada S. McKinley Community Services, Chicago, Illinois
Janitorial/Custodial
HQ, U.S. Strategic Command
Buildings 500, 501, 502, 515, 522, 591 and 597
Offutt Air Force Base, Nebraska
NPA: Goodwill Industries, Inc., Omaha, Nebraska
Janitorial/Custodial
U.S. Army Reserve Center
2513–15 Gravel Road
Fort Worth, Texas
NPA: Goodwill Industries of Fort Worth, Fort Worth, Texas.

Beverly L. Milkman,
Executive Director.

[FR Doc. 94–8480 Filed 4–7–94; 8:45 am]
BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee

AGENCY: National Communications System.

ACTION: Notice of meeting.

A meeting of the Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee will be held on Friday, April 29, 1994 from 9 a.m. to 3 p.m. at the Mitre-Hayes Building, 7525 Colshire Drive, McLean, VA 27006. The agenda is as follows:

—Call to Order
—Operations Working Group/Plans Working Group
—IES–OMNCS–COP NSTAC Issues Ad Hoc Group
—Network Security Steering Committee
—NS/EP Panel
—National Information Infrastructure Task Force
—Network Reliability and Security Working Group
—NE/EP Implications of Telecommunications Legislation
—New Business
—Adjournment

Due to the requirement to discuss classified information, in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense. Any person desiring information about the meeting may telephone (703) 692–9274 or write the Manager, National Communications System, 701 S. Court House Road, Arlington, VA 22204–2198.

Dated: April 4, 1994.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–8399 Filed 4–7–94; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before May 9, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 401–3200. 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: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or

Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: April 4, 1994.

Wallace McPherson,

Acting Director, Information Resources Management Service.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Interim Title I State Plan for the State Vocational Rehabilitation Services Program and the Title VI, Part C State Plan Supplement for the State Supported Employment Services Program.

Frequency: Annually.

Affected Public: State or local governments.

Reporting Burden: Responses: 81. Burden Hours: 7,436.

Recordkeeping Burden: Recordkeepers: 81. Burden Hours: 1,521,787.

Abstract: The Rehabilitation Act of 1973, as amended, requires each State to submit a State Plan for VR services and a supplement for supported employment services to receive Federal funds. The State Plan is the basis upon which RSA monitors State VR agency compliance with statutory and regulatory provisions.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Resolution of Applicant/Client Appeals.

Frequency: Annually.

Affected Public: State or local governments.

Reporting Burden: Responses: 81. Burden Hours: 162.

Recordkeeping Burden: Recordkeepers: 0. Burden Hours: 0.

Abstract: This form will be used to meet specific data requirements, collecting information on the number and types of Vocational Rehabilitation agency applicant/client appeals handled, the types of complaints/issues, and the resolution of those appeals. The Department will use the information to monitor program management and compliance.

[FR Doc. 94–8408 Filed 4–7–94; 8:45 am]

BILLING CODE 4000–01–M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by April 15, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green, (202) 401–3200.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Management Service, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: April 4, 1994.

Wallace McPherson,

Acting Director, Information Resources Management Service.

Office of Elementary and Secondary Education

Type of Review: Expedited.

Title: Goals 2000: Educate America Act.

Abstract: This form will provide assistance to State agencies to improve the quality of education for all students by supporting a long-term effort of coherent and coordinated improvements. The Department will use the information to ensure that statutory requirements will be fulfilled.

Additional Information: An expedited review is appropriate for the Goals 2000 Application Package due to the short timespan between Congressional approval and Presidential signature on the legislation and the date which funds are available and should be awarded. Final approval by Congress of S. 1150 and H.R. 1804 is pending with the bill in conference at this time. Funds are available July 1, 1994.

A technical assistance conference will be held April 19–21, 1994, in Washington, DC, for six representatives from each State, representing the governor's office and the State educational agency. At this time the Department of Education will provide assistance regarding the preparation of the application for FY 1994 funds. It is critical that an approved application package is available for distribution at the beginning of that conference. Thus our target date for approval is Friday, April 15, 1994.

Frequency: One-time.

Affected Public: State or local governments.

Reporting Burden: Responses: 57. Burden Hours: 1,140.

Recordkeeping Burden: Recordkeepers: 0. Burden Hours: 0.

[FR Doc. 94–8407 Filed 4–7–94; 8:45 am]

BILLING CODE 4000–01–M

Institute for International Public Policy

AGENCY: Department of Education.

ACTION: Notice of proposed definitions and proposed priority for fiscal year 1994.

SUMMARY: The Secretary proposes a competitive priority for fiscal year (FY) 1994 under the Institute for International Public Policy program. This program is designed to significantly increase the number of African Americans, Hispanic Americans, and other underrepresented minorities in the international service. The Secretary takes this action to focus Federal financial assistance on this identified national need. The priority is intended to encourage applicants to develop consortial arrangements that include historically Black colleges and universities, institutions of higher education serving substantial numbers of African Americans, Hispanic Americans, or other underrepresented minority students, and institutions of higher education with programs to train foreign service professionals.

DATES: Comments must be received on or before May 9, 1994.

ADDRESSES: All comments concerning this proposed priority should be addressed to Ralph Hines, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202–5332.

FOR FURTHER INFORMATION CONTACT: Ralph Hines. Telephone: (202) 732–6066. 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: The Institute for International Public Policy program will provide a grant to a consortium of institutions of higher education to conduct a program designed to significantly increase the number of African Americans, Hispanic Americans, and other underrepresented minorities in the international service.

Title VI, Part C, section 621 of the Higher Education Act of 1965, as amended, states that an eligible recipient is a consortium that consists of at least one or more from each of the following categories: (1) An institution eligible for assistance under Part B of title III of the Higher Education Act of 1965, as amended; (2) an institution of higher education that serves substantial numbers of African Americans or other underrepresented minority students; and (3) an institution of higher education with programs in training foreign service professionals.

Many of the students this program is designed to serve are enrolled in institutions in categories (1) and (2). The Secretary believes that the purposes of the legislation can be best carried out by a consortium that includes at least one institution from categories (1), (2), and (3). Therefore, the Secretary proposes to establish a competitive priority for applications from consortia that include historically Black colleges and universities, institutions serving substantial numbers of African Americans, Hispanic Americans or other underrepresented minorities, and institutions that offer programs to train foreign service professionals.

The Secretary will announce the final priority in a notice in the **Federal Register**. The final priority will be determined by responses to this notice, and other considerations of the Department. Funding of the grant depends on the nature of the final priority and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priority does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priority.

Priority

Under 34 CFR 75.105(c)(2)(i) the Secretary proposes to give preference to applications that meet the following competitive priority. The Secretary proposes to award 15 points to an application that meets this competitive priority in a particularly effective way. These points would be in addition to any points the application earns under the selection criteria for this program:

Consortia that include at least one institution from each of the following categories: (1) Historically Black colleges and universities as defined in section 322 of the Higher Education Act of 1965, as amended; (2) institutions of higher education that serve substantial numbers of African Americans, Hispanic Americans, or other underrepresented minority students; and (3) institutions of higher education with programs in training foreign service professionals.

Definitions

The statute states that one of the members of an eligible consortium may be an institution of higher education that serves substantial numbers of African American or other underrepresented minority students. The Secretary proposes to define "substantial" to mean at least 25 percent of the enrolled undergraduate student population at an institution. The Secretary also proposes to define "underrepresented minorities" to include African Americans, Hispanic Americans, Asian Americans, American Indians, Alaskan Natives, Native Hawaiians, and Pacific Islanders.

Intergovernmental Review

This program is 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 this order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in suite 2100, 490 L'Enfant Plaza East, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Program Authority: 20 U.S.C. 1131–1131f.

(Catalog of Federal Domestic Assistance Number 84.269)

Dated: March 31, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–8406 Filed 4–7–94; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL94–56–000]

Franklin County PUD No. 1; Filing

April 4, 1994.

Take notice that on March 28, 1994, Franklin County PUD No. 1 tendered for filing a letter requesting that the Commission waive the annual requirements to file FERC Form 715.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of

Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before April 12, 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. 94–8405 Filed 4–7–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[Docket No. ERA–FC–81–012]

Tucson Electric Power Co.; Rescission of Prohibition Order Issued Under the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of rescission of prohibition order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that on March 31, 1994, it issued an order rescinding the final Prohibition Order issued on July 15, 1981, to the Tucson Electric Power Company (TEP) by the Economic Regulatory Administration (46 FR 37960, July 23, 1981) under the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*). This rescission permits TEP to continue to use oil or natural gas as a primary energy source in its Irvington Generating Station Units 1, 2, and 3.

This action is being taken at the request of TEP because of changed circumstances regarding the economic and financial feasibility of converting these generating units to coal as an energy source.

A copy of this rescission order is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–7751. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 4, 1994.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–8477 Filed 4–7–94; 8:45 am]

BILLING CODE 6450–01–P

Western Area Power Administration

Collections From Central Valley Project Power Contractors To Carry Out the Restoration, Improvement, and Acquisition of Environmental Habitat Provisions of the Central Valley Project Improvement Act of 1992

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of final procedures for the assessment and collection of restoration fund payments from the Central Valley Project power contractors.

SUMMARY: The Central Valley Project (CVP) Improvement Act of 1992 (Act) (Pub. L. 102–575, 106 Stat. 4706 *et seq.*) establishes in the Treasury of the United States the "Central Valley Project Restoration Fund" to carry out the habitat restoration, improvement, and acquisition provisions of the Act. The Act further requires the Secretary of the Interior to assess and collect annual mitigation and restoration payments from CVP water and power contractors. The Secretary of the Interior, through the Bureau of Reclamation (Reclamation), is responsible for determining the CVP water contractors' share and the CVP power contractors' share of the Restoration Fund payments. Because Western Area Power Administration (Western) is responsible for the marketing of CVP power and maintains all CVP power contracts, Western has agreed to assess and collect the total CVP power contractors' share of the Restoration Fund payments, as determined by Reclamation, from the CVP power contractors. By publication of this notice, Western establishes procedures to accomplish the assessment and collection of Restoration Fund payments from the CVP power contractors as required by the Act.

DATES: The final procedures will become effective May 9, 1994 and will remain in effect until superseded.

ADDRESSES: Information regarding this final procedure, including spreadsheet analysis, comments, letters, memorandums, and other supporting documents made or kept by Western for the purpose of developing these procedures, is available for public inspection and copying at Western's Sacramento Area Office located at 1825 Bell Street, suite 105, Sacramento, CA 95825–1097.

FOR FURTHER INFORMATION CONTACT:

James C. Feider, Area Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, suite 105, Sacramento, CA 95825–1097, (916) 649–4418.

SUPPLEMENTARY INFORMATION: Section 3407 of the Act establishes in the Treasury of the United States the "Central Valley Project Restoration Fund" to carry out the habitat restoration, improvement, and acquisition provisions of the Act. The Act further requires the Secretary of the Interior to assess and collect annual mitigation and restoration payments from CVP water and power contractors. The Secretary of the Interior, through Reclamation, is responsible for determining and collecting the CVP water contractors' share and the CVP power contractors' share of the annual Restoration Fund payments.

Because Western is responsible for the marketing of CVP power, Western has agreed to administer the assessment and collection of the Restoration Fund payments from the CVP power contractors. Western has executed a Letter of Agreement with Reclamation to establish procedures for depositing the collections from the CVP power contractors into the Restoration Fund.

The total power Restoration Fund payment obligation, determined by Reclamation, will be assessed to the CVP power contractors. Every month each CVP power contractor will receive a bill reflecting the amount to be paid into the Restoration Fund. The CVP power contractor will pay that amount to Western, who will deposit all amounts collected from the CVP power contractors into the Restoration Fund.

Acronyms and Definitions

Descriptions of the acronyms and definitions used in this **Federal Register** notice may be found in the Final Procedures.

Public Notice and Comments

The process used by Western to ensure involvement of interested parties in the development of these final procedures for assessing and collecting Restoration Fund payments from the CVP power contractors is summarized below.

1. On October 1, 1993, Western issued a letter to all CVP customers announcing Reclamation's determination of a total power Restoration Fund payment obligation of $7,092,800 for fiscal year (FY) 1994.

2. On October 29, 1993, in a letter to all CVP power customers, Western announced the plans to implement collections from the CVP power contractors for the Restoration Fund on an interim basis, beginning with a November 24, 1993, bill.

3. A **Federal Register** notice was published at 58 FR 62343, November 26, 1993, officially announcing the

proposed procedures for the assessment and collection of the Restoration Fund payments from the CVP power contractors, initiating the public consultation and comment period, announcing the public information forum and public comment forum, and presenting procedures for public participation.

4. On December 1, 1993, in a letter to all CVP customers and interested parties, Western announced that the public consultation and comment period had begun; announced the dates, times, and locations of the public information forum and the public comment forum; and enclosed a copy of the November 26, 1993, **Federal Register** notice.

5. At the public information forum held on December 16, 1993, Western's staff presented the proposed procedures for the assessment and collection of Restoration Fund payments and discussed the methodologies and studies that were used in developing the proposed procedures.

6. A public comment forum was held on December 16, 1993, to give the public the opportunity to comment for the record. Three persons representing customers made oral comments.

7. Fifteen comment letters were received during the 30-day consultation and comment period. The consultation and comment period ended December 26, 1993. All formally submitted comments have been considered in the preparation of the final procedures.

8. On December 30, 1993, copies of all written comments received during the 30-day comment period were sent to all CVP customers and interested parties.

9. Based on customer comments regarding the proposed assessment and collection method, Western analyzed various alternative methods to address certain concerns. Upon request, Western shared these analyses at a Northern California Power Agency members meeting on January 13, 1994, and a CVP Customer Technical Committee Meeting on January 19, 1994.

10. On February 3, 1994, in a letter addressed to the Restoration Fund commentors, Western provided copies of all handouts distributed during the meetings specified in item 9 above.

Comments

During the 30-day consultation and comment period, Western received 15 written comments from 14 different sources. In addition, three persons commented during the December 16, 1993, public comment forum.

Written comments were received from the following sources:

Alameda, City of (California)
Arvin Edison Water Storage District (California)
Calaveras Public Power Agency (California)
Modesto Irrigation District (California)
Palo Alto, City of (California)
Petershagen, Mr. George F. (California)
Redding, City of (California)
Roseville, City of (California)
Sacramento Municipal Utility District (California)
Santa Clara, City of (California)
Shasta Lake, City of (California)
Trinity County Public Utility District (California)
Tuolomne County Public Power Agency (California)
Westlands Water District (California).

Representatives of the following organizations made oral comments:

Redding, City of (California)
Roseville, City of (California)
Sacramento Municipal Utility District (California).

Most of the comments Western received dealt with assessing the total Restoration Fund payment obligation to scheduled or delivered energy, the authority to collect interim bills and assess late payment charges during the interim period, the issuance of separate bills, and establishing a review process for the final procedures. Additional comments were received regarding assessing excess energy and capacity sales, excluding first preference customers from the assessment, assessing project use, changing the amount allocated to power by Reclamation, and conducting an informal workshop. Discussion of the comments will be grouped by these issues, with all other comments placed under the heading of "Other." In some cases Western will address several comments with one response. The comments, paraphrased for brevity, and responses are presented below.

Assessing to Scheduled or Delivered Energy

Comment: The agricultural power users consider Western's proposal to be a fair and equitable method of allocating Restoration Fund payment obligations.

Comment: The proposal states that total collections will be the same each month which could penalize seasonally diverse customers. It seems appropriate that the collections more nearly reflect monthly revenues.

Comment: Energy alone is not an adequate assessment factor to reflect utilization of the CVP. Factors such as actual demand and CVP allocation used either separately or together could be more representative than just energy alone.

Comment: The proposal is likely to foster a market environment in which Western's scheduling power contractors compete against other Western power contractors to minimize the impact of the Restoration Fund. Establish the assessment based on a system-wide per-kilowatthour (kWh) basis.

Comment: By assessing monthly energy, Western would distort recently approved rates by effectively increasing the energy rate but not the other charges included in bills. This could cause an undesirable and/or unexpected response by customers who have resource flexibility.

Comment: An assessment of the payment as a fixed surcharge based on a percentage of monthly energy entitlement would totally eliminate the incentive to avoid restoration payments through reducing scheduled energy.

Comment: Assess the Restoration Fund payment obligation based on total Contract Rate of Delivery (CRD). Under the proposed plan, contract users could direct their energy needs from other sources in order to evade payment of the Restoration Fund assessment leaving customers with limited resource options to pay a larger portion of the payment.

Comment: The recent CVP rate process found that a 40-percent capacity and 60-percent energy split is most equitable. The Restoration Fund collections should also be assessed in this manner.

Comment: Western has considered the cost allocation issue in length, in the CVP general rate case proceeding, and determined that the appropriate allocation of revenue requirements (costs) is 40 percent to capacity/60 percent to energy. We recommend Western utilize this same methodology to allocate the Restoration Fund costs.

Comment: Diversify the proposal to collect 50 percent on capacity sales and 50 percent on energy sales; this will distribute and dilute any uncontrollable price signals and discourage defensive gaming.

Response: Western shares in the concerns of customers who felt the proposed method would (1) penalize seasonally diverse customers, (2) send adverse pricing signals, and/or (3) allow for adverse actions on behalf of certain customer groups. Therefore, Western has decided to prorate the total Restoration Fund payment obligation among actual delivered or scheduled energy and capacity on a 50/50 basis.

Western considered the comments recommending the allocation be based on actual energy entitlement or CRD. Western believes the assessment should reflect actual use of the CVP power system and not a customer's upper limit on use of the CVP system.

Western agrees that extensive analyses for the recent CVP rate process

indicated that Western's costs are best represented in a 40-percent capacity 60-percent energy ratio. Western also agrees that heavily assessing CVP energy costs may send adverse pricing signals. However, as stated above, it is Western's position that the Restoration Fund should be assessed based on the actual use of the resource provided rather than the costs associated with that resource use. The 50/50 basis was chosen because it reflects an assessment to both types of long-term power services available from the CVP. Adverse pricing signals that may be caused by an inequitable assessment to capacity or energy will be reduced with a 50-percent delivered or scheduled energy, 50-percent delivered or scheduled capacity assessment.

Authority To Assess and Collect Interest on Interim Bills

Comment: Will interest accrue on interim billing or after the public process becomes final?

Comment: Western does not have the authority to require customers to pay interim bills or assess interest before a final procedure is adopted.

Comment: Western should formally acknowledge that payment during the interim period is optional.

Comment: We appreciate your interest to minimize cash flow impacts by starting collections as soon as possible. However, some customers may prefer to wait until the public process is complete. We suggest that the interim procedures be made optional.

Comment: Current contract provisions do not provide for the assessment of the Restoration Fund fees.

Response: Western initiated the interim assessment and collection process during the public process to reduce the economic impact to the CVP power contractors, to proactively support the provisions of the Act, and to assist Reclamation. Payments made by the CVP power contractors during the interim period are considered by Western to be optional. Bills not paid during the interim period did not accrue interest. All billing notices sent to the CVP power contractors during the interim period stated, "Interim billing is not subject to a late charge assessment." Although Restoration Fund payments are not included in the CVP power sales contracts, collection is mandated by the Act. Adoption of these final procedures provides Western the legal authority to collect Restoration Fund payments. Interest will accrue on Restoration Fund bills in the first billing cycle 30 days after the publication of the final procedures in the **Federal Register**.

Separate Billing

Comment: Are the bills separate? Why is there a separate bill versus inclusion in the current power bill from Western?

Comment: Does the Act mandate monthly payments? What governed the timing of the collection? Could collections be made on a quarterly basis?

Comment: The Act provides for annual, not monthly, payments to be collected from the CVP water and power customers.

Comment: We would like to avoid the administrative burden of an additional monthly bill.

Comment: We support the Western proposal to utilize a separate billing for the Restoration Fund. This approach allows all parties to clearly identify the payments that are being made pursuant to the Central Valley Project Improvement Act.

Comment: We support the proposed separate billing; this will aid in tracking our share of the Restoration Fund.

Response: Western will use separate bills to assess the Restoration Fund payments to the CVP power contractors. The Secretary of the Interior, through Reclamation, is responsible for determining and collecting the CVP water contractors' share and the CVP power contractors' share of the annual Restoration Fund payments. Because Western is responsible for the marketing of CVP power, Western has agreed to administer the assessment and collection of the Restoration Fund payments from the CVP power contractors on behalf of Reclamation. Western is assessing the total Restoration Fund payment obligation among the CVP power contractors as a pass-through surcharge from Reclamation. The Restoration Fund assessment is not associated with current CVP rates or power revenues; the funds will not flow through the CVP power repayment study, nor will they be deposited into the Reclamation Fund to be applied to the repayment of CVP investment. In addition, the amounts collected for the Restoration Fund are deposited into a separate Treasury account and late payment interest charges are assessed in a different manner than those imposed by the General Power Contract Provisions included in the CVP power contractors' power sales contracts. Western has adopted assessment and collection of the Restoration Fund payments on a monthly basis to assure adequate cash flow to Reclamation to carry out the goals of the Act.

Establish a Review Process for the Final Procedures

Comment: What would happen if the Act is overturned or its implementation is delayed?

Comment: Is there a sunset clause? What will happen if Congress increases the limit significantly?

Comment: Is the proposed procedure permanent for the duration of the Fund?

Comment: Include an opportunity to reopen the public process in the final methodology, in case of unforeseen problems.

Comment: Build in the flexibility to review every 2, 3, or 5 years at the longest.

Comment: We recommend that the final procedures include a statement that Western will automatically reopen the surcharge matter for comment and revision, in conjunction with the CVP's normal 5-year ratemaking process.

Comment: The assessment method should include a review process to accommodate change and improvements that will become necessary as we gain experience with the method and its effects.

Response: Western agrees with customer comments and concerns and has included a review process in the final procedures. Minimally, Western will review the assessment method every 5 years from the effective date of the final procedures or if one of the following occurs:

(1) If there is a significant change to or suspension of the legislation,

(2) If a material issue arises, or

(3) If an apparent inequity in the assessment method is discovered.

Assess Excess Capacity and Energy Sales

Comment: Why were Energy Account Number 2 (EA2) and excess capacity sales excluded from the allocation?

Comment: Does Western do any other sales to Pacific Gas and Electric Company (PG&E)?

Comment: Entities receiving excess energy may escape an assessment; this will increase the assessment to long-term power contractors, and the increased assessment would be for energy not yet received. This does not appear equitable.

Comment: Seasonal CVP capacity is provided by CVP generating facilities and "impacts" the CVP waterways in the same manner normal sales of CVP capacity and energy might "impact" waterways. To disregard an allocation to this type of sale would allow certain customers to benefit from CVP power without paying for a portion of the Restoration Fund.

Comment: Excess power sales should be assessed because those end users are also benefiting from the CVP.

Response: Western sells two types of surplus power: surplus energy and surplus capacity. Surplus power is only available for sale by Western after contractual obligations are fulfilled. Western proposed the total power Restoration Fund payment obligation be assessed to the CVP power contractors that purchase power on a long-term basis because Western believes that the assessment should be made on power sales that are predictable during the year and should be billed to customers that are fully benefiting from the CVP resource. By definition, this excludes sales of surplus power because surplus power is not normally available for a period in excess of 1 year.

Surplus energy is normally sold to PG&E, under contract number 14–06–200–2948A, into EA2. Later, Western may repurchase the energy from PG&E at rates that reflect savings incurred by PG&E in the original purchase price from Western. If EA2 sales are assessed a portion of the total power Restoration Fund payment obligation, the increased cost to PG&E would be reflected in the repurchase of the energy upon withdrawal from EA2, which would result in a higher cost for energy. Such higher costs will be passed on to the CVP power customers in future power rates or the revenue adjustment clause.

Excess capacity sales may be offered to scheduling utilities normally at rates that reflect Western's costs associated with capacity. Revenues from these sales increase the total revenue available for CVP repayment. If the excess capacity sales included the Restoration Fund assessment, less revenue would be available for the repayment of CVP investment. Furthermore, Western's excess capacity sales compete in the market and the addition of the Restoration Fund assessment may make this service noncompetitive.

Exclude First Preference Customers From the Assessment

Comment: Western's proposed procedures for the collection of Restoration Fund payments provides for two exclusions: EA2 sales and excess capacity sales. A third exclusion should be added for first preference customers because these customers' counties natural resources were appropriated to build facilities of the CVP and because the fish and wildlife restoration goals for the Trinity River are not funded by the Restoration Fund, but by the Trinity River Basin Fish and Wildlife Restoration Program (Pub. L. 98–541).

Response: The Act was designed to benefit many interests within the State of California. In section 3402 of the Act, Congress provided for a wide variety of purposes. These purposes include the protection, restoration, and enhancement of fish, wildlife, and associated habitats in the Central Valley and Trinity River basins of California; an attempt to achieve a reasonable balance among competing demands for the use of CVP water; and other benefits to particular areas of the State of California, and to the State as a whole. Because the Act and the Restoration Fund were designed to service varied interests, including those within the first preference customers' home counties, Western has chosen not to make payment into the Restoration Fund connected to benefits to be received from the Restoration Fund.

The first preference customers have, by legislation, been allowed a significant benefit over other preference entities in Western's service area. Other preference entities must compete for an allocation of Federal power under each marketing plan, and many eligible preference entities receive no allocation. Congress sought to compensate these counties for the natural resources appropriated when the Trinity and New Melones facilities were constructed by allowing them this first preference. In all other respects, the first preference customers are to be treated as any other CVP preference power customer. See, Trinity County Public Utilities District, et al. v. Harrington, 781 F.2d 163 (9th Cir. 1986). Western has chosen not to administratively extend benefits of the first preference customers by excusing them from payments made into the Restoration Fund.

Project Use

Comment: Are project use sales being assessed?

Comment: Wouldn't the amount charged to preference customers be less if project use was assessed by Western?

Response: Project use is assessed by Reclamation in the amount allocated to the water contractors. Because the allocation percentage used by Reclamation to determine the total power Restoration Fund payment obligation if for commercial power only, and does not include project use, these sales will not be assessed.

Changing the Amount Allocated to Power by Reclamation

Comment: Revise the proposed procedures and eliminate any reference of the willingness to pay whatever Reclamation requests into the Restoration Fund. Congress, not Reclamation, determined the amount to be allocated to power and water.

Comment: The 18 percent that Reclamation has assessed to power needs to be addressed and made more equitable to all CVP users by placing a larger portion on water users and less on electric contractors.

Comment: Establish a balancing account to ensure sufficient funds by collecting 10 percent more than Reclamation assesses.

Response: Western does not have the legal authority to increase or decrease the amount allocated to power by Reclamation. The Act states, "* * * the Secretary shall assess and collect annual mitigation and restoration fund payments * * * that will result in collection, during each fiscal year, of an amount that can be reasonably expected to equal the amount appropriated each year * * * the Secretary shall require the CVP water and power contractors to make such additional annual payments as are necessary to yield * * * the amount required * * *." Although Western has in the past and will in the future attempt to work with Reclamation to assure that Restoration Fund allocations are reasonable, Reclamation has final authority under the Act to determine the level of allocations. Western is collecting the Restoration Fund assessment to the CVP power contractors under the terms of an agreement between Western and Reclamation. Issues regarding the amount allocated to power by Reclamation should be addressed to Reclamation.

Conduct an Informal Workshop Prior to Publication of Final Procedures

Comment: An informal workshop might help to develop a mutually acceptable surcharge for the CVP power customers.

Comment: Allowing only 5 days between the public information meeting and public comment forum and the final written comments is too restrictive. We urge you to extend the comment period or hold an additional workshop prior to publishing the final procedures in the **Federal Register**.

Response: Western believes that interested parties had adequate time to comment on its proposed procedures. In response to customer comments regarding the proposed assessment and collection method, Western attended informal workshops and analyzed various alternative methods to address certain concerns. Upon request, Western shared these analyses at a Northern California Power Agency members meeting on January 13, 1994, and a CVP Customer Technical committee meeting

on January 19, 1994. On February 3, 1994, in a letter addressed to the Restoration Fund commentors, Western provided copies of all handouts distributed during the above-mentioned meetings.

Other

Comment: Will Restoration Fund payment impact the current CVP rates?

Response: No. Western is assessing the total power Restoration Fund payment obligation among the CVP power contractors as a pass-through surcharge from Reclamation. The Restoration Funds are not associated with current CVP rates or power revenues; the funds will not flow through the CVP power repayment study nor will they be deposited into the Reclamation Fund to be applied to the repayment of CVP investment.

Comment: The proposed procedure involves retroactive billing which is precedent setting and undesirable.

Response: Western has revised the final procedures. Under the final procedures, CVP power contractors will know the amount of the Restoration Fund assessment at the time the power purchase is made. The assessment month is now defined as the period 1 month prior to the billing month. This is consistent with Western's other current power billing practices.

Comment: The assessment to the power contractors should be based on CVP revenue requirements.

Response: Western feels that basing the Restoration Fund assessment on revenue requirements would reflect the cost of the resources rather than the use of those resources. It is Western's position that the Restoration Fund should be assessed based on the actual use of the resource provided rather than the costs associated with that resource.

Comment: Western's assessment includes both water and electric contract users, therefore users with both water and power contracts receive a double assessment.

Response: The Act requires an assessment to both CVP power and water contractors. While this type of customer may or may not be the only customers receiving two separate Restoration Fund assessments, these customers are receiving the benefit of two clearly separable resources.

Changes to Proposed Procedures

Western has considered all comments received during the 30-day consultation and comment period from the CVP customers and interested parties and has made changes to the proposed procedures. While the decisions outlined in the final procedures may not reflect a consensus on every issue, Western believes the final procedures to be an equitable distribution of the total Restoration Fund payment obligation among the CVP power customers. The final procedures will provide the mechanism required to assess and collect an amount that can be reasonably expected to equal the amount appropriated by Congress and allocated to power by Reclamation.

The proposed procedures provided that the total power Restoration Fund payment obligation assigned by Reclamation be prorated over the FY to determine a total monthly obligation. Each month the total monthly obligation was assessed to the CVP power contractors as a ratio of the individual power contractor's delivered or scheduled energy to the total delivered or scheduled energy recorded in the assessment month. The assessment month was previously defined as the month 2 months prior to the billing month. This definition has been changed; the assessment month will be 1 month prior to the billing month. In the final procedures, the total power restoration fund payment obligation will be assessed on a 50/50 basis to both delivered or scheduled energy and capacity. An energy and capacity multiplier will be derived from the prior FY actual delivered or scheduled energy and capacity, adjusted for any anticipated changes to the CVP power contractor base. The multiplier will then be applied during the assessment month to each power contractor's actual current year delivered or scheduled energy and capacity.

The final procedures include a mid-year review of the assessment method. If the actual amount assessed is 25 percent greater or less than the projected assessments, Western will adjust the energy and capacity multipliers. The CVP power contractors will be notified by letter, and the adjusted multipliers will be applied for the remaining months of the current FY. All other deviations in the amounts actually collected or assessed will be rolled into the following FY assessment. Finally, Western has agreed to review the final procedures at a minimum of every 5 years or to accommodate for unforeseen changes or problems.

Interim Billing Adjustments

The total power Restoration Fund payment obligation assigned by Reclamation to the CVP power contractors for FY 1994 is $7,092,800. In an effort to implement collections for the Restoration Fund, Western began issuing bills during an interim period on November 24, 1993. The total power Restoration Fund payment obligation was prorated among the CVP power contractors, and since November 1993, each CVP power contractor has received a bill reflecting this prorated amount. The amount assessed and collected from the CVP power contractors during the interim period will be compared retroactively to the amount that should be assessed and collected under the terms of the final procedures, as follows:

Western will prorate the FY 1994 total Restoration Fund payment obligation of $7,092,800 assessing 50 percent of the total to delivered or scheduled energy and 50 percent to delivered or scheduled capacity. This results in an equal assessment of $3,546,400 to delivered or scheduled energy and capacity. Western has determined the FY 1993 total delivered or scheduled energy and capacity and has made adjustments for anticipated changes to the CVP power contractor base. The FY 1994 energy multiplier will be equal to $3,546,400 divided by the adjusted delivered or scheduled energy of 7,314,510 megawatt-hours, or 0.48 mills/kWh. The FY 1994 capacity multiplier will be equal to $3,546,400 divided by the adjusted delivered or scheduled capacity of 14,373 megawatts, or $0.25/kilowatt-year. These multipliers will then be applied to each CVP power contractor's actual energy and capacity since October 1, 1993, to determine the total Restoration Fund payment due from the contractor.

The total Restoration Fund payment due will be netted with the total Restoration Fund payments assessed and collected during the interim period. Any resulting increase/decrease will be assessed in the first Restoration Fund bill issued after the final procedures become effective, which is 30 days after the publication of this notice in the **Federal Register**. If a CVP power contractor has paid more during the interim period than should have been collected under the terms of the final procedures, that CVP power contractor will not receive an additional FY 1994 assessment until the over-collection meets the current FY 1994 obligation. Late payment charges will accrue on delinquent Restoration Fund payments in accordance with the terms outlined in the final procedures.

Final Procedures

Acronyms and Definitions

As used herein, the following acronyms and definitions apply:

Assessment Month: The service month which is 1 month prior to the billing month. The data derived from this service month will serve as the basis

for calculating the monthly Restoration Fund bills.

Billing Month: The month each CVP power contractor will be billed for the Restoration Fund payment.

CVP: Central Valley Project.

CVP Power Contractor: Any entity purchasing firm capacity and/or energy from Western for a period in excess of 1 year.

CVP Power Contractor's Restoration Fund Payment: The amount recorded as payable on the CVP power contractor's Restoration Fund bill.

FY: Fiscal year beginning October 1 and ending September 30.

kWh: Kilowatthour.

Reclamation: Bureau of Reclamation, United States Department of the Interior.

Restoration Fund: The Central Valley Project Restoration Fund created by section 3407 of Public Law 102–575, 106 Stat. 4726 *et seq.*

Restoration Fund Bill: The instrument prepared and issued monthly by Western as a mechanism for collecting the Restoration Fund payments from the CVP power contractors.

Total Power Restoration Fund Payment Obligation: The total annual Restoration Fund payment obligation calculated and assigned to the CVP power contractors by Reclamation.

Western: Western Area Power Administration, United States Department of Energy.

Determination of the Total Power Restoration Fund Payment Obligation

Reclamation is responsible for determining the total power Restoration Fund payment obligation for the CVP power and water contractors. Prior to each FY Reclamation will, by written communication, provide to Western's Area Manager, Sacramento Area Office, the amount determined to be the total power Restoration Fund payment obligation, and a detailed explanation of the computation of the amount. Upon receiving the written communication from Reclamation, Western will notify the CVP power contractors of the total power Restoration Fund payment obligation, and the multipliers to be used in assessing that obligation to the CVP power contractors.

Assessing the Total Power Restoration Fund Payment Obligation

Each FY, Western will prorate the total power Restoration Fund payment obligation to both delivered or scheduled energy and capacity. Western will assess 50 percent of the total power Restoration Fund payment obligation to delivered or scheduled energy and 50 percent to delivered or scheduled capacity. Western will determine an energy and capacity multiplier based on the prior FY total delivered or scheduled energy and capacity amounts, adjusted for any anticipated changes in the CVP power contractor base. The total power Restoration Fund payment obligation for the current FY to be prorated to energy will be divided by the adjusted prior FY delivered or scheduled energy to determine the energy multiplier. The same process will be repeated using the total power Restoration Fund payment obligation prorated to capacity divided by the adjusted prior FY delivered or scheduled capacity to determine the capacity multiplier. During the assessment month, these multipliers will then be applied to each CVP power contractor's scheduled or delivered energy and capacity to determine the power contractor's Restoration Fund payment. The total amount recorded in the assessment month will be reflected in the CVP power contractor's Restoration Fund bill.

Assessing the Total Power Restoration Fund Payment Obligation

Reclamation is responsible for determining the total power Restoration Fund payment obligation for the CVP power and water contractors. Prior to each FY Reclamation will, by written communication, provide to Western's Area Manager, Sacramento Area Office, the amount determined to be the total power Restoration fund payment obligation, and a detailed explanation of the computation of the amount. Upon receiving the written communication from Reclamation, Western will notify the CVP power contractors of the total power Restoration Fund payment obligation, and the multipliers to be used in assessing that obligation to the CVP power contractors.

Assessing the Total Power Restoration Fund Payment Obligation

Reclamation is responsible for determining the total power Restoration Fund payment obligation for the CVP power and water contractors. Prior to each FY Reclamation will, by written communication, provide to Western's Area Manager, Sacramento Area Office, the amount determined to be the total power Restoration fund payment obligation, and a detailed explanation of the computation of the amount. Upon receiving the written communication from Reclamation, Western will notify the CVP power contractors of the total power Restoration Fund payment obligation, and the multipliers to be used in assessing that obligation to the CVP power contractors.

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Reclamation is responsible for determining the total power Restoration Fund payment obligation for the CVP power and water contractors. Prior to each FY Reclamation will, by written communication, provide to Western's Area Manager, Sacramento Area Office, the amount determined to be the total power Restoration fund payment obligation, and a detailed explanation of the computation of the amount. Upon receiving the written communication from Reclamation, Western will notify the CVP power contractors of the total power Restoration Fund payment obligation, and the multipliers to be used in assessing that obligation to the CVP power contractors.

Collection of CVP Power Contractor's Restoration Fund Bill

Each CVP power contractor will receive a Restoration Fund bill on or about the 25th, but no later than the 30th, of each billing month designating the amount payable. Within 20 days of the date shown on the Restoration Fund bill, the total amount payable as set forth on the bill will be due. The first Restoration Fund billing cycle, for each FY, will begin at least 30 days after (1) October 1 or (2) the date written notification of the total power Restoration Fund payment obligation is received from Reclamation, whichever occurs later.

Payment Due Date

All CVP power contractors' Restoration Fund payments are due and payable by the CVP power contractors before the close of business on the 20th calendar day after the date of issuance of each Restoration Fund bill or the next business day thereafter if said day is a Saturday, Sunday, or Federal holiday.

Late Payment Charges Assessed to Delinquent Restoration Fund Payments

Western will calculate and assess late payment charges on all CVP power Restoration Fund payment obligations which are not paid in full by the due date as specified above. The late payment charge will be the interest accrued on all unpaid balances and will be compounded quarterly at the average prime interest rate values published in the Federal Reserve Bulletin for each calendar quarter.

Deposit of CVP Power Contractor's Restoration Fund Payments into the Restoration Fund

On or about the 21st day of the month following each billing month, Western will deposit all of the CVP power contractors' Restoration Fund payments received, including late payment charges, into the Restoration Fund.

Adjustment to Collections

By April 30, Western will review the Restoration Fund assessments, for the period October 1 through March 31. If the actual amount being assessed is 25 percent greater or less than projected assessments, Western will adjust the delivered or scheduled energy and capacity multipliers for the remaining months of the current FY. The CVP power contractors will be notified by letter, no later than May 15, of any adjustment to the multipliers. Beginning June 1, and continuing throughout the balance of the current FY, the adjusted multipliers will be applied to the CVP power contractors' delivered or scheduled energy and capacity. All other deviations, in the amounts actually collected or assessed, will be rolled into the following FY and added to or subtracted from the amount to be assessed in that FY.

Review Process

Minimally, Western will review the assessment method every 5 years or if one of the following occurs:

(1) If there is a significant change to or suspension of the legislation,

(2) If a material issue arises, or

(3) If an apparent inequity in the assessment method is discovered.

Availability of Information

Information regarding this final procedure, including spreadsheet analysis, comments, letters, memorandums, and other supporting documents made or kept by Western for the purpose of developing these procedures, is available for public inspection and copying at Western's Sacramento Area Office located at 1825 Bell Street, suite 105, Sacramento, CA 95825–1097.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, each agency, when required to publish proposed procedures, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the procedures on small entities. Western has determined that (1) This rulemaking relates to services offered by Western and, therefore, is not a rule within the purview of the Act and (2) the impacts of an assessment from Western would not cause a substantial adverse economic impact to such entities. The requirements of this Act can be waived if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. By execution of this **Federal Register** notice, Western's Administrator certifies that no significant economic impact on a substantial number of small entities will occur.

Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this procedure by the Office of Management and Budget is required.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and the Council on Environmental Quality Regulations (40 CFR part 1500–1508), Reclamation is performing a programmatic environmental impact statement (PEIS) on implementation of the Act. Western is a cooperating agency in that PEIS. The proposed procedures for the Restoration Fund payments covered by this notice fall within Western's routine activities and operations categorical exclusion issued January 7, 1993, and will have no environmental impact.

Issued at Golden, Colorado, March 30, 1994.

William H. Clagett,

Administrator.

[FR Doc. 94–8478 Filed 4–7–94; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4710–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 21, 1994 Through March 25, 1994 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

Summary of Rating Definitions

Environmental Impact of the Action

LO—Lack of Objections

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC—Environmental Concerns

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

EU—Environmental Objections

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EO—Environmentally Unsatisfactory

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected

at the final EIS stage, this proposal will be recommended for referral to the CEQ.

Adequacy of the Impact Statement

Category 1—Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2—Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category 3—Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

DRAFT EISs

ERP No. D–AFS–E65043–00 Rating EC2, Red-Cockaded Woodpecker (RCW) (Picoides borealis) Repopulation, Habitat Management Areas, Implementation, National Forests in the Southern Region.

Summary: EPA expressed environmental concerns regarding impacts due to oil and gas seismic exploration. EPA recommended more stringent restriction on oil and gas exploration and encouraged uneven-aged timber harvesting instead of even-aged cutting, as a mean to preserve habitat diversity.

ERP No. D–CGD–K50010–CA Rating EC2, Ford Bridge (Known as Henry Ford (Badger Avenue) Railroad Bridge) Replacement Project, Implementation, across the Cerritos Channel of Los Angeles and Long Beach Harbor, Approval of Permits, Los Angeles County, CA.

Summary: EPA expressed environmental concerns regarding the project's potential air quality impacts and the possibility that sediments proposed for dredging may contain elevated DDT levels. EPA requested clarification of these issues in the final EIS.

ERP No. D–COE–L39050–WA Rating EC2, Southwest Harbor Cleanup and Redevelopment Project, Construction, NPDES Permit, from SW Spokane Street to Elliott Bay and from Harbor Avenue SW to the West Waterway, Port of Seattle, King County, WA.

Summary: EPA had environmental concerns due to the lack of information on contamination at the Wyckoff property and lack of Clean Air Act conformity determination.

ERP No. D–IBR–K39049–CA Rating EC2, Coachella Canal Lining Water Project, Construction, Operation and Funding, Riverside and Imperial Counties, CA.

Summary: EPA expressed environmental concerns regarding the mitigation plan and requested additional information on supply and quality of mitigation water.

ERP No. D–SFW–F60005–IN Rating LO1, Patoka River Wetlands Project, Land Acquisition for Fish and Wildlife Protection and Management, Funding and Section 404 Permit, Gibson and Pike Counties, IN.

Summary: EPA had no objections to the proposed project.

ERP No. D–USA–K11051–CA Rating EC2, Sacramento Army Depot Disposal and Reuse, Implementation, Sacramento, El Dorado, Placer and Yolo Counties, CA.

Summary: EPA expressed environmental concerns regarding the lack of a comprehensive analysis of cumulative impacts and Clean Air Act conformity requirement. Clarification of these issues was requested.

ERP No. DC–NOA–K90007–00 Rating LO1, Pacific Coast Groundfish Fishery Management Plan, Amendment No. 8, Fixed Gear Sablefish Individual Quotas Program, Approval and Implementation, off the Coast of WA, OR and CA.

Summary: EPA had no objections with the proposed action.

Final EISs

ERP No. F–BOP–D80022–PA, Philadelphia, PA. Metropolitan Detention Center (MDC), Construction and Operation, City of Philadelphia, PA.

Summary: EPA had no objections to the proposed action.

ERP No. F–FAA–C51015–NJ, Newark International Airport Installation and Operation of an Instrument Landing System on Runway 11, Funding and Airport Layout Plan Approval, Essex and Union Counties, NJ.

Summary: EPA had no objection to the proposed project.

ERP No. F–UAF–E11032–FL, Homestead Air Force Base (AFB) Disposal and Reuse, Implementation, Dade County, FL.

Summary: EPA expressed environmental concerns regarding the air quality analysis and requested additional clarification.

ERP No. FA–COE–E36013–MS, Mississippi River and Tributaries Flood Control Plan, Updated Information, Yazoo Projects, Yazoo River Basin, several counties, MS.

Summary: EPA continued to have environmental concerns regarding the sufficiency and success of the proposed mitigation. Verification will only be determined during the subsequent monitoring effort and any shortcomings will need to be rectified.

Dated: April 5, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94–8495 Filed 4–7–94; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4710–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed March 28, 1994 Through April 01, 1994 Pursuant to 40 CFR 1506.9.

EIS No. 940109, Legislative Draft EIS, BLM, AZ, Arizona Statewide Wild and Scenic Rivers, Suitable or Nonsuitable Designation, National Wild and Scenic Rivers System, several counties, AZ Due: July 07, 1994, Contact: Phillip Moreland (602) 650–0509.

EIS No. 940110, Draft EIS, COE, WI, Fort McCoy Family Housing Project for Military Personnel, Site Selection, Construction, Funding, Permits and Licenses Approval, Monroe, Jackson,

Juneau, LaCrosse and Vernon Counties, WI, Due: May 23, 1994, Contact: Larry Van Winkle (703) 355–7625.

EIS No. 940111, Final EIS, FAA, WA, Seattle-Tacoma International Airport Improvement, South Aviation Support Area, Airport Layout Plan, Airport Master Plan, Funding, Section 10 and 404 Permits and NPDES Permit, Port of Seattle, King County, WA, Due: May 09, 1994, Contact: Cayla Morgan (206) 227–2653.

EIS No. 940112, Draft EIS, BPA, WA, ID, WY, CO, CA, OR, MT, UT, NM, NV, AZ, PacifiCorp Capacity Power Sale Contract for 1100 Megawatts (MW) Long-Term Contract for Peaking Capacity, Implementation, WA, OR, ID, MT, WY, UT, CO, CA, NV, AZ, NM and British Columbia, Due: May 23, 1994, Contact: Roy Fox (503) 230–5878.

EIS No. 940113, Draft Supplement, FHW, MN, I–35/ Washington Avenue South in Minneapolis to I–35 in Burnsville Improvements, Construction and Reconstruction, Additional Information, Funding, COE Section 404 and 10 Permits and U.S. CGD Permit, Cities of Minneapolis and Burnsville, Hennepin and Dakota Counties, MN, Due: May 23, 1994, Contact: Steven Bahler (612) 290–3259.

EIS No. 940114, Draft EIS, BLM, CA, Mesquite Regional Landfill Project, Implementation, Federal Land Exchange, Right-of-Way Approval, Conditional-Use-Permit and General Plan Amendment, Imperial County, CA, Due: July 06, 1994, Contact: Thomas Zale (619) 353–1060.

EIS No. 940115, Draft Supplement, NPS, IN, Gary Marina Development, Updated Information for the New Access Alternatives, Approval and Right-of-Way Permit, Indiana Dunes National Lakeshore, City of Gary, Lake County, IN, Due: June 07, 1994, Contact: Dale Engquist (219) 926–7561.

EIS No. 940116, Final EIS, AFS, CO, Mountain Plover (Charadruis Montanus) Management Strategy, Implementation, Pawnee National Grassland, Arapaho and Roosevelt National Forests, Weld County, CO, Due: May 09, 1994, Contact: Jeffrey M. Losche (303) 353–5004.

EIS No. 940117, Draft EIS, GSA, CA, Sacramento Federal Building—United States Courthouse, Site Selection and Construction within a portion of the Central Business District, City of Sacramento, Sacramento County, CA, Due: May 23, 1994, Contact: Albert P. Liu (510) 744–5256.

EIS No. 940118, Revised Draft EIS, FRC, NB, Kingsley Dam Project (FERC. No. 1417) and North Platte/Keystone Diversion Dam (FERC. No. 1835) Hydroelectric Project, Updated Information, Application for Licenses, Near the Confluence of the North/South Platters, Keith, Lincoln, Garden, Dawson and Grasper Counties, NB, Due: May 23, 1994, Contact: J. Ronald McKitrick (202) 219–2783.

EIS No. 940119, Final EIS, NOA, American Lobster Fishery Management Plan Amendment 5, Elimination or Prevention of Over fishing in the Exclusive Economic Zone (EEZ), Approval and Permits, U.S. Atlantic Coast, Due: May 09, 1994, Contact: Rolland A. Schmitten (301) 713–2239.

Dated: April 5, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94–8494 Filed 4–7–94; 8:45 am]

BILLING CODE: 6560–50–U

[FRL–4861–3]

Science Advisory Board; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that various committees of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Time. All meetings are open to the public. Due to limited space, seating at all meetings will be on a first-come basis. For further information concerning each meeting, please contact the individuals listed below. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office. Many of the meetings listed below include discussion of issues relevant to the SAB's Environmental Futures Project. The Environmental Futures effort is described in 58 FR 48063, dated September 14, 1993.

1. Ecological Processes and Effects Committee

The Wildlife Criteria Subcommittee of the Ecological Processes and Effects Committee (EPEC) of the SAB will meet on April 27–28, 1994, at the Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007. The Subcommittee will engage in a consultation with Agency staff regarding the development of national wildlife criteria. The meeting is open to the public, and will begin at 1 p.m. on April 27. To obtain a draft agenda, please contact Ms. Mary Winston, SAB Staff Secretary, at (202) 260–6552 or INTERNET address WINSTON.MARY@EPAMAIL.EPA.GOV, or by mail to Ecological Processes and Effects Committee, Science Advisory Board (1400F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Single copies of the briefing materials provided to the Subcommittee are available from the EPA Water Resource Center (RC–4100), 401 M Street, SW., Washington, DC 20460, telephone (202) 260–7786. Anyone wishing to make a brief oral presentation at the meeting must notify Stephanie Sanzone, Designated Federal Official for the Committee, at (202) 260–6557 and forward thirty-five (35) copies of a written statement to her no later than April 22, 1994. Oral comments to the Committee will be limited to five minutes per individual, and should not be repetitive of previously submitted written statements.

2. Drinking Water Committee

The Drinking Water Committee (DWC) of the SAB will meet on April 27–28, 1994, from 8:30 a.m. to 5 p.m. at the Holiday Inn Georgetown, 2101 Wisconsin Avenue NW., Washington, DC 20007. At the meeting, the Committee will:

(a) Be briefed on the Agency's treatment of relative source contribution;

(b) Review the Information Collection Rule proposed by the Agency on February 10, 1994 (59 FR 6332); and

(c) Conduct a discussion and work session concerning the Committee's contribution to the SAB's Environmental Futures Initiative. The Committee has been provided with copies of the Information Collection Rule. This document is available by calling the Drinking Water Hotline at 1–800–426–4791 or writing to the EPA Water Resource Center, 401 M Street SW., (Mail Code RC–4100), Washington, DC 20460. The report is not available from the Science Advisory Board. No background documents are available for items (a) and (c) above.

To obtain a draft agenda, please contact Ms. Mary Winston, SAB Staff Secretary, at (202) 260–6552 or INTERNET address WINSTON.MARY@EPAMAIL.EPA.GOV, or by mail to Drinking Water Committee, Science Advisory Board (1400F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Members of the public wishing to make a brief oral presentation at the meeting

must notify Mr. Manuel Gomez, Designated Federal Official for the Committee, at (202) 260–2563 and forward thirty-five (35) copies of a written statement to him no later than April 22, 1994. Oral comments to the Committee will be limited to five minutes per individual, and should not be repetitive of previously submitted written statements.

3. Bioaccumulation Subcommittee

On April 28–29, 1994, the Bioaccumulation Subcommittee, a joint subcommittee of the Drinking Water Committee and the Ecological Processes and Effects Committee of the SAB, will meet at the Holiday Inn Georgetown (location listed above) beginning at 3 p.m. on April 28 and ending no later than 4 p.m. on April 29. The Bioaccumulation Subcommittee will: (a) Review the Thomann model for bioaccumulation and its application by the Agency; and (b) conduct a consultation on strategies to address issues of bioaccumulation by the Agency in the future.

Single copies of the background materials provided to the Subcommittee are available from the EPA Water Resource Center (RC–4100), 401 M Street, SW., Washington, DC 20460, telephone (202) 260–7786. For copies of the agenda and other practical meeting information, please contact Ms. Mary Winston, Staff Secretary, at (202) 260–6552, or INTERNET address WINSTON.MARY@EPAMAIL.EPA.GOV. For more detailed information concerning the Subcommittee meeting, please contact Mr. Manuel R. Gomez, Designated Federal Official (DWC), or Ms. Stephanie Sanzone, Designated Federal Official (EPEC), Science Advisory Board (1400F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Members of the public who wish to make a brief oral presentation to the Subcommittee must contact Mr. Gomez or Ms. Sanzone no later than Wednesday, April 22, 1994, in order to be included on the Agenda. In general, oral presentations will be limited to five minutes per individual or group and should not be repetitive of previously submitted oral or written statements. Written statements of any length (at least 35 copies) may be provided to the Committee up until the meeting.

4. Radiation Advisory Committee

The Science Advisory Board's (SAB's) Radiation Advisory Committee (RAC), will conduct a planning, coordination and review meeting on Wednesday, May 4 through Thursday, May 5, 1994 at the Marriott Crystal City Courtyard, 2899 Jefferson Davis Highway, Arlington, VA 22202 (tel. 703–549–3435). On Wednesday, May 4, 1994 the RAC will meet at 9 a.m. and adjourn no later than 6 p.m. On Thursday, May 5, 1994 the RAC will meet starting at 8:30 a.m. and will adjourn no later than 4 p.m.

The topics likely to be covered include a consultation on either Clean-Up Standards for Radionuclides or Low Level Waste Research. The RAC anticipates a closure discussion on its own self-initiated Radon Science Initiative (RSI) study, a progress report on its efforts on the Radiation Environmental Futures Project, and a progress report on its own self-initiated study on a RAC Retrospective, which is a reflective study of the impacts and value of the RAC's past reviews to the conduct of the Agency's radiation-related activities. Additionally, there are likely to be courtesy briefings by the Office of Radiation and Indoor Air (ORIA) staff on a number of topics, including the following: Biological Effects on Ionizing Radiation (BEIR) VI, Waste Isolation Pilot Plant (WIPP) Classification Criteria, Waste Classification, and Low Linear Energy Transfer (LET) Uncertainty. The meeting is open to the public and seating will be on a first come basis.

Any member of the public wishing further information, such as a proposed agenda for the meeting should contact Dr. K. Jack Kooyoomjian, Designated Federal Official, or Mrs. Diana L. Pozun, Staff Secretary; Science Advisory Board (1400–F); U.S. Environmental Protection Agency; 401 M Street, SW., Washington, DC 20460, Phone: (202) 260–6552 or FAX (202) 260–7118. Copies of the draft Radon Science Initiative (RSI) study will be available at the time of the meeting. Otherwise, there are no documents on any of the above review topics available to the public. Members of the public who wish to make a brief oral presentation should contact Dr. Kooyoomjian no later than April 27, 1994 in order to have time reserved on the agenda. Written statements of any length (at least 35 copies) may be provided to the Committee up until the meeting.

5. Radiation Environmental Futures Subcommittee

The Radiation Environmental Futures Subcommittee (REFS) of the Radiation Advisory Committee (RAC), Science Advisory Board (SAB) will conduct a meeting on Friday, May 6, 1994 at the Marriott Crystal City Courtyard, 2899 Jefferson Davis Highway, Arlington, VA 22202 (tel. 703–549–3435). On Friday, May 6, 1994 the RAC will meet at 8:30 a.m. and adjourn no later than 4 p.m. The REFS will continue development of a draft report on the topic of radiation environmental futures. At this time, a draft report is not available. The meeting is open to the public and seating will be on a first come basis.

Any member of the public wishing further information, such as a proposed agenda for the meeting should contact Dr. K. Jack Kooyoomjian, Designated Federal Official, or Mrs. Diana L. Pozun, Staff Secretary; Science Advisory Board (1400–F); U.S. Environmental Protection Agency; 401 M Street, SW., Washington, DC 20460, Phone: (202) 260–6552 or FAX (202) 260–7118. Members of the public who wish to make a brief oral presentation should contact Dr. Kooyoomjian no later than April 27, 1994 in order to have time reserved on the agenda. Written statements of any length (at least 35 copies) may be provided to the Committee up until the meeting.

6. Research Strategies Advisory Committee

The Research Strategies Advisory Committee (RSAC) of the Science Advisory Board (SAB) will meet from 8:30 a.m. to 5 p.m. on May 12 and 13, 1994 to review a contractor prepared report on the EPA Laboratory Study. The Committee will meet in the EPA Conference Center adjacent to the Washington Information Center at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The meeting is open to the public, however, seating at the meeting is limited and will be on a first come basis. On May 12 the meeting will be held in Room 4 South and on May 13 the meeting will be held in Room 3 North.

The SAB has been asked by EPA Administrator Carol M. Browner to review an assessment of the management, missions, staffing, facilities, and services of the EPA laboratories (including laboratories operated by the Office of Research and Development, EPA program offices, and ten regional environmental services laboratories). The objectives of this assessment are to develop a baseline of all of EPA's laboratories, to assess options to enhance the quality, effectiveness, and efficiency of laboratory, and to provide institutional flexibility needed for current and future roles and missions. This study will be completed in late April. As part of the review, the SAB has been asked to evaluate the adequacy of the data collection and analysis, the relevance of the analysis to the objectives of the study, and EPA's needs for scientific and technical information with respect

to their impact on the quality of science now and in the future.

To obtain single copies of the report, please contact Mr. Jerry Graham, (202) 260–7500, Office of Research Program Management (8102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Anyone wishing to obtain an agenda for this meeting or to make a presentation at the meeting must notify Dr. Edward S. Bender, Designated Federal Official, at (202) 260–2562, Research Strategies Advisory Committee, Science Advisory Board (1400F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or at INTERNET address BENDER. EDWARD@ EPAMAIL.EPA.GOV. For written statements, please provide thirty-five (35) copies to him no later than April 28, 1994. Oral comments to the Committee will be limited to five minutes per individual, and should not be repetitive of previously submitted written statements.

7. Environmental Futures Committee

The Environmental Futures Committee (EFC) of the SAB will conduct public meetings from 8:30 a.m. to 5 p.m. on the following dates: May 18–19, 1994 and June 15–16, 1994. Both meetings will be held at the Marriott Crystal City Courtyard, 2899 Jefferson Davis Highway, Arlington, Virginia 22202.

The Environmental Futures Committee (EFC) was formed by the SAB at the request of Administrator Browner to assist the Agency in anticipating environmental problems, issues and opportunities. The charge to this Committee includes: developing a procedure for short and long-term forecasting of natural and anthropogenic developments which may affect environmental quality and its protection; develop detailed examinations procedures and apply them to some future developments; and draw implications from the examinations of future developments and recommend actions for EPA to address them. At these meetings, the EFC will receive briefings on Futures issues; discuss the overall progress of the project (including tracking the activities of the SAB Standing Committees that are involved in the project); and begin to develop its draft report. A final Committee product is anticipated in late 1994.

These meetings are open to the public, but seating is limited and available on a first come basis. Any member of the public wishing further information concerning the meetings or who wishes to submit oral or written comments (at least 35 copies) should contact one of the Designated Federal Officials, Mr. Robert Flaak or Dr. Edward Bender, Science Advisory Board (Mail Code 1400F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone (202) 260–6552; FAX (202) 260–7118, or via The INTERNET at: FLAAK.ROBERT@EPAMAIL.EPA.GOV.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of five minutes. For conference call meetings, opportunities for oral comment will be limited to no more than five minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Dated: March 30, 1994.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 94–8462 Filed 4–7–94; 8:45 am]

BILLING CODE 6560–50–P

[AMS- FRL–4861–2]

Air Pollution Control; Ozone Transport Commission; Recommendation that EPA Adopt Low Emission Vehicle Program for the Northeast Ozone Transport Region

AGENCY: Environmental Protection Agency.

ACTION: Notice of public hearing.

SUMMARY: The Environmental Protection Agency (EPA) is now in the process of reviewing the recommendation of the Northeast Ozone Transport Commission (OTC) that EPA require all State members of the OTC to adopt an OTC Low Emission Vehicle program for the entire Northeast Ozone Transport Region. The Agency must approve, disapprove or partially approve and partially disapprove the recommendation of the OTC.

DATES: EPA will hold a public hearing on the OTC recommendation on Monday, May 2, 1994 from 1 p.m. to 4:30 p.m. (EDT) and on Tuesday, May 3, 1994 from 9 a.m. to 4:30 p.m. (EDT).

ADDRESSES: The hearings will be held at the Fifth Floor Auditorium, Connecticut Department of Environmental Protection Building, 79 Elm Street Hartford, Connecticut 06106. In compliance with the Americans with Disabilities Act, accommodations will be provided for persons with hearing impairments.

FOR FURTHER INFORMATION CONTACT: Mike Shields, Office of Mobile Sources, USEPA, 401 M Street, SW., Washington, DC 20460, telephone: (202) 260–3450.

SUPPLEMENTARY INFORMATION: The Agency has previously issued a **Federal Register** notice describing the OTC petition, on Friday, March 18, 1994 at 59 FR 12914–12916. The Agency will issue a further **Federal Register** notice in mid April that will provide specific information and more detail regarding the process EPA intends to follow in reaching a decision. The notice will also describe and discuss significant issues related to the petition.

Dated: April 1, 1994.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 94–8460 Filed 4–7–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4861–1]

Notice of Availability of 1993 RCRA Inspection Manual

AGENCY: Environmental Protection Agency.

ACTION: Availability of inspection manual.

SUMMARY: The Environmental Protection Agency (EPA) announces the availability of a final inspection guidance entitled *The 1993 RCRA Inspection Manual.* This manual replaces the RCRA Inspection Manual completed in 1988. The manual provides guidance concerning the procedures and checklists employed by duly authorized inspectors during RCRA inspections pursuant to section 3007 of the Resource Conservation and Recovery Act.

Although this manual is intended for use by RCRA field inspectors to assist them in their performance of Compliance Evaluation Inspections of RCRA generators, transporters, and treatment, storage, and disposal facilities, with this notice, we are also making it available to the public.

ADDRESSES: Copies of the document entitled The 1993 RCRA Inspection Manual are available for viewing at all

EPA libraries and the RCRA/Superfund docket. The docket number is F–94-RI2A-FFFFF. The docket is located at EPA Headquarters (room M2616), 410 M Street SW., Washington, DC 20460 and is open from 9 a.m. to 4 p.m., except for Federal holidays. The public must make an appointment to review docket materials. Call 202–260–9327 for appointments. Copies cost $.15/page. In addition, this document is also available for purchase through the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, VA 22161, at (703) 487–4600: The 1993 RCRA Inspection Manual. (NTIS # PB94–963–605).

Dated: April 1, 1994.

Bruce M. Diamond,

Director, Office of Waste Programs Enforcement.

[FR Doc. 94–8461 Filed 4–7–94; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–59977A; FRL–4770–5]

Certain Chemicals; Premanufacture Notices; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: This notice corrects the Dates section for a premanufacture notice which published in the **Federal Register** of March 17, 1994 by removing the review periods for two entries that were inadvertently included and by adding the review period for two that were mistakenly left off the list.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460 (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 17, 1994 (59 FR 12604), FR Doc. 94–6171, OPPTS–59977, the Dates section is corrected to read as follows:

DATES: Close of review periods:

Y 94–38, February 10, 1994.
Y 94–39, February 15, 1994.
Y 94–40, February 16, 1994.
Y 94–41, February 21, 1994.
Y 94–42, February 22, 1994.
Y 94–43, February 24, 1994.
Y 94–44, February 22, 1994.
Y 94–45, 94–46, 94–47, 94–48, 94–49, February 28, 1994.

List of Subjects

Environmental protection, Premanufacture notification.

Dated: March 28, 1994.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–8463 Filed 4–7–94; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–59335; FRL–4770–6]

Certain Chemicals; Application of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which musteither be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of two applications for exemption, provides a summary, and requests comments on the appropriateness of granting these exemptions.

Written comments by:
T 94–8, March 24, 1994.
T 94–9, March 24, 1994.

ADDRESSES: Written comments, identified by the document control number "(OPPTS–59335)" and the specific TME number should be sent to: Document Control Office Center (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW, Rm. G–099 ET Washington, DC 20460, (202) 260–1532.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW, Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer of the TME received by EPA. The complete nonconfidential document is available in the TSCA Public docket Office ETG–102 at the above address between 12 noon and 4 p.m., Monday through Friday, excluding legal holidays.

T 94–8

Manufacturer. Confidential.
Close of Review Period. April 7, 1994.
Chemical. (G) Alkylamine salt, naphthenic, sulfonic acids, oil-soluble, sodium salt.
Use/Production. (G) Dispersion aid. Prod. range: Confidential.

T 94–9

Close of Review Period. April 7, 1994.
Manufacturer. Confidential.
Chemical. (G) Starch-g-poly (methyl acrylate).
Use/Production. (G) Foam loose fill and foam sheet packing material Prod. range: 900,000–1,500,000 kg/yr.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: March 28, 1994.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–8464 Filed 4–7–94; 8:45 am]

BILLING CODE 6560–50–F

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Board of Directors of the Export-Import Bank of the United States

Time and Place: Monday, April 11, 1994, at 9:30 a.m. The meeting will be held at Eximbank in room 1141, 811 Vermont Avenue, NW., Washington, DC 20571.

Agenda: 1. Reinventing Eximbank: Working Capital Guarantee Program Additionality; 2. Option 1: Additionality, Small Business, and the Working Capital Guarantee Program; 3. Option 2: Additionality Accepted; 4. Reinventing Eximbank: Working Capital Guarantee Program Changes.

Public Participation: The meeting will be open to public observation. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Loretta Carrier, room 1112, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 566–8893, not later than Friday, April 8, 1994. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to April 8, 1994, Loretta Carrier, room 1112, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 566–8893 or TDD: (202) 535–3913.

Further Information: For further information, contact Loretta Carrier,

room 1112, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 566–8893

Tamzen C. Reitan,

Vice President, Management Services and Human Resources.

[FR Doc. 94–8424 Filed 4–7–94; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. I–6950]

On February 28, 1994, COMSAT Mobile Communications (CMC) Filed its Proposed Non-Accounting Compliance Plan (PLAN) in Response to the Requirements Set Forth in the Order, Communications Satellite Corporation, 8 FCC Rcd 1531 (1993)

File Nos. I–S–P–92–001 and I–S–P–91–004

April 4, 1994.

In this Public Notice we amend the pleading cycle established in Public Notice, Report No. I–6939 (March 9, 1994).

Amended Pleading Cycle Established

Comments: April 25, 1994;

Reply Comments: May 9, 1994.

In its Plan, CMC seeks approval of certain proposed non-structural safeguards to permit the elimination of structural safeguards for CMC's enhanced maritime services, as set forth in *Communications Satellite Corporation,* 8 FCC Rcd 1531 (1993).

Interested parties may file comments on the proposed plan no later than April 25, 1994. Reply comments may be filed no later than May 9, 1994.

An original and four copies of all comments and replies must be filed in accordance with Commission rule 1.51(c), 47 CFR 1.51(c). In addition, one copy of each pleading should be filed with International Transcription Service, the Commission's duplicating contractor, at its offices at 2100 M St., NW., suite 140, Washington, DC 20037, and one copy at the International Reference Room, 1919 M Street, NW., room 533, Washington, DC 20554.

For further information concerning this matter, please contact Jennifer A. Manner, International Policy Division, Common Carrier Bureau, (202) 632–7265, or Mary Cobbs and June Alston at (202) 632–7265.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–8387 Filed 4–7–94; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Proceeding

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No.	MM docket No.
A. Cumberland Communities Communications Corp; Pioneer, TN.	BPED–920508MD ..	94–27
B. The Moody Bible Institute of Chicago; Crossville, TN.	BPED–920810MA.	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. 307(b)—Noncommercial Educational FM—A and B
2. Comparative—Noncommercial Educational FM—A and B
3. Ultimate—A and B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, Inc. 2100 M Street, NW., suite 140, Washington, DC 20037; telephone (202) 857–3800.

Linda B. Blair,

Assistant Chief, Audio Service Division, Mass Media Bureau.

[FR Doc. 94–8423 Filed 4–7–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–955–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA–955–DR), dated August 24, 1992, and related determinations.

EFFECTIVE DATE: April 1, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Robert Adamcik of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Paul Hall as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 94–8469 Filed 4–7–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1020–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1020–DR), dated March 31, 1994, and related determinations.

EFFECTIVE DATE: April 4, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia dated March 31, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the

catastrophe declared a major disaster by the President in his declaration of March 31, 1994:

Catoosa, Walker, Whitfield, Murray, and Rabun Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Chief of Staff.

[FR Doc. 94–8470 Filed 4–7–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1014–DR]

Virginia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Virginia, (FEMA–1014–DR), dated March 10, 1994, and related determinations.

EFFECTIVE DATE: March 28, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Virginia dated March 10, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 10, 1994:

Cities of Bristol, Buena Vista, Fredericksburg, Petersburg, Radford, Roanoke and Richmond and the County of Amherst for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–8468 Filed 4–7–94; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

Credit Commercial de France S.A. and Berliner Handels-und Frankfurter Bank; Applications To Engage in Certain Nonbanking Activities

Credit Commercial de France S.A., Paris, France, and Berliner Handels-und Frankfurter Bank, Frankfurt am Main, Germany (Applicants), have applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23 of the Board's Regulation Y (12 CFR 225.23), to retain control of Charterhouse North America, Inc., New York, New York, and its subsidiaries (Company), and thereby engage in the following nonbanking activities:

1. Acting as agent in the private placement of securities;

2. Providing advice, including rendering fairness opinions and providing valuation services, in connection with mergers, acquisitions, divestitures, joint ventures, leveraged buyouts, recapitalizations, capital structurings, and financing transactions (including private and public financings and loan syndications), and conducting financial feasibility studies, pursuant to § 225.25(b)(4)(vi)(A)(*1*) of the Board's Regulation Y;

3. Providing financial and transaction advice regarding the structuring and arranging of swaps, caps, and similar transactions relating to interest rates, currency exchange rates or prices, and economic and financial indices, and similar transactions, pursuant to § 225.25(b)(4)(vi)(A)(*2*) of the Board's Regulation Y;

4. Providing portfolio investment advice, including providing investment research and advice to, and promoting and assisting direct investment by, investors in real property, pursuant to § 225.25(b)(4)(iii) of the Board's Regulation Y; and

5. Arranging commercial real estate equity financing, pursuant to § 225.25(b)(14) of the Board's Regulation Y.

Applicants seek approval to conduct the proposed activities throughout the United States.

Closely Related to Banking Standard

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto". In determining whether a proposed activity is closely related to banking for purposes of the BHC Act, the Board considers, *inter alia*, the matters set forth in *National Courier Association* v. *Board of Governors of the Federal Reserve System*, 516 F.2d 1229 (D.C. Cir. 1975). These considerations are (1) whether banks generally have in fact provided the proposed services, (2) whether banks generally provide services that are operationally or functionally so similar to the proposed services as to equip them particularly well to provide the proposed services, and (3) whether banks generally provide services that are so integrally related to the proposed services as to require their provision in a specialized form. See 516 F.2d at 1237. In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. *Board Statement Regarding Regulation Y*, 49 FR 806, January 5, 1984.

Applicants state that the Board previously has determined by regulation that certain of the proposed activities, when conducted within the limitations established by the Board in its regulations and in related interpretations and orders, are closely related to banking for purposes of section 4(c)(8) of the BHC Act. See 12 CFR 225.25(b) (4) and (14) (certain investment and financial advisory services and real estate equity financing activities). See also The Royal Bank of Scotland Group plc, 76 Federal Reserve Bulletin 866 (1990). Applicants maintain that Company will engage in these proposed activities in conformity with the limitations established by the Board in Regulation Y and in previous interpretations and orders.

Applicants also maintain that the Board previously has determined by order that the proposed private placement activities, when conducted within the limitations established by the Board in its previous orders, are closely related to banking, and consistent with section 20 of the Glass-Steagall Act (12 U.S.C. 377). See Bankers Trust New York Corporation, 75 Federal Reserve Bulletin 829 (1989). Applicants state that Company will conduct the proposed private placement activities in conformity with the conditions and limitations established by the Board in prior cases.

Proper Incident to Banking Standard

In order to approve the proposal, the Board must determine that the proposed activities to be conducted by Company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." 12 U.S.C. 1843(c)(8).

Applicants believe that the proposal will produce public benefits that outweigh any potential adverse effects. In particular, Applicants maintain that the proposal will enhance customer convenience and efficiency. In addition,

Applicants state that the proposed activities will not result in adverse effects such as an undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the applications, and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than April 27, 1994. Any request for a hearing on this proposal must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. The applications may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, April 4, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–8426 Filed 4–7–94; 8:45 am]

BILLING CODE 6210–01–P

Futura Banc Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 2, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Futura Banc Corp., Urbana, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Champaign National Bank and Trust, Urbana, Ohio.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. CNB Holdings Inc., Pulaski, Virginia; to become a bank holding company by acquiring 100 percent of Community National Bank (in organization), Pulaski, Virginia, a *de novo* bank.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Northern Trust Corporation, Chicago, Illinois, and Northern Trust of Florida Corporation, Chicago, Illinois; to acquire 100 percent of the voting shares of Beach One Financial Services, Inc., Vero Beach, Florida, and thereby indirectly acquire Beach One Financial Services, Inc., Vero Beach, Florida, and The Beach Bank of Vero Beach, Vero Beach, Florida.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Mabrey Bancorporation, Inc., Okmulgee, Oklahoma; to acquire 48.78 percent of the voting shares of CSB, Inc., Bixby, Oklahoma, and thereby indirectly acquire Citizens Security Bancshares, Inc., Bixby, Oklahoma, and Citizens Security Bank and Trust Company, Bixby, Oklahoma. In connection with this application, CSB, Inc., Bixby, Oklahoma; has applied to become a bank holding company by acquiring 80 percent of the voting shares of Citizens Security Bancshares, Inc., Bixby, Oklahoma, and thereby indirectly acquiring 100 percent of the voting shares of Citizens Security Bank & Trust Company, Bixby, Oklahoma.

2. PCI Holdings, Inc., St. Mary's Kansas; to become a bank holding company by acquiring 97.33 percent of the voting shares of St. Mary's State Bank, St. Mary's, Kansas.

3. Stockgrowers State Banc Corporation, Ashland, Kansas, to acquire 100 percent of the voting shares of Peoples Bank, National Association, Cold Water, Kansas.

Board of Governors of the Federal Reserve System, April 4, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-8428 Filed 4-7-94; 8:45 am]

BILLING CODE 6210-01-F

Progressive Bancshares, Inc.; 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 April 28, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Progressive Bancshares, Inc., Lexington, Kentucky; to engage *de novo* through its subsidiary Progressive Mortgage Company, Lexington, Kentucky, in originating, making or acquiring for the company's account or the accounts of others, residential mortgage loans, commercial mortgage loans, and construction mortgage loans, and to service residential mortgage loans, commercial mortgage loans, and construction mortgage loans for the company or the accounts of others pursuant to § 225.25(b)(1) of the Board's Regulation Y; provididing residential and/or commercial appraisal services for itself and others pursuant to § 225.25(b)(13) of the Board's Regulation Y; acting as agent or broker for credit life insurance and disability insurance or mortgage payment insurance in conjunction with the origination of loans pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 4, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-8429 Filed 4-7-94; 8:45 am]

BILLING CODE 6210-01-F

Rickey Earl Stuckey, 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 April 28, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Rickey Earl Stuckey, Colquitt, Georgia; to retain .10 percent and to acquire an additional 3.27 percent, for a total of 11.52 percent of the voting shares of Peoples Community Bancshares, Inc., Colquitt, Georgia, and thereby indirectly acquire Peoples Community Bank, Colquitt, Georgia and Peoples Community Bank, Columbia, Alabama.

2. Sheila A. Stuckey, Colquitt, Georgia; to retain .10 percent and to acquire an additional 3.27 percent, for a total of 11.52 percent of the voting shares of Peoples Community Bancshares, Inc., Colquitt, Georgia, and thereby indirectly acquire Peoples Community Bank, Colquitt, Georgia and Peoples Community Bank, Columbia, Alabama.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. John Thomas Talkington, Lubbock, Texas; to acquire 7.02 percent, for a total of 28.54 percent, of the voting shares of Lubbock National Bancshares, Inc., Lubbock, Texas, and thereby indirectly acquire Lubbock National Bank, Lubbock, Texas.

Board of Governors of the Federal Reserve System, April 4, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-8430 Filed 4-7-94; 8:45 am]

BILLING CODE 6210-01-F

United Missouri Bancshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 May 2, 1994.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. United Missouri Bancshares, Inc., Kansas City, Missouri; to expand the activites of United Missouri Brokerage Services, Inc., Kansas City, Missouri, to include full service brokerage activities, including the provision of investment advice pursuant to §§ 225.25(b)(15)(ii) and 225.25(b)(4)(iii) and (iv) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 4, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-8431 Filed 4-7-94; 8:45 am]

BILLING CODE 6210-01-F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Meeting

AGENCY: General Accounting Office.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that the regular monthly meeting of the Federal Accounting Standards Advisory Board will be held on Thursday, April 21, 1994 from 9 a.m. to 4:30 p.m. in room 7313 of the General Accounting Office, 441 G St., NW., Washington, DC

The agenda for the meeting includes discussions on (1) the Entity and Display Exposure Draft, (2) the options paper on Revenue Recognition, (3) options for Physical Property and Land, (4) and Measurement and Recognition.

We advise that other items may be added to the agenda; interested parties

should contact the Staff Director for more specific information and to confirm the date of the meeting.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Executive Staff Director, 750 First St., NE., room 1001, Washington, DC 20002, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990)).

Dated: April 4, 1994.

Ronald S. Young,

Executive Director.

[FR Doc. 94–8392 Filed 4–7–94; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (Title 5, U.S.C., Appendix 2) announcement is made of the following advisory committee scheduled to meet during the month of April 1994:

Name: Health Care Policy and Research Special Emphasis Panel.

Date and Time: April 13, 1994, 8:30 a.m.

Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Conference Room TBA, Rockville, Maryland 20852.

Open April 13, 8:30 a.m. to 9 a.m. Closed for remainder of meeting.

Purpose: The Panel is charged with conducting the initial review of applications for cooperative agreements submitted in response to the special RFA HS–94–003, "HIV Cost and Services Utilization Study" for the research grant program administered by the Agency for Health Care Policy and Research (AHCPR).

Agenda: The open session of the meeting on April 13 from 8:30 a.m. to 9 a.m. will be devoted to a business meeting covering administrative matters. During the closed session, the committee will be reviewing complex, technically-oriented applications. In accordance with the Federal Advisory Committee Act, Title 5, U.S.C., Appendix 2 and Title 5, U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

After the meeting, anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Gerald E. Calderone, Ph.D., Agency for Health Care Policy and Research, Suite 602, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1449.

Agenda items for all meetings are subject to change as priorities dictate.

Date: April 1, 1994.

J. Jarrett Clinton,

Administrator.

[FR Doc. 94–8421 Filed 4–7–94; 8:45 am]

BILLING CODE 4160–90–P

Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (Title 5, U.S.C., Appendix 2) announcement is made of the following advisory committee scheduled to meet during the month of April 1994:

Name: Health Care Policy and Research Special Emphasis Panel.

Date and Time: April 14, 1994, 8:30 a.m.

Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Conference Room TBA, Rockville, Maryland 20852.

Open April 14, 8:30 a.m. to 9 a.m. Closed for remainder of meeting.

Purpose: This special emphasis panel is charged with conducting the expedited initial review of grant applications addressing research topics related to health care for persons with acquired immune deficiency syndrome (AIDS) and other related human immunodeficiency virus (HIV) diseases for the research grant program administered by the Agency for Health Care Policy and Research (AHCPR).

Agenda: The open session of the meeting on April 14 from 8:30 a.m. to 9 a.m. will be devoted to a business meeting covering administrative matters. During the closed session, the committee will be reviewing complex applications dealing with the organization, financing, cost, quality and effectiveness of services for HIV/AIDS. In accordance with the Federal Advisory Committee Act, Title 5, U.S.C., Appendix 2 and Title 5, U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

After the meeting, anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Gerald E. Calderone, Ph.D., Agency for Health Care Policy and Research, Suite 602, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1449.

Agenda items for all meetings are subject to change as priorities dictate.

Dated: April 1, 1994.

J. Jarrett Clinton,

Administrator.

[FR Doc. 94–8422 Filed 4–7–94; 8:45 am]

BILLING CODE 4160–90–P

National Institutes of Health

National Cancer Institute; Meeting of a Subcommittee of the National Cancer Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Subcommittee to Review Clinical Trial Activities on April 10, 1994. The meeting will take place from 7:30 a.m. to adjournment in the Sussex Room, San Francisco Westin St. Francis Hotel, 335 Powell Street, San Francisco, California 94102.

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 entire meeting will be closed to the public to review procedures and recommendations regarding clinical trials. This discussion could reveal personal information concerning individuals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The contact person for additional information is Ms. Carole Frank, Committee Management Specialist, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 630, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496–5708).

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 conflicting 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: April 4, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–8412 Filed 4–7–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the following National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract, proposals, and/or

cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such a patentable material, and personal information concerning individuals associated with the applications an/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Dates of Meeting: April 29, 1994.

Time of Meeting: 9 a.m. until adjournment.

Place of Meeting: 6120 Executive Blvd., Executive Plaza South, Conference Room 434, Rockville, MD.

Agenda: Review of proposals received in response to RFP–NIH–DC–94–13.

Contact Person: Dr. Mary Nekola, Scientific Review Administrator, NIDCD/SRB, Executive Plaza South, room 400C, Bethesda, Maryland 20892, (301) 496–8683.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communicative Disorders)

Dated: April 1, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–8413 Filed 4–7–94; 8:45 am]

BILLING CODE 4140–01–M

NIH Technology Assessment Workshop on the Persian Gulf Experience and Health

Notice is hereby given of the NIH Technology Assessment Workshop on "The Persian Gulf Experience and Health," which will be held April 27–29, 1994, in the Masur Auditorium of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. This conference is sponsored by the NIH Office of Medical Applications of Research, the Department of Health and Human Services, the Department of Defense, the Department of Veterans Affairs, and the Environmental Protection Agency. The conference begins at 8:30 a.m. on April 27, 8 a.m. on April 28, and 9 a.m. on April 29. The meeting is open to the public at no charge.

The purpose of this Technology Assessment Workshop is to examine the available information relating to environmental exposure of troops serving in the Persian Gulf and the reported illnesses, to determine if an increased incidence of unexpected illnesses occurred, and to attempt to develop a working case definition for that illness. In addition, plausible etiologies and biological explanations for the illness will be considered and recommendations for future research will be made.

The exposure of U.S. and coalition forces to the unique environment of the Persian Gulf region during Operations Desert Shield and Desert Storm has resulted in a controversy about the possible health effects that may have been caused by that exposure. Few battlefield casualties occurred and relatively little illness was seen immediately following the troop buildup and the short conflict. Since then, however, there have been numerous reports of illness from troops who were participants, and many of them attribute their health problems to their wartime experience. Most of the unexplained cases of illness include symptoms that are often vague—fatigue, weakness and malaise, skin rash, headache, and respiratory symptoms. But reports of illness extend beyond the troops own physical symptoms. Some veterans have reported illnesses in their spouses and birth defects in children conceived after the conflict.

While it is clear that troops were exposed to many potentially toxic substances present in the wartime environment fumes and smoke from oil well fires, diesel fumes, toxic paints, pesticides, and depleted uranium—it is uncertain whether troops were exposed to chemical or biological weapons. Nor is it clear whether the variety of symptoms and illnesses reported by U.S. troops constitute a distinct syndrome. Numerous responses have been generated as a result of the veterans complaints. Troop registries have been set up by the Department of Defense and Department of Veterans Affairs, and special referral centers for clinical evaluation of complaints have been established.

Research proposals have been solicited, and epidemiological surveillance is ongoing.

After 1½ days of presentations and discussion by the audience, an independent non-Federal panel will weigh the scientific evidence and write a draft statement in response to the following key questions:

- What is the evidence for an increased incidence of unexpected illnesses attributable to service in the Persian Gulf War?
- If unexpected illnesses have occurred, what are the components of the most practical working case definition(s) based on the existing data?
- If unexpected illnesses have occurred, what are the plausible etiologies and biological explanations for these unexpected illnesses?
- What future research is necessary?

On the second day of the workshop, time has been allocated for eight 5-minute oral presentations by Persian Gulf veterans. Those veterans wishing to give testimony must submit a written request along with a copy of their written testimony to Technical Resources, Inc., ATTN: Ann Besignano, 3202 Tower Oaks Boulevard, Rockville, Maryland 20852, by 5 p.m. EST, April 18, 1994. If more than eight requests to testify are received, presenters will be chosen by lot. All veterans selected will be notified in writing or by telephone, if a telephone number has been supplied, by April 21.

On the final day of the meeting, the panel chairman will read the draft statement to the workshop audience and invite comments and questions.

Information on the workshop program and registration material may be obtained from: Ann Besignano, Technical Resources, Inc., 3202 Tower Oaks Blvd., suite 200, Rockville, Maryland 20852, (301) 770–3153.

The final workshop statement will be submitted for publication. The interim statement will be available beginning April 29, 1994, from the NIH Consensus Program Information Service, P.O. Box 2577, Kensington, Maryland 20891, phone 1–800–NIH–OMAR (1–800–644–6627).

Dated: March 30, 1994.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 94–8414 Filed 4–7–94; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Pub. L. 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on Friday, March 25, 1994.

(Call Reports Clearance Officer on (410) 965–4142 for copies of package)

1. Supplement to Claim of Person Outside the United States—0960–0051. The information on form SSA–21 is used by the Social Security Administration to determine continuing entitlement, proper benefit amount, and withholding tax liability of aliens who

lived, live, or are planning to live, outside the U.S. for more than 6 months. The respondents are such aliens.

Number of Respondents: 35,000
Frequency of Response: On occasion
Average Burden Per Response: 5 minutes
Estimated Annual Burden: 2,917 hours

2. Request for Withdrawal of Application—0960–0015. The information on form SSA–521 is used by the Social Security Administration to effectuate and record an applicant's withdrawal of his or her claim for benefits. The respondents are applicants who choose to withdraw their claims for benefits.

Number of Respondents: 100,000
Frequency of Response: 1
Average Burden Per Response: 5 minutes
Estimated Annual Burden: 8,333 hours

3. Claim for Amounts Due in the Case of a Deceased Beneficiary—0960–0101. The information on form SSA–1724 is used by the Social Security Administration to determine which applicant should receive any underpayment that is due a deceased beneficiary. The respondents are applicants for such underpayments.

Number of Respondents: 300,000
Frequency of Response: 1
Average Burden Per Response: 10 minutes
Estimated Annual Burden: 50,000 hours

4. Claimant's Statement about Loan of Food or Shelter; Statement about Food or Shelter Provided to Another—0960–NEW. The information on forms SSA–5062 and SSA–L5063 will be used by the Social Security Administration to determine whether food or shelter provided to a recipient of Supplemental Security Income (SSI) payments should be counted as income. The respondents are SSI recipients who receive food or shelter and individuals who provide it to them.

Number of Respondents: 131,080
Frequency of Response: On occasion
Average Burden Per Response: 10 minutes
Estimated Annual Burden: 21,847 hours
OMB Desk Officer: Laura Oliven

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Date: April 4, 1994.
Charlotte Whitenight,
Reports Clearance Officer, Social Security Administration.

[FR Doc. 94–8327 Filed 4–7–94; 8:45 am]
BILLING CODE 4190–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–1917; FR–3350–N–78]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized,underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Barbara Richards, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857: (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal Use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Barbara Richards at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing

sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: Elaine Sims, CECPW–FP, U.S. Army Center for Public Works, 7701 Telegraph Road, Alexandria, VA 22310–3862; (703) 355–3475; (This is not a toll-free number).

Dated: March 31, 1994.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 04/08/94

Suitable/Available Properties

Buildings (by State)

Alabama

Bldg. 24501
Fort Rucker
Fort Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219410242
Status: Unutilized
Comment: 100 sq. ft.; concrete block; needs rehab.; most recent use—sentry station; off-site use only

Arizona

Bldg. 67116
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219410243
Status: Unutilized
Comment: 1,784 sq. ft.; 1 story; wood; most recent use—admin.; off-site use only

Bldg. 67205
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219410244
Status: Unutilized
Comment: 2,166 sq. ft.; 2 story; wood; most recent use—admin.; off-site use only

Bldg. 67207
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219410245
Status: Unutilized
Comment: 2,166 sq. ft.; 2 story; wood; most recent use—admin.; off-site use only

Bldg. 67213
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219410246
Status: Unutilized
Comment: 2,594 sq. ft.; 1 story; wood; most recent use—admin.; off-site use only

Bldg. 73913
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219410247
Status: Unutilized
Comment: 910 sq. ft.; 1 story; wood; most recent use—admin.; off-site use only

Bldg. 80001
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219410248
Status: Unutilized
Comment: 1,958 sq. ft.; 2 story; wood; most recent use—admin.; off-site use only

Bldg. 83027
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219410249
Status: Unutilized
Comment: 1,993 sq. ft.; 2 story; wood; most recent use—admin.; off-site use only

Bldg. 84007
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219410250
Status: Unutilized
Comment: 2,000 sq. ft.; 2 story; wood; most recent use—admin.; off-site use only

Bldg. 68320
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219410251
Status: Unutilized
Comment: 1,531 sq. ft.; 1 story; wood; most recent use—recreation center; off-site use only

Bldg. 30126
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219410252
Status: Unutilized
Comment: 9,324 sq. ft.; 1 story; wood; most recent use—maintenace; off-site use only

Bldg. 84014
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219410253
Status: Unutilized
Comment: 2,260 sq. ft.; 1 story; wood; most recent use—maintenance; off-site use only

Colorado

Bldg. T–740
Fort Carson
Colorado Springs Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219410254
Status: Unutilized
Comment: 2,382 sq. ft.; 1 story; wood; needs rehab.; presence of asbestos; most recent use—admin.; off-site use only

Bldg. T–741
Fort Carson
Colorado Springs Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219410255
Status: Unutilized
Comment: 7,528 sq. ft.; 1 story; wood; most needs rehab.; presence of asbestos; most recent use—admin.; off-site use only

Bldg. T–1817
Fort Carson
Colorado Springs Co: El Paso C0 80913–
Landholding Agency: Army
Property Number: 219410256
Status: Unutilized
Comment: 5,310 sq. ft.; 2 story; wood; needs rehab.; presence of asbestos; most recent use—admin.; off-site use only

Bldg. T–2740
Fort Carson
Colorado Springs Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219410257
Status: Unutilized
Comment: 1,916 sq. ft.; 1 story; wood; needs rehab.; most recent use—admin.; off-site use only

Bldg. T–6049
Fort Carson
Colorado Springs Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219410258
Status: Unutilized
Comment: 19,344 sq. ft.; 2 story; concrete block; needs rehab.; presence of asbestos; most recent use—youth center; off-site use only

Bldg. T–106
Fort Carson
Colorado Springs Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219410259
Status: Unutilized
Comment: 25,749 sq. ft.; 1 story; wood; needs rehab.; presence of asbestos; most recent use—storage; off-site use only

Bldg. T–3853
Fort Carson
Colorado Springs Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219410260
Status: Unutilized
Comment: 160 sq. ft.; 1 story; wood; needs rehab.; most recent use—storage; off-site use only

Bldg. T–6028
Fort Carson
Colorado Springs Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219410261
Status: Unutilized
Comment: 10,193 sq. ft.; 1 story; wood; needs rehab.; presence of asbestos; most recent use—storage; off-site use only

Bldg. S–6275
Fort Carson
Colorado Springs Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219410262
Status: Unutilized
Comment: 679 sq. ft.; 1 story; concrete block; needs rehab.; most recent use—storage; off-site use only

Bldg. T–6093
Fort Carson
Colorado Springs Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219410263
Status: Unutilized
Comment: 2,150 sq. ft.; 1 story; wood; presence of asbestos; most recent use—maintenance shop; off-site use only

Georgia

Bldg. 10501
Fort Gordon
Fort Gordon Co: Richmond GA 30905—
Landholding Agency: Army
Property Number: 219410264
Status: Unutilized
Comment: 2,516 sq. ft.; 1 story; wood; needs rehab.; most recent use—office; off-site use only

Bldg. 10601
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219410265
Status: Unutilized
Comment: 1,334 sq. ft.; 1 story; wood; most recent use—office; off-site use only

Bldg. 20303
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219410266
Status: Unutilized
Comment: 2,376 sq. ft.; 1 story; wood; needs rehab.; most recent use—office; off-site use only

Bldg. 41504
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219410267
Status: Unutilized
Comment: 2,516 sq. ft.; 1 story; wood; needs rehab.; most recent use—store; off-site use only

Bldg. 963
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219410268
Status: Unutilized
Comment: 18,471 sq. ft.; 1 story; wood; needs rehab.; most recent use—warehouse; off-site use only

Bldg. 11813
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219410269
Status: Unutilized
Comment: 70 sq. ft.; 1 story; metal; needs rehab.; most recent use—storage; off-site use only

Bldg. 21314
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219410270
Status: Unutilized
Comment: 85 sq. ft.; 1 story; needs rehab.; most recent use—storage; off-site use only

Bldg. 951
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219410271
Status: Unutilized
Comment: 17,825 sq. ft.; 1 story; wood; needs rehab.; most recent use—workshop; off-site use only

Bldg. 12809
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219410272
Status: Unutilized
Comment: 2,788 sq. ft.; 1 story; wood; needs rehab.; most recent use—maintenance shop; off-site use only

Bldg. 10306
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219410273
Status: Unutilized
Comment: 195 sq. ft.; 1 story; wood; most recent use—oil storage shed; off-site use only

Hawaii

Bldg. P–69
Fort DeRussy
Honolulu Co: Honolulu HI 96815–
Landholding Agency: Army
Property Number: 219410274
Status: Unutilized
Comment: 620 sq. ft.; 1 story; hollow tile; good condition; most recent use—beach bath house; off-site use only

Kansas

Bldg. 166, Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 219410325
Status: Unutilized
Comment: 3,803 sq. ft., 3-story brick residence, needs rehab, presence of asbestos, located within National Registered Historic District

Kentucky

Bldg. 7
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410275
Status: Unutilized
Comment: 3,500 sq. ft.; most recent use—admin.; off-site use only

Bldg. 15
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410276
Status: Unutilized
Comment: 7,759 sq. ft.; most recent use—admin.; off-site use only

Bldg. 2731
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410277
Status: Unutilized
Comment: 2,750 sq. ft.; most recent use—admin.; off-site use only

Bldg. 2770
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410278
Status: Unutilized
Comment: 2,750 sq. ft.; most recent use—admin.; off-site use only

Bldg. 2784
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410279
Status: Unutilized
Comment: 3,250 sq. ft.; most recent use—admin.; off-site use only

Bldg. 2963
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410280
Status: Unutilized
Comment: 1,850 sq. ft.; most recent use—admin.; off-site use only

Bldg. 103
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410281
Status: Unutilized
Comment: 8,962 sq. ft.; most recent use—barracks; off-site use only

Bldg. 105
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410282
Status: Unutilized
Comment: 18,015 sq. ft.; most recent use—barracks; off-site use only

Bldg. 2732
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410283
Status: Unutilized
Comment: 2,950 Sq. ft.; most recent use—dining school; off-site use only

Bldg. 2772
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410284
Status: Unutilized
Comment: 2,350 sq. ft.; most recent use—dining building; off-site use only

Bldg. 2733
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410285
Status: Unutilized
Comment: 2,200 sq. ft.; most recent use—classroom bldg.; off-site use only

Bldg. 2735
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410286
Status: Unutilized
Comment:2,208 sq. ft.; most recent use—classroom bldg.; off-site use only

Bldg. 3133
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410287
Status: Unutilized
Comment: 2,200 sq. ft.; most recent use—classroom bldg.; off-site use only

Bldg. 3135
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410288
Status: Unutilized
Comment: 2,200 sq. ft.; most recent use—classroom bldg.; off-site use only

Bldg. 3172
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410289
Status: Unutilized
Comment: 2,500 sq. ft.; most recent use—classroom bldg.; off-site use only

Bldg. 3174
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410290
Status: Unutilized
Comment: 2,350 sq. ft.; most recent use—classroom bldg.; off-site use only

Bldg. 3180
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410291
Status: Unutilized
Comment: 2,750 sq. ft.; most recent use—classroom bldg.; off-site use only

Bldg. 2102
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410292
Status: Unutilized
Comment: 2,750 sq. ft.; most recent use—shop; off-site use only

Bldg. 5613
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410293
Status: Unutilized
Comment: 10,496 sq. ft.; most recent use—shop; off-site use only

Bldg. 610
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410296
Status: Unutilized
Comment: 224 sq. ft.; needs rehab.; most recent use—storage; off-site use only

Bldg. 2155
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410297
Status: Unutilized
Comment: 2,250 sq. ft.; most recent use—storage; off-site use only

Bldg. 2511
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410298
Status: Unutilized
Comment: 5,310 sq. ft.; most recent use—storage; off-site use only

Bldg. 5410
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410299
Status: Unutilized
Comment: 1,000 sq. ft.; needs rehab.; most recent use—storage; off-site use only

Bldg. 6550
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410300
Status: Unutilized
Comment: 25,701 sq. ft.; most recent use—storage; off-site use only

Bldg. 7162
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410301
Status: Unutilized
Comment: 1,256 sq. ft.; most recent use—storage; off-site use only

Bldg. 5185
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410302
Status: Unutilized
Comment: 357 sq. ft.; needs rehab.; most recent use—gas station; off-site use only

Bldg. 5395
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410303
Status: Unutilized
Comment: 200 sq. ft.; needs rehab.; most recent use—gas station; off-site use only

Bldg. 5406
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410304
Status: Unutilized
Comment: 8,208 sq. ft.; 1 story; presence of asbestos; needs rehab.; most recent use—vehicle maintenance shop; off-site use only

Bldg. 5408
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410305
Status: Unutilized
Comment: 1,350 sq. ft.; 1 story; presence of asbestos; needs rehab.; most recent use—vehicle maintenance shop; off-site use only

Bldg. 5411
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410306
Status: Unutilized
Comment: 1,350 sq. ft.; 1 story; presence of asbestos; needs rehab.; most recent use—vehicle maintenance shop; off-site use only

Bldg. 5413
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410307
Status: Unutilized
Comment: 8,208 sq. ft.; 1 story; needs rehab.; presence of asbestos; most recent use—vehicle maintenance shop; off-site use only

Bldg. 5415
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410308
Status: Unutilized
Comment: 1,350 sq. ft.; 1 story; needs rehab.; presence of asbestos; most recent use—vehicle maintenance shop; off-site use only

Bldg. 5417
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410309
Status: Unutilized
Comment: 8,208 sq. ft.; 1 story; needs rehab.; presence of asbestos; most recent use—vehicle maintenance shop; off-site use only

Bldg. 5418
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410310
Status: Unutilized
Comment: 2,732 sq. ft.; 1 story; needs rehab.; presence of asbestos; most recent use—vehicle maintenance shop; off-site use only

Bldg. 5419
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410311
Status: Unutilized
Comment: 2,732 sq. ft.; 1 story; needs rehab.; presence of asbestos; most recent use—vehicle maintenance shop; off-site use only

Bldg. 05451, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410337
Status: Unutilized
Comment: 200 sq. ft., 1 story, needs rehab., presence of asbestos, most recent use—military vehicle gas station

Bldg. 05624, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410338
Status: Unutilized
Comment: 2,732 sq. ft., 1 story, needs rehab., presence of asbestos, most recent use—maintenance shop

Bldg. 05625, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410339
Status: Unutilized
Comment: 2,732 sq. ft., 1 story, needs rehab., presence of asbestos, most recent use—maintenance shop

Bldg. 05711, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410340
Status: Unutilized
Comment: 10,944 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop

Bldg. 05713, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410341
Status: Unutilized
Comment: 10,944 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop

Bldg. 05811, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410342
Status: Unutilized
Comment: 1,010 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—dispatch bldg.

Bldg. 05813, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410343
Status: Unutilized

Comment: 2,700 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—vehicle shop
Bldg. 05815, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410344
Status: Unutilized
Comment: 1,350 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop
Bldg. 05817, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410345
Status: Unutilized
Comment: 3,108 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop
Bldg. 05819, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410346
Status: Unutilized
Comment: 3,376 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop
Bldg. 05823, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410347
Status: Unutilized
Comment: 2,732 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop
Bldg. 05829, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410348
Status: Unutilized
Comment: 3,376 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop
Bldg. 5422
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410349
Status: Unutilized
Comment: 2,732 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—vehicle maintenance shop; off-site use only
Bldg. 5423
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410350
Status: Unutilized
Comment: 2,732 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—vehicle maintenance shop; off-site use only
Bldg. 5426
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410351
Status: Unutilized
Comment: 2,732 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—vehicle maintenance shop; off-site use only
Bldg. 5427
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410352
Status: Unutilized
Comment: 2,732 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—vehicle maintenance shop; off-site use only
Bldg. 5708
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410353
Status: Unutilized
Comment: 1,350 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—vehicle maintenance shop; off-site use only
Bldg. 5712
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410354
Status: Unutilized
Comment: 2,732 sq. ft.; 1 story; needs rehab.; presence of asbestos; most recent use—vehicle maintenance shop; off-site use only
Bldg. 5715
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410355
Status: Unutilized
Comment: 10,944 sq. ft.; 1 story; needs rehab.; presence of asbestos; most recent use—vehicle maintenance shop; off-site use only
Bldg. 5716
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410356
Status: Unutilized
Comment: 2,732 sq. ft.; 1 story; needs rehab.; presence of asbestos; most recent use—vehicle maintenance shop; off-site use only
Bldg. 5717
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410357
Status: Unutilized
Comment: 10,944 sq. ft.; 1 story; needs rehab.; presence of asbestos; most recent use—vehicle maintenance shop; off-site use only
Bldg. 5722
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410358
Status: Unutilized
Comment: 3,247 sq. ft.; 1 story; needs rehab.; presence of asbestos; most recent use—vehicle maintenance shop; off-site use only
Bldg. 5723
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410359
Status: Unutilized
Comment: 10,944 sq. ft.; 1 story; needs rehab.; presence of asbestos; most recent use—vehicle maintenance shop; off-site use only
Bldg. 5724
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410360
Status: Unutilized
Comment: 2,732 sq. ft.; 1 story; needs rehab.; presence of asbestos; most recent use—vehicle maintenance shop; off-site use only
Bldg. 5725
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410361
Status: Unutilized
Comment: 10,944 sq. ft.; 1 story; needs rehab.; presence of asbestos; most recent use—vehicle maintenance shop; off-site use only
Bldg. 5727
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410362
Status: Unutilized
Comment: 10,944 sq. ft.; 1 story; needs rehab.; presence of asbestos; most recent use—vehicle maintenance shop; off-site use only
Bldg. 5728
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410363
Status: Unutilized
Comment: 3,108 sq. ft.; 1 story; needs rehab.; presence of asbestos; most recent use—vehicle maintenance shop; off-site use only
Bldg. 5730
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219410364
Status: Unutilized
Comment: 9,000 sq. ft.; 1 story; needs rehab.; presence of asbestos; most recent use—vehicle maintenance shop; off-site use only

Michigan

Bldg. 306
Arsenal Acres
24140 Mound Rd.
Warren MI 48091–
Landholding Agency: Army
Property Number: 219410326
Status: Unutilized
Comment: 2,443 sq. ft.; 2-story colonial style home, secured area w/alternate access
Bldg. 307
Arsenal Acres
24140 Mound Rd.
Warren MI 48091–
Landholding Agency: Army
Property Number: 219410327
Status: Unutilized
Comment: 2,443 sq. ft., 2-story colonial style home, secured area w/alternate access
Bldg. 308
Arsenal Acres
24140 Mound Rd.
Warren MI 48091–
Landholding Agency: Army
Property Number: 219410328
Status: Unutilized
Comment: 205 sq. ft., 1-story brick, secured area w/alternate access

Montana

Bldg. T–1, Fort Missoula

Missoula Co: Missoula MT 59801–
Landholding Agency: Army
Property Number: 219410330
Status: Unutilized
Comment: 10,231 sq. ft., 2-story, wood frame, presence of asbestos, most recent use—gen. inst. bldg.

Bldg. T–18, Fort Missoula
Missoula Co: Missoula MT 59801–
Landholding Agency: Army
Property Number: 219410331
Status: Unutilized
Comment: 42 sq. ft., 1-story, concrete, most recent use—dist. XFMR bldg.

Bldg. T–19, Fort Missoula
Missoula Co: Missoula MT 59801–
Landholding Agency: Army
Property Number: 219410332
Status: Unutilized
Comment: 300 sq. ft., 1-story, wood frame, most recent use—valve house

Bldg. P–17, Fort Missoula
Missoula Co: Missoula MT 59801–
Landholding Agency: Army
Property Number: 219410333
Status: Unutilized
Comment: 204 sq. ft., 1-story, concrete, most recent use—pump station

Bldg. P–20, Fort Missoula
Missoula Co: Missoula MT 59801–
Landholding Agency: Army
Property Number: 219410334
Status: Unutilized
Comment: 204 sq. ft., 1-story, concrete, most recent use—pump station

Bldg. P–21, Fort Missoula
Missoula Co: Missoula MT 59801–
Landholding Agency: Army
Property Number: 219410335
Status: Unutilized
Comment: 252 sq. ft., 1-story, concrete, most recent use—substation bldg.

Bldg. P–24, Fort Missoula
Missoula Co: Missoula MT 59801–
Landholding Agency: Army
Property Number: 219410336
Status: Unutilized
Comment: 46,322 sq. ft., 2-story, concrete/stucco, most recent use—admin.

Oklahoma

Bldg. T–282
Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 219410236
Status: Unutilized
Comment: 2,420 sq. ft., 2-story, wood frame, most recent use—admin., off-site use only

Bldg. T–2937
Fort Sill
Lawton Co: Comanche OK 23501–5100
Landholding Agency: Army
Property Number: 219410237
Status: Unutilized
Comment: 3,740 sq. ft., 1-story, wood frame, most recent use—admin., off-site use only

Bldg. T–2908
Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 219410238
Status: Unutilized
Comment: 3,745 sq. ft., 1-story, wood frame, most recent use—classroom, off-site use only

South Carolina

Bldg. 10–412
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410190
Status: Unutilized
Comment: 4,800 sq. ft., wood frame, 2-story, needs rehab., off-site use only, utilities upgrade, most recent use—barracks

Bldg. 10–413
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410191
Status: Unutilized
Comment: 4,800 sq. ft., wood frame, 2-story, needs rehab., off-site use only, utilities upgrade; most recent use—barracks

Bldg. 10–417
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410192
Status: Unutilized
Comment: 4,800 sq. ft., wood frame, 2-story, needs rehab., off-site use only, utilities upgrade, most recent use—barracks

Bldg. 10–418
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410193
Status: Unutilized
Comment: 4,800 sq. ft.; wood frame; 2 story; needs rehab.; off-site use only; utilities upgrade; most recent use—barracks

Bldg. 10–422
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410194
Status: Unutilized
Comment: 4,800 sq. ft.; wood frame; 2 story; needs rehab.; off-site use only; utilities upgrade; most recent use—barracks

Bldg. 10–423
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410195
Status: Unutilized
Comment: 4,800 sq. ft.; wood frame; 2 story; needs rehab.; off-site use only; utilities upgrade; most recent use—barracks

Bldg. 10–427
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410196
Status: Unutilized
Comment: 4,800 sq. ft.; wood frame; 2 story; needs rehab.; off-site use only; utilities upgrade; most recent use—barracks

Bldg. 10–431
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410197
Status: Unutilized
Comment: 4,800 sq. ft.; wood frame; 2 story; needs rehab.; off-site use only; utilities upgrade; most recent use—barracks

Bldg. 10–432
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410198
Status: Unutilized
Comment: 4,800 sq. ft.; wood frame; 2 story; needs rehab.; off-site use only; utilities upgrade; most recent use—barracks

Bldg. 10–433
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410199
Status: Unutilized
Comment: 4,800 sq. ft.; wood frame; 2 story; needs rehab.; off-site use only; utilities upgrade; most recent use—barracks

Bldg. 9608
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410200
Status: Unutilized
Comment: 4,720 sq. ft.; wood frame; 2 story; needs rehab.; off-site use only; utilities upgrade; most recent use—enlisted quarters

Bldg. 2459
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410201
Status: Unutilized
Comment: 2,250 sq. ft.; wood frame; 1 story; needs rehab.; off-site use only; utilities upgrade; most recent use—administration

Bldg. 5410
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410202
Status: Unutilized
Comment: 2,700 sq. ft.; wood frame; 1 story; off-site use only; utilities upgrade; most recent use—administration

Bldg. 6450
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410203
Status: Unutilized
Comment: 5,340 sq. ft.; wood frame; 1 story; needs rehab.; off-site use only; utilities upgrade; most recent use—administration

Bldg. 6451
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410204
Status: Unutilized
Comment: 8,940 sq. ft.; wood frame; 1 story; needs rehab.; off-site use only; utilities upgrade; most recent use—administration

Bldg. 6502
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410205
Status: Unutilized
Comment: 2,750 sq. ft.; concrete frame; 1 story; needs rehab.; off-site use only;

utilities upgrade; most recent use—administration

Bldg. 2458
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410206
Status: Unutilized
Comment: 2,250 sq. ft.; wood frame; 1 story; needs rehab.; off-site use only; utilities upgrade; most recent use—NCO club

Bldg. 5492
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410207
Status: Unutilized
Comment: 2,379 sq. ft.; wood frame; 1 story; off-site use only; utilities upgrade; most recent use—information management office

Bldg. 10–400
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410208
Status: Unutilized
Comment: 1,170 sq. ft.; wood frame; 1 story; needs rehab.; off-site use only; utilities upgrade; most recent use—headquarters building

Bldg. 10–401
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410209
Status: Unutilized
Comment: 1,040 sq. ft.; wood frame; 1 story; off-site use only; utilities upgrade; most recent use—headquarters building

Bldg. 2433
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410210
Status: Unutilized
Comment: 3,108 sq. ft.; wood frame; 1 story; off-site use only; limited utilities; needs rehab. or utilities upgrade; most recent use—storage

Bldg. 2443
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410211
Status: Unutilized
Comment: 3,108 sq. ft.; wood frame; 1 story; off-site use only; limited utilities; needs rehab. or utilities upgrade; most recent use—storage

Bldg. 5495
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410212
Status: Unutilized
Comment: 3,175 sq. ft.; wood frame; 1 story; off-site use only; limited utilities; needs rehab. or utilities upgrade; most recent use—storage

Bldg. 9609
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410213
Status: Unutilized
Comment: 992 sq. ft.; wood frame; 1 story; off-site use only; limited utilities; needs rehab. or utilities upgrade; most recent use—storage

Bldg. 10–419
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410214
Status: Unutilized
Comment: 1,040 sq. ft.; wood frame; 1 story; needs rehab.; off-site use only; utilities upgrade; most recent use—storage

Bldg. 10–420
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410215
Status: Unutilized
Comment: 2,280 sq. ft.; wood frame; 1 story; off-site use only; limited utilities; needs rehab. or utilities upgrade; most recent use—storage

Bldg. 10–424
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410216
Status: Unutilized
Comment: 1,040 sq. ft.; wood frame; 1 story; off-site use only; limited utilities; needs rehab. or utilities upgrade; most recent use—storage

Bldg. 10–436
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410217
Status: Unutilized
Comment: 100 sq. ft.; wood frame; 1 story; off-site use only; limited utilities; needs rehab.; most recent use—shed

Bldg. 7532
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410218
Status: Unutilized
Comment: wood frame; 1 story; off-site use only; limited utilities; needs rehab. or utilities upgrade; most recent use—food storage

Bldg. 9421
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410219
Status: Unutilized
Comment: 2,997 sq. ft.; wood frame; 1 story; needs rehab.; off-site use only; utilities upgrade; most recent use—operations bldg.

Bldg. 9423
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410220
Status: Unutilized
Comment: 3,108 sq. ft.; wood frame; 1 story; needs rehab.; off-site use only; utilities upgrade; most recent use—platoon operations

Bldg. 9424
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410221
Status: Unutilized
Comment: 3,230 sq. ft.; wood frame; 1 story; needs rehab.; off-site use only; utilities upgrade; most recent use—platoon operations

Bldg. 9425
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410222
Status: Unutilized
Comment: 3,230 sq. ft.; wood frame; 1 story; needs rehab.; off-site use only; utilities upgrade; most recent use—platoon operations

Bldg. 10–404
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410223
Status: Unutilized
Comment: 4,050 sq. ft.; concrete block frame; 1 story; needs rehab.; off-site use only; utilities upgrade; most recent use—classrooms

Bldg. 10–411
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410224
Status: Unutilized
Comment: 1,170 sq. ft.; wood frame; 1 story; off-site use only; limited utilities; needs rehab. or utilities upgrade; most recent use—classrooms

Bldg. 10–416
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410225
Status: Unutilized
Comment: 1,170 sq. ft.; wood frame; 1 story; off-site use only; limited utilities; needs rehab. or utilities upgrade; most recent use—classrooms

Bldg. 6452
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410226
Status: Unutilized
Comment: 8,940 sq. ft.; wood frame; 1 story; needs rehab.; off-site use only; utilities upgrade; most recent use—medical offices

Bldg. 5493
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410227
Status: Unutilized
Comment: 9,000 sq. ft.; wood frame; 1 story; off-site use only; utilities upgrade; most recent use—medical storage

Bldg. 5494
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410228
Status: Unutilized
Comment: 3,175 sq. ft.; wood frame; 1 story; off-site use only; limited utilities; needs

rehab. or utilities upgrade; most recent use—warehouse

Bldg. 6300
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410229
Status: Unutilized
Comment: 12,149 sq. ft.; wood frame; 1 story; needs rehab.; off-site use only; utilities upgrade; most recent use—training facility

Bldg. 10–405
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410230
Status: Unutilized
Comment: 100 sq. ft.; wood frame; 1 story; off-site use only; limited utilities; needs rehab. or utilities upgrade; most recent use—range support facility

Bldg. 10–415
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410231
Status: Unutilized
Comment: 2,268 sq. ft.; wood frame; 1 story; needs rehab.; off-site use only; utilities upgrade; most recent use—dining hall

Bldg. 10–425
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410232
Status: Unutilized
Comment: 2,268 sq. ft.; wood frame; 1 story; off-site use only; limited utilities; needs rehab. or utilities upgrade; most recent use—dining facility

Bldg. 10–421
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410233
Status: Unutilized
Comment: 1,170 sq. ft.; wood frame; 1 story; off-site use only; limited utilities; needs rehab. or utilities upgrade; most recent use—day room

Bldg. 10–426
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410234
Status: Unutilized
Comment: 1,170 sq. ft.; wood frame; 1 story; needs rehab.; off-site use only; utilities upgrade; most recent use—orderly room

Bldg. 10–429
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410235
Status: Unutilized
Comment: 1,040 sq. ft.; wood frame; 1 story; off-site use only; limited utilities; needs rehab. or utilities upgrade; most recent use—arms room

Texas

Bldg. 128, Fort Hood
Fort Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219410312
Status: Unutilized
Comment: 2,000 sq. ft.; 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. 132, Fort Hood
Fort Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219410313
Status: Unutilized
Comment: 2,000 sq. ft.; 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. 240, Fort Hood
Fort Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219410314
Status: Unutilized
Comment: 2,000 sq. ft.; 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. 315, Fort Hood
Fort Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219410315
Status: Unutilized
Comment: 2,400 sq. ft.; 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. 316, Fort Hood
Fort Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219410316
Status: Unutilized
Comment: 1,500 sq. ft.; 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. 317, Fort Hood
Fort Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219410317
Status: Unutilized
Comment: 2,000 sq. ft.; 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. 856, Fort Hood
Fort Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219410318
Status: Unutilized
Comment: 20,742 sq. ft.; 1-story, most recent use—self service supply center, off-site use only

Bldg. 943, Fort Hood
Fort Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219410319
Status: Unutilized
Comment: 10,530 sq. ft.; 1-story, most recent use—storage, off-site use only

Bldg. 3436, Fort Hood
Fort Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219410320
Status: Unutilized
Comment: 1,080 sq. ft.; 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. 3437, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219410321
Status: Unutilized
Comment: 1,080 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. 4480, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219410322
Status: Unutilized
Comment: 2,160 sq. ft., 1-story, most recent use—storage, off-site use only

Bldg. 5708, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219410323
Status: Unutilized
Comment: 2,798 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. 57029, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219410324
Status: Unutilized
Comment: 2,798 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Virginia

Bldg. 3502
Fort Eustis
Newport News VA 23604–5327
Landholding Agency: Army
Property Number: 219410239
Status: Unutilized
Comment: 1,200 sq. ft., 1 story; metal; needs rehab.; most recent use—golf cart storage; off-site use only

Bldg. 3535
Fort Eustis
Newport News VA 23604–5327
Landholding Agency: Army
Property Number: 219410240
Status: Unutilized
Comment: 1,200 sq. ft., 1 story; metal; most recent use—golf cart storage, off-site use only

Bldg. 1503
Fort Eustis
Newport News VA 23604–
Landholding Agency: Army
Property Number: 219410241
Status: Unutilized
Comment: 3,663 sq. ft., 1 story; wood; needs major rehab.; most recent use—reserve center; off-site use only

Quarters 19201 & 19209
Fort Lee
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219410365
Status: Unutilized
Comment: 8,370 sq. ft. 2 story family quarters with 6 units each; off-site use only

Quarters 19202, 19204, 19206, 19208, 19211 & 19213
Fort Lee
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219410366
Status: Unutilized
Comment: 8,404 sq. ft. each 2 story family quarters with 6 units each; off-site use only

Quarters 19203, 19205, 19207
Fort Lee
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219410367
Status: Unutilized
Comment: 9,416 sq. ft. 2 story family quarters with 8 units each; off-site use only

Quarters 19210, 19214
Fort Lee
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219410368
Status: Unutilized

Comment: 7,084 sq. ft. 2 story family quarters with 6 units each; off-site use only

Quarter 19212
Fort Lee
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219410369
Status: Unutilized
Comment: 14,098 sq. ft.; 2 story family quarters with 12 units; off-site use only

Land (by State)

Montana

Land, Fort Missoula
Missoula Co: Missoula MT 59801–
Landholding Agency: Army
Property Number: 219410329
Status: Unutilized
Comment: 10.97 acres (including roads and parking area), most recent use—military post

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BILLING CODE 4210–29–M

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–94–3688; FR–3589–N–02]

Amendments to the Notice of Fund Availability (NOFA) for Supportive Housing for the Elderly

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Amendment to the notice of fund availability for FY 94.

SUMMARY: On February 2, 1994, HUD published at 59 FR 5038, a Notice of Fund Availability (NOFA) announcing the availability of $499,361,500 to fund 7,745 units under the Section 202 Supportive Housing for the Elderly Program. The funds were allocated to field offices for applications in metropolitan and/or nonmetropolitan areas.

Because the allocations to some field offices were not sufficient to develop feasible projects in both metropolitan and nonmetropolitan areas, the funds were allocated to only one of the geographical areas. Field Offices that had an allocation for only one area could not accept applications for the other area.

In order for these applications to also compete, HUD has decided that these Field Offices can accept applications for projects in areas where they do not have funds allocated. However, these applications can only be funded after all other approvable applications submitted in response to the advertised allocation area have been funded. Field Offices must still follow the outstanding procedures for recommending projects for selection from the field office allocation. Pursuant to 24 CFR 889.300(f), unused funds remaining in the field office allocation can then be used to fund projects in another field office but within the same State. Thereafter, unused funds can be used to fund other projects within the region in either allocation area. All remaining approvable applications including those submitted to offices which did not have funds allocated for the particular allocation area would then compete in rank order for the remaining unused funds. In this way, the Department believes fairness is provided to sponsors whose applications were responsive to the February 2, 1994 NOFA as well as to those sponsors who would not have had a chance to compete.

To accommodate this change in submission eligibility, HUD is extending the application deadline date by one week. All applications for Section 202 capital advances must be received by HUD at the appropriate address by 4 p.m. local time on May 10, 1994.

Except as previously noted, this NOFA will follow the same guidance regarding eligibility, submission requirements, available amounts, selection criteria and application processing as previously published in the February 2, 1994 NOFA (59 FR 5038).

Application Package: The application package can be obtained from the appropriate Field Office identified in appendix A. and the Multifamily Housing Clearinghouse, P.O. Box 6424, Rockville, MD 20850; telephone 1–800–955–2232. A checklist of steps and exhibits involved in the application process is included in the application package.

DATES: The deadline date for receipt of applications in response to this NOFA is 4 p.m. local time on May 10, 1994. The application deadline is firm as to date and hour. In the interest of fairness to all applicants, HUD will not consider any application that is received after the deadline. Sponsors should take this into account and submit applications as early as possible to avoid risk brought about by unanticipated delays or delivery-related problems. In particular, Sponsors intending to mail applications must provide sufficient time to permit delivery on or before the deadline date. Acceptance by a Post Office or private mailer does not constitute delivery. Facsimile (FAX), COD, and postage due applications will not be accepted.

ADDRESSES: Applications must be delivered to the Director of the Housing Development Division in the HUD Field Office for your jurisdiction. A listing of HUD Field Offices, their addresses and telephone numbers (including TDD telephone numbers) are attached as appendix A to this NOFA. HUD will date and time stamp incoming applications to evidence timely receipt, and upon request, provide the applicant with an acknowledgement of receipt.

FOR FURTHER INFORMATION CONTACT: The HUD Field Office for your jurisdiction.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–220), the information collection requirements have been assigned OMB Control Number 2502–0267.

Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410.

B. Federalism Executive Order

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12612, Federalism, has determined that this NOFA does not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This NOFA merely notifies the public of the availability of capital advances and project rental assistance for supportive housing for the elderly.

C. Family Executive Order

The General Counsel, as the Designated Official under Executive Order No. 12606, The Family, has determined that this NOFA does not significantly affect family formation, maintenance, or general well-being, and, thus, is not subject to review under the order.

D. Accountability in the Provision of HUD Assistance

HUD has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD

Reform Act). The final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published at 57 FR 1942, additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation, public access, and disclosure requirements of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

1. Documentation and Public Access

HUD will ensure documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

2. Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

E. Documentation and Public Access Requirements: HUD Reform Act

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

F. Section 103

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (TDD/Voice). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

G. Lobbying

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions regarding the rule should be directed to the Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815 (TDD/Voice). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

H. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352)(the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

I. Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Program title and number is 14.181, Housing for the Elderly or Handicapped.

Authority: Section 202, Housing Act of 1959, as amended (12 U.S.C. 1701q), section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: April 4, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing, Federal Housing Commissioner.

Appendix A—HUD Field Offices

Regional and Field Office Directory

Region I

Boston, Massachusetts Regional Office

Jeanne McHallam, Director—Housing Development, HUD-Boston Regional Office, Room 375, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston, Massachusetts 02222–1092, (617) 565–5234, Fax (617) 565–5257

Hartford, Connecticut Office (A)

Ronald Black, Director, Housing Development, HUD-Hartford Office, 330 Main Street, Hartford, Connecticut 06106–1860, (203) 240–4523, Fax (203) 240–4674

Manchester, New Hampshire Office (B)

Loren W. Cole, Director, Housing Development, HUD-Manchester Office, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, New Hampshire 03103–2487, (603) 666–7681, Fax (603) 666–7736

Providence, Rhode Island Office (B)

Michael Dziok, Director, Housing Development, HUD-Providence Office, 330 John O. Pastore Federal Building and U.S. Post Office—Kennedy Plaza, Providence, Rhode Island 02902–1785, (401) 528–5351, Fax (401) 528–5312

Region II

New York Regional Office

Martin Sckalor, Director, Housing Development, Regional Housing Commissioner, HUD-New York Regional Office, 26 Federal Plaza, New York, New York 10278–0068, (212) 264–6500, Fax (212) 264–0246

Buffalo, New York Office (A)

Robert Rifenberick, Director, Housing Development, HUD-Buffalo Office, 5th Floor, Lafayette Court, 465 Main Street, Buffalo, New York 14203–1780, (716) 846–5755, Fax (716) 846–5752

Newark, New Jersey Office (A)

Geraldine McGann, Director, Housing Development, HUD-Newark Office, 1 Newark Center, Newark, New Jersey 07102–5504, (201) 622–7900 Ext. 3102, Fax (201) 645–2323

Region III

Philadelphia Regional Office

Michael J. Perretta, Director, Housing Development, HUD-Philadelphia Regional Office, Liberty Square Building, 105 South 7th Street, Philadelphia, Pennsylvania 19106–3392, (215) 597–2560, Fax (215) 597–9627

Baltimore, Maryland Office (A)

Candace L. Simms, Director, Housing Development, HUD-Baltimore Office, 5th Floor, City Crescent Building, 10 South Howard Street, Baltimore, Maryland 21201–2505, (410) 962–2520, Fax (410) 962–4947

Charleston, West Virginia Office (B)

Robert J. Gibson, Chief, Housing Development, HUD-Charleston Office, Suite 708, 405 Capitol Street, Charleston, West Virginia 25301–1795, (304) 347–7000, Fax (304) 347–7050

Pittsburgh, Pennsylvania Office (A)

Edward Palombizio, Director—Housing Development, HUD-Pittsburgh Office, 412 Old Post Office Courthouse, 7th Avenue & Grant Street, Pittsburgh, Pennsylvania 15219, (412) 644–6428, Fax (412) 644–6499

Richmond, Virginia Office (A)

Charlie Famuliner, Director—Housing Development, HUD-Richmond Office, The 3600 Centre, 3600 West Broad Street, P. O. Box 90331, Richmond, Virginia 23230–0331, (804) 278–4507, Fax (804) 771–2314

Washington, DC Office (A)

Felicia Williams, Director—Housing Development, HUD-Washington, DC Office, Suite 300, Union Center Plaza, Phase II, 820 First Street, NE., Washington, DC 20002–4205, (202) 275–9200, Fax (202) 275–0779

Region IV

Atlanta, Georgia Regional Office

Gayle F. Burbidge, Director—Housing Development, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303–3388, (404) 331–5136, Fax (404) 331–0845

Birmingham, Alabama Office (A)

Martha K. Andus, Acting Director—Housing Development, HUD-Birmingham Office, Suite 300, Beacon Ridge Tower, 600 Beacon Parkway West, Birmingham, Alabama 35209–3144, (205) 290–7617, Fax (205) 290–7593

Caribbean Office (A)

Alberto Rosado, Director—Housing Development, HUD-Caribbean Office, New San Juan Office Building, 159 Carlos E. Chardon Avenue, San Juan, Puerto Rico 00918–1804, (809) 766–6121, Fax (809) 766–5995

Columbia, South Carolina Office (A)

Keene R. LaFountain, Director—Housing Development, HUD-Columbia Office, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, South Carolina 29201–2480, (803) 765–5592, Fax (803) 765–5515

Greensboro, North Carolina (A)

Daniel A. McCanless, Director—Housing Development, HUD-Greensboro Office, Koger Building, 2306 West Meadowview Road, Greensboro, North Carolina 27407–3707, (919) 547–4001, Fax (919) 547–4015

Jackson, Mississippi Office (A)

Reba G. Cook, Director—Housing Development, HUD-Jackson Office, Dr. A.H. McCoy Federal Building, 100 West Capitol Street, Room 910, Jackson, Mississippi 39269–1096, (601) 965–5308, FAX (601) 965–4773

Jacksonville, Florida Office (A)

Donald E. Odenthal, Director—Housing Development, HUD-Jacksonville Office, Suite 2200, Southern Bell Tower, 301 West Bay Street, Jacksonville, Florida 32202–5121, (904) 232–2626, Fax (904) 232–3759

Knoxville, Tennessee Office (A)

John E. Robbins, Director—Housing Management, HUD-Knoxville Office, Third Floor, John J. Duncan Federal Building, 710 Locust Street, SW., Knoxville, Tennessee 37902–2526, (615) 545–4384, Fax (615) 545–4569

Louisville, Kentucky Office (A)

David A. Powell, Director—Housing Development, HUD-Louisville Office, 601 West Broadway, P.O. Box 1044, Louisville Kentucky 40201–1044, (502) 582–5251, Fax (502) 582–6074

Nashville, Tennessee Office (B)

Ed M. Phillips, Director—Housing Development, HUD-Nashville Office, Suite 200, 251 Cumberland Bend Drive, Nashville, Tennessee 37228–1803, (615) 736–5213, Fax (615) 736–2018

Region V

Chicago, Illinois Regional Office

Louis Berra, Director—Housing Development, HUD-Chicago Regional Office, Ralph Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507, (312) 353–5680, Fax (312) 353–0121

Cincinnati, Ohio Office (B)

Loustine Tuck, Director—Housing Development, HUD-Cincinnati Office, Room 9002, Federal Office Building, 550 Main Street, Cincinnati, Ohio 45202–3253, (513) 684–2884, Fax (513) 684–6224

Cleveland, Ohio Office (B)

Phillip J. Giaconia, Director—Housing Development, HUD-Cleveland Office, Room 420, One Playhouse Square, 1375 Euclid Avenue, Cleveland, Ohio 44114–1670, (216) 522–4065, Fax (216) 522–2975

Columbus, Ohio Office (A)

Don Jakob, Director—Housing Development, HUD-Columbus Office, 200 North High Street, Columbus, Ohio 43215–2499, (614) 469–5737, Fax (614) 469–2432

Detroit, Michigan Office (A)

Robert Brown, Director—Housing Development, HUD-Detroit Office, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, Michigan 48226–2592, (313) 226–7900, Fax (313) 226–4394

Grand Rapids, Michigan Office (B)

John Milchick, Director—Housing Development, HUD-Grand Rapids Office,

2922 Fuller Avenue, NE., Grand Rapids, Michigan 49505–3499, (616) 456–2100, Fax (616) 456–2191

Indianapolis, Indiana Office (A)

Erica Dobreff, Director—Housing Development, HUD-Indianapolis Office, 151 North Delaware Street, Indianapolis, Indiana 46204–2526, (317) 226–6303, Fax (317) 226–6317

Milwaukee, Wisconsin Office (A)

Lester Marriner, Director—Housing Development, HUD-Milwaukee Office, Suite 1380, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203–2289, (414) 297–3214, Fax (414) 297–3947

Minneapolis-St. Paul, Minnesota (A)

John Buenger, Director—Housing Development, HUD-Minneapolis-St. Paul Office, 220 Second Street, South, Minneapolis, Minnesota 55401–2195, (612) 370–3000, Fax (612) 370–3220

Region VI

Forth Worth, Texas Regional Office

Larry Mumford, Director—Housing Development, HUD-Forth Worth Regional Office, 1600 Throckmorton, P.O. Box 2905, Fort Worth, Texas 76113–2905, (817) 885–5401, Fax (817) 885–5629

Houston, Texas Office (B)

Allen J. Novosad, Director—Housing Development, HUD-Houston Office, Suite 200, Norfolk Tower, 2211 Norfolk, Houston, Texas 77098–4096, (713) 653–3274, Fax (713) 653–3319

Little Rock, Arkansas Office (A)

Nathan Abernathy, Director—Housing Development, HUD-Little Rock Office, Suite 900, TCBY Tower, 425 West Capitol Avenue, Little Rock, Arkansas 72201–3488, (501) 324–5931, Fax (501) 324–5900

New Orleans, Louisiana Office (A)

Jose A. Pagan, Director—Housing Development, HUD-New Orleans Office, Fisk Federal Building, 1661 Canal Street, New Orleans, Louisiana 70112–1887, (504) 589–7200, Fax (504) 589–2917

Oklahoma City, Oklahoma Office (A)

Sherry Hunt, Acting Director—Housing Development, HUD-Oklahoma City Office, Murrah Federal Building, 200 N.W. 5th Street, Oklahoma 73102–3202, (405) 231–4181, Fax (405) 231–4648

San Antonio, Texas Office (A)

Robert W. Hicks, Acting Director—Housing Development, HUD-San Antonio Office, Washington Square Building, 800 Dolorosa Street, San Antonio, Texas 78207–4563, (210) 229–6800, Fax (210) 229–6753

Region VII

Kansas City, Kansas Regional Office

Richard Kluge, Director—Housing Development, HUD-Kansas City Regional Office, Room 200, Gateway Tower II, 400 State Avenue, Kansas City, Kansas 66101–2406, (913) 236–2162

Des Moines, Iowa Office (B)

Donna Davis, Director—Housing Development, HUD-Des Moines Office, Room 239, Federal Building, 210 Walnut Street, Des Moines, Iowa 50309–2155, (515) 284–4512, Fax (515) 284–4743

Omaha, Nebraska Office (A)

Robert E. Peterson, Director—Housing Development, HUD-Omaha Office, Executive Tower Centre, 10909 Mill Valley Road, Omaha, Nebraska 68154–3955, (402) 492–3101, Fax (402) 492–3150

St. Louis, Missouri Office (A)

Joy Miller, Director—Housing Development, HUD-St. Louis Office, Third Floor, Robert A. Young Federal Building, 1222 Spruce Street, St. Louis, Missouri 63103–2836, (314) 539–6560, Fax (314) 539–6575

Region VIII

Denver, Colorado Regional Office

Arthur Tonilli, Director—Housing Development, HUD-Denver Regional Office, Executive Tower Building, 1405 Curtis Street, Denver, Colorado 80202–2349, (303) 844–4513, Fax (303) 844–2475

Region IX

San Francisco, California Regional Office

Jayne Hulbert Humphrey, Director—Housing Development, HUD-San Francisco Regional Office, Philip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, California 94102–3448, (415) 556–4752, Fax (415) 556–4176

Honolulu, Hawaii Office (A)

Jill Hurt, Director—Housing Development, HUD-Honolulu Office, Suite 500, Seven Waterfront Plaza, 500 Ala Moana Blvd., Honolulu, Hawaii 96813–4918, (808) 541–1323, Fax (808) 541–3146

Los Angeles, California Office (A)

Joe L. Hirsch, Director—Housing Development, HUD-Los Angeles Office, 1615 West Olympic Boulevard, Los Angeles, California 90015–3801, (213) 251–7122, Fax (213) 251–7096

Phoenix, Arizona Office (B)

Laura Massie, Director—Housing Development, HUD-Phoenix Office, Suite 600, Two Arizona Center, 400 North 5th Street, Phoenix, Arizona 85004–2361, (602) 379–4434, Fax (602) 379–3985

Sacramento, California Office (B)

Williams F. Bolton, Director—Housing Development, HUD-Sacramento Office, Suite 200, 777 12th Street, Sacramento, California 95814–1977, (916) 551–1351, Fax (916) 551–2899

Region X,

Seattle, Washington Regional Office

John H. Taylor, Director—Housing Development, HUD-Seattle Regional Office, Suite 200, Seattle Federal Office Building, 909 First Avenue, Seattle, Washington 98104–1000, (206) 220–5101, Fax (206) 553–4405

Anchorage, Alaska Office (A),

Gene Dobrzynski, Chief—Housing Development, HUD-Anchorage Office, Suite 401, University Plaza Building, 949 East 36th Avenue, Anchorage, Alaska 99508–4135, (907) 271–4170, Fax (907) 271–3667

Portland, Oregon Office (A),

Thomas C. Cusack, Director—Housing Development, HUD-Portland Office, 520 S.W. 6th Avenue, Portland, Oregon 97204–1596, (503) 326–2561, Fax (503) 326–3097

[FR Doc. 94–8400 Filed 4–7–94; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[WO–270–4333–02–24 1A]

Nomination of Significant Caves

AGENCY: Office of the Secretary, Interior.

ACTION: Notice and call for nominations.

SUMMARY: The Secretary of the Interior is calling for nominations for the listing of significant caves on lands administered by the Department of the Interior. This call for nominations is in response to provisions in the Federal Cave Resources Protection Act of 1988, which directs the Secretaries of the Interior and Agriculture to prepare and maintain a list of significant caves. Any person or organization may submit nominations.

DATES: Nominations to be considered for the initial listing of significant caves must be received by October 5, 1994. Nominations received after this date will be considered for subsequent listing.

FOR FURTHER INFORMATION CONTACT: Hal Hallett, Bureau of Land Management (270), 1849 C Street, NW., Washington, DC 20240, telephone (202) 452–7794.

SUPPLEMENTARY INFORMATION: In order to be considered for nomination, Federal caves are required to meet one or more of the criteria listed in 43 CFR 37.11(c). Nominations are required to follow the prescribed format set forth in an instruction packet that is available from the State or Regional Offices of the Bureau of Land Management, Bureau of Reclamation, Fish and Wildlife Service, or National Park Service. Copies of the instruction packet can also be obtained by writing the Headquarters Office of any of the agencies listed below.

Bureau of Land Management, Attn: WO–270, 1849 C Street, NW., Washington, DC 20240.

Bureau of Reclamation, Attn: W–6500, 1849 C Street, NW, Washington, DC 20240.

Fish and Wildlife Service, Division of Refuges, Attn: Cave Coordinator, 4401 Fairfax Drive, Arlington, VA 22203.
National Park Service, Wildlife and Vegetation Division, P.O. Box 37127, suite 500, Washington, DC 20013–7127.

Dated: March 25, 1994.

Piet deWitt,

Acting Assistant Secretary of the Interior.

[FR Doc. 94–8388 Filed 4–7–94; 8:45 am]

BILLING CODE 4310–84–P

Bureau of Land Management

[CA–068–94–4410–12]

1994 Amendment to the California Desert Conservation Area Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to change the land-use designation on certain public lands in Inyo County, California within the California Desert District from Multiple Use Class "Limited" to "Unclassified".

SUMMARY: Pursuant to 43 CFR 1610.2(c) and 1610.3–1(d) implementing the Federal Lands Policy Management Act of 1976, an amendment has been proposed to the existing land management plan for the California Desert Conservation Area (CDCA), Inyo County, California. The California Desert Conservation Area Plan designated land use categories for all public lands within the CDCA. This amendment would change the land use designation on approximately 160 acres of public lands located in Section 10 of T. 20 N., R. 7E., SBM, in the community of Tecopa, Inyo County, California, from Multiple Use Class (MUC) Limited to Unclassified. This land use designation change would make the affected public lands available for sale or exchange out of federal ownership under the Land Tenure Adjustment Element of the CDCA Plan.

SUPPLEMENTARY INFORMATION: The current land use designation for the affected public lands is "Limited". This classification does not provide for sale or exchange of lands out of federal ownership, even when such lands are scattered, isolated parcels that are difficult to manage. The "Unclassified" land use designation would give the Bureau of Land Management the flexibility to sell or exchange these public lands for high priority acquisition area lands within the CDCA.

Environmental issues to be addressed in the environmental assessment include potential affects on the nearby Area of Critical Environmental Concern and general resource issues. The affected lands are not within critical habitat designated for any threatened or endangered species. Other issues include potential surveying needs for the area.

DATES: Written comments must be postmarked by May 9, 1994.

ADDRESSES: Written comments should be addressed to Bureau of Land Management, Barstow Resource Area, 150 Coolwater Lane, Barstow, CA 92311, Attn: Mike DeKeyrel.

Information on the proposal will be available at the Barstow Resource Area office located in Barstow. In addition, copies of the proposal and a map of the affected area may be obtained by calling or writing the Bureau of Land Management (BLM), Barstow Resource Area office at the address above.

FOR FURTHER INFORMATION CONTACT: Mike DeKeyrel, Bureau of Land Management, Barstow Resource Area, phone (619) 256–3591.

Dated: March 30, 1994.

Karla K.H. Swanson,

Acting Area Manager.

[FR Doc. 94–8432 Filed 4–7–94; 8:45 am]

BILLING CODE 4310–40–M

[CA–050–7123–02–6257]

Closure Order of Public Lands in Lake and Mendocino Counties, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Closure of Public Lands in Lake and Mendocino Counties, California.

SUMMARY: Notice is hereby given related to the closure of lands administered by the Bureau of Land Management (BLM) for use from ONE HOUR AFTER SUNSET TO ONE HOUR BEFORE SUNRISE in accordance with regulations contained in 43 CFR subpart 8364.1(a). This closure shall apply only to those lands included in the Off-Highway Vehicle staging areas. These staging areas are located at the Knoxville and South Cow Mountain Recreation Areas. Each staging area will occupy ten acres of public land.

This "Day Use Only" policy will apply to the Oakwood Springs Staging Area T. 14 N., R. 11 W., Section 3, SW¼NW¼NW¼, encompassing ten acres in Lake County; South Cow Mountain Staging Area, T. 14 N., R. 11 W., Section 4, NW¼SW¼SW¼, encompassing ten acres in Mendocino County and the Knoxville Northern Trailhead Staging Area, T. 12 W., R. 5 W., Section 28, NW¼SW¼SE¼, encompassing ten acres in Lake County. The closure will not apply to any peace officers, firefighters, or any other emergency service personnel while in the performance of their duties. Exemption to this closure may be granted to groups or individuals by permit from BLM.

DATE: This Closure of Public Lands will become effective immediately.

SUPPLEMENTARY INFORMATION: These Staging areas were exclusively constructed with "Day Use Only" activities in mind. No overnight accommodations were constructed. The nocturnal closure of these areas is necessary to reduce vandalism, excessive public drinking, and inappropriate uses which have been occurring after dark. The Bureau of Land Management will continue to manage these areas for daylight recreational activities. These Staging areas will be posted "Day Use Only", closed ONE HOUR AFTER SUNSET TO ONE HOUR BEFORE SUNRISE. These supplementary regulations on nocturnal closure do not supersede regulations already established. Violations of these supplementary regulations under authority of 43 CFR 8364.1(a) are subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Scott C. Adams, Clear Lake Resource Area Outdoor Recreation Planner, Bureau of Land Management, Clear Lake Resource Area, 555 Leslie Street, Ukiah, California office at (707) 468–4000.

Renee Snyder,

Clear Lake Resource Area Manager.

[FR Doc. 94–8343 Filed 4–7–94; 8:45 am]

BILLING CODE 4310–40–M

[CA–060–04–5440–10–B026; 2–00160]

Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that a joint draft Environmental Impact Statement and Environmental Impact Report (EIS/EIR) has been prepared by the Bureau of Land Management and the County of Imperial for the proposed Mesquite Regional Class III Landfill. The proposed federal action analyzes the environmental effects of a land exchange for approximately 1,750 acres, rights of way for a railroad spur and a gas pipeline plus an amendment to the California Desert Plan.

DATES: *For Public Hearings and Comments:* A 90-day public review period has been established for this

document. Comments concerning the adequacy or accuracy of this document will be considered in preparation of the Final EIS/EIR. Written comments on this document will be accepted through July 6, 1994. Two public hearings will be held during the public comment period to receive verbal testimony on the following dates: 7 p.m. PDT, Wednesday, May 25, 1994, at the El Centro Community Center, 375 South First Street, El Centro, California 92243, (619–337–4555); 7 p.m. PDT, Thursday, May 26, 1994, at the Desert Expo Center, Fine Arts Building, 46–350 Arabia Street, Indio, California 92201 (619–863–8247).

ADDRESSES: Written comments must be filed no later than July 6, 1994, reference BLM CA–29617, and should be addressed to Bureau of Land Management, 1661 South 4th Street, El Centro, CA 92243.

FOR FURTHER INFORMATION CONTACT: Thomas Zale, Multi-Resource Staff Chief, Bureau of Land Management, El Centro Resource Area, 1661 South 4th Street, El Centro, California 92243.

SUPPLEMENTARY INFORMATION: Gold Fields Mining Co. (Gold Fields), Western Waste Industries, and S.P. Environmental Systems have formed a (Partnership) that would own and develop the landfill located contiguous to the site of the currently operating Mesquite Gold Mine and Ore Processing Facility (Mesquite Mine) in eastern Imperial County. The project would include the unloading and loading of Municipal Solid Waste (MSW) residue containers, placement of MSW into the landfill, rail and equipment maintenance, landfill gas recovery and destruction by flaring or utilization of energy recovery techniques, leachate collection and processing and waste water treatment. Temporary storage of recyclable materials from originating transportation operations (in accordance with AB939) will also be provided.

The proposed project would involve 4,250 acres, of which 2,290 acres would be utilized for the landfill footprint and ancillary facilities. The proposed landfill is designed to accommodate up to 600 million tons of MSW residue and would have an operational life of 100 years. MSW would be collected from population centers in Southern California, including Imperial County, by local collection vehicles and taken to existing or future transfer stations/material recovery facilities (MRFs) where it would be sorted and processed to remove recyclables, hazardous materials, and other unacceptable wastes in accordance with AB939. From these locations, MSW residue would be transferred to railroad loading intermodals where it would be loaded for rail haulage to the Mesquite Regional Landfill project site. Truck transfer of Imperial County MSW residue could also occur (based on future decisions made by local officials) after processing at local transfer stations/MRFs. The estimated rate of growth of daily MSW volumes would be 4,000 tons per day (tpd) for Year 1 of operations, increasing up to 20,000 tpd after Year 7. The estimated daily number of trains that would be required would be one train during Year 1 (4,000 tpd), increasing to 5 trains after Year 7 (20,000 tpd). The proposed maximum daily volume of MSW residue would be 20,000 tons per day averaged over a two week, 12 day period. The actual rate of growth and operational life of the landfill will depend upon market conditions for MSW disposal in communities that choose to use the regional landfill.

In addition to the No Action Alternative, four alternatives to the proposed action are considered in the EIS/EIR and include: Smaller Landfill Footprint (Alternative I); Reduced Daily Volumes (Alternative II); Alternative Mesquite Regional Landfill Site (Alternative III); and Larger Project (increased daily MSW residue volumes and larger landfill footprint) (Alternative IV). The EIS/EIR analyzes the effects of the proposed action and alternatives on such environmental issues including but not limited to: air quality, social and economic impacts, ground and surface water quality, endangered and other special status plants and animals, cultural or historical and visual resources.

Dated: April 1, 1994.

G. Ben Koski,

Area Manager.

[FR Doc. 94–7804 Filed 4–7–94; 8:45 am]

BILLING CODE 4310–40–M

[CA–010–04–4210–05: CA–34040]

Notice of Realty Action; Direct Sale of Public Lands, Calaveras County, CA

AGENCY: Dept. of the Interior, Bureau of Land Management.

REALTY ACTION: Direct Sale of Public Land, Calaveras County, CA–34040.

SUMMARY: The following described public land is being considered for direct sale pursuant to section 203 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713):

Calaveras County, California

T. 6 N., R. 13 E., M.D.M.
Sec. 26: lot 8.

Comprising 3.22 acres, more or less.

The above tract is a wedge-shaped parcel of public land that is difficult to manage in Federal ownership. The 3.22 acre tract of public land would be sold to the heirs of Fred Ault, Sr. at fair market value. An additional $50.00 non-returnable mineral conveyance processing fee would be required.

The tract would be transferred subject to a reservation to the United States for a right-of-way for ditches and canals. All necessary clearances including clearances for archeology and for rare plants and animals would be completed prior to any conveyance of title by the U.S. The proposal is consistent with the Bureau's land use plans that support the disposal of small difficult to manage tracts.

The above described land is hereby segregated from settlement, location and entry under the public land laws and the mining laws for a period of 270 days from the date of publication of this notice in the **Federal Register.**

ADDRESSES: Interested parties may submit comments to the District Manager, c/o Folsom Resource Area Manager, 63 Natoma Street, Folsom, California 95630. Comments must be received within 45 days of publication of this notice.

FOR ADDITIONAL INFORMATION: Contact Marianne W. Lopez at (916) 985–4474 or at the address above.

D.K. Swickard,

Area Manager.

[FR Doc. 94–8416 Filed 4–7–94; 8:45 am]

BILLING CODE 4310–40–M

[CA–010–03–4350–03]

Seasonal Visitation Restriction Order for the Carrizo Plain Natural Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of a Seasonal Visitation Restriction Order on Public Lands within the Carrizo Plain Natural Area, Kern and San Luis Obispo Counties, in the Caliente Resource Area, Bakersfield District, California.

SUMMARY: This emergency action seasonally restricts public visitation on BLM-administered rock outcrops within the Carrizo Plain Natural Area due to the presence of sensitive species of birds of prey during a critical part of their life cycle and restricts vehicular use of certain roads due to fire hazard and seasonal storms. The public lands affected by this restriction are located within Kern and San Luis Obispo Counties, California.

SUPPLEMENTARY INFORMATION: Effective on the date of publication, and pursuant to 43 CFR part 8360 and 43 CFR 8364.1(a), all visitation within 0.25 miles of any rock outcrop in the vicinity of and including Painted Rock is unlawful. This prohibition includes all outcrops within public lands in T32S, R20E, Sections 8, 16, and 17, Mount Diablo Base and Meridian. Access shall be limited to persons carrying written permission from the Authorized Officer or those participating in an authorized guided tour. Unauthorized individuals within 0.25 miles of the base of a rock outcrop or climbing on a rock outcrop within the above described area will be in violation of this Seasonal Visitation Restriction Order.

Effective on the date of publication, and pursuant to 43 CFR part 8360 and 43 CFR 8364.1(a), roads presenting a fire hazard due to vegetative growth will be closed to vehicular travel during the dry fire season. Roads may also be closed seasonally after heavy rains to prevent road damage and provide for public safety. All such roads will be posted with appropriate signs to advise of the closures.

This Seasonal Visitation Restriction Order will be in effect from the date of publication in the **Federal Register** until June 30, 1994, for the Painted Rock Area and on an as needed basis for the road closures. Until the Resource Management Plan is approved similar use restrictions may be enforced in subsequent years if the Authorized Officer determines that sensitive resources need seasonal protection. Use restrictions intended to protect nesting raptors will generally occur from April 1 to June 30 and road closures will occur from June 1 to September 30 for fire restrictions and December 1 to April 15 for storm damage. Maps of the affected area and information concerning guided tours are available from the Caliente Resource Area Office, 3801 Pegasus Drive, Bakersfield, California 93308–6837. This emergency visitation restriction has three purposes: to limit visitor-caused disturbance to nesting birds of prey to a level compatible with successful nesting while allowing for educational and recreational use; to reduce accidental fires caused by vehicular travel on roads heavily overgrown with annual grasses; and to reduce damage to roads after seasonal storms while promoting public safety on these roads.

Bureau of Land Management employees and Carrizo Plain cooperators are exempt from this order while in the course of their official duties.

Any person who fails to comply with this restriction order may be subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Penalties are contained in 43 CFR 8360.0–7.

Dated: March 29, 1994.

James Wesley Abbott,

Caliente Resource Area Manager.

[FR Doc. 94–8396 Filed 4–7–94; 8:45 am]

BILLING CODE 4310–40–M

[MT–940–04–4730–02]

Land Resource Management

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice.

SUMMARY: The plat of survey of the following described land accepted March 21, 1994, will be officially filed in the Montana State Office, Billings, Montana, May 9, 1994.

Principal Meridian, Montana

T. 31 N., R. 2 W.

The plat representing the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines, and the Adjusted Original Meanders of the Right and Left Banks of the Marias River, through Section 19, and the subdivision of Section 19, and the survey of portions of Medial lines and Median lines of abandoned channels of the Marias River, and certain division of reliction lines, Township 31 North, Range 2 West, Principal Meridian, Montana.

The triplicate original of the preceding described plat will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against this survey, as shown on the plat, is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. The protested plat of survey will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed. This survey was executed at the request of the Lewistown District Office.

EFFECTIVE DATE: March 22, 1994.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: March 31, 1994.

Thomas P. Lonnie,

Acting State Director.

[FR Doc. 94–8433 Filed 4–7–94; 8:45 am]

BILLING CODE 4310–DN–M

[NV–942–04–4730–02]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

EFFECTIVE DATES: Filing is effective at 10 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: John S. Parrish, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702–785–6541.

SUPPLEMENTARY INFORMATION:

1. The Plat of Survey of lands described below was officially filed at the Nevada State Office, Reno, Nevada on September 8, 1993:

Mount Diablo Meridian, Nevada

T. 5 S., R. 60 E.—Dependent Resurvey.

2. This survey was approved September 3, 1993 and was executed to meet certain administrative needs of the Bureau of Land Management.

3. The Plat of Survey of lands described below was officially filed at the Nevada State Office, Reno, Nevada on September 15, 1993:

Mount Diablo Meridian, Nevada

T. 42 N., R. 22 E.—Dependent Resurvey.

4. This survey was approved September 8, 1993 and was executed to meet certain administrative needs of the Bureau of Land Management.

5. The Plat of Survey of lands described below was officially filed at the Nevada State Office, Reno, Nevada on October 4, 1993:

Mount Diablo Meridian, Nevada

T. 38 N., R. 59 E.—Dependent Resurvey.

6. This survey was approved September 30, 1993 and was executed to meet certain administrative needs of the Bureau of Land Management.

7. The Plat of Survey of lands described below was officially filed at the Nevada State Office, Reno, Nevada on October 26, 1993:

Mount Diablo Meridian, Nevada

T. 19 S., R. 61 E.—Dependent Resurvey.

8. This survey was approved October 21, 1993 and was executed to meet certain administrative needs of the Bureau of Land Management.

9. The Plat of Survey of lands described below was officially filed at the Nevada State Office, Reno, Nevada on December 2, 1993:

Mount Diablo Meridian, Nevada

T. 13 N., R. 70 E.—Dependent Resurvey.

10. This survey was accepted November 30, 1993 and was executed to meet certain administrative needs of the National Park Service.

11. The Plat of Survey of lands described below was officially filed at the Nevada State Office, Reno, Nevada on December 21, 1993:

Mount Diablo Meridian, Nevada

T. 18 N., R. 20 E.—Supplemental Plat.

12. This plat was accepted December 16, 1993 and was prepared to meet certain administrative needs of the Bureau of Land Management.

13. The Plat of Survey of lands described below was officially filed at the Nevada State Office, Reno, Nevada on January 6, 1994:

Mount Diablo Meridian, Nevada

T. 30 N., R. 56 E.—Dependent Resurvey.

14. This survey was approved December 30, 1993 and was executed to meet certain administrative needs of the Bureau of Land Management.

15. The Plat of Survey of lands described below was officially filed at the Nevada State Office, Reno, Nevada on January 19, 1994:

Mount Diablo Meridian, Nevada

T. 20 N., R. 20 E.—Supplemental Plat.

16. This plat was accepted January 13, 1994 and was prepared to meet certain administrative needs of the Bureau of Land Management.

17. The Plat of Survey of lands described below was officially filed at the Nevada State Office, Reno, Nevada on March 10, 1994:

Mount Diablo Meridian, Nevada

T. 29 N., R. 56 E.—Dependent Resurvey.

18. This survey was approved March 7, 1994 and was executed to meet certain administrative needs of the Bureau of Land Management.

19. The Plats of Survey of lands described below will be officially filed at the Nevada State Office, Reno, Nevada, on June 1, 1994:

Mount Diablo Meridian, Nevada

T. 37 N., R. 52 ½ E.—Dependent Resurvey and Survey
T. 36 ½ N., R. 53 E.—Dependent Resurvey and Survey
T. 37 N., R. 53 E.,—Dependent Resurvey, Independent Resurvey and Survey
T. 37 N., R. 54 E.,—Dependent Resurvey

20. These surveys were approved March 24, 1994 and were executed to meet certain administrative needs of the Bureau of Land Management.

21. Subject to valid existing rights, the provisions of existing withdrawals and classifications, and the requirements of applicable laws, those portions of the lands listed in paragraph 19 as "Survey" will be open to application, petition, and disposal, including application under the mineral leasing laws at 10:00 a.m. on June 1, 1994. All such valid applications received on or prior to June 1, 1994, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing.

24. All the lands have been and continue to be open under the mining law.

25. The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

John S. Parrish,

Chief Cadastral Surveyor, Nevada.

[FR Doc. 94–8415 Filed 4–7–94; 8:45 am]

BILLING CODE 4310–HC–M

INTERNATIONAL TRADE COMMISSION

International Trade Commission, Practice Relating to Administrative Protective Orders

AGENCY: U.S. International Trade Commission.

ACTION: Summary of Commission practice relating to administrative protective orders.

SUMMARY: This notice provides a summary by the U.S. International Trade Commission (Commission) of its investigations of breaches of administrative protective orders (APOs) issued in connection with investigations under Title VII and section 337 of the Tariff Act of 1930.

This notice is intended to inform the public of the Commission's experience with APO breaches. The Commission also intends that this notice will educate and alert representatives of parties to Commission proceedings as to some specific types of APO breaches encountered by the Commission. This notice is illustrative only and does not limit the Commission's rules or standard APO. The notice does not provide an exclusive list of conduct that will be deemed to be a breach of the Commission's APOs, and does not indicate how the Commission will rule in future cases.

FOR FURTHER INFORMATION CONTACT: Paul R. Bardos, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3102.

SUPPLEMENTARY INFORMATION: The discussion below illustrates APO breach investigations that the Commission has completed including a description of actions taken in response to breaches. The discussion covers breach investigations completed during 1993 with respect to antidumping and countervailing duty cases. Also discussed are the Commission's investigations completed during 1993 of possible violations of Commission rule 207.3, commonly known as the "one day rule." Finally, in the interest of providing as much information to practitioners as possible on APO practice, this notice also discusses breach investigations completed during the period 1988–1993 with respect to investigations under section 337 of the Tariff Act of 1930.

The Commission will report a summary of its actions in response to violations of Commission APOs periodically in an effort to educate those obtaining access under an APO of the common problems encountered in handling business proprietary information (BPI) and confidential business information (CBI). This is the fourth notice of its kind, the previous ones having been published at 56 FR 4846–4850 (Feb. 6, 1991); 57 FR 12335 (Apr. 9, 1992); and 58 FR 21991 (Apr. 26, 1993). The Commission intends to publish summaries at least annually, and more frequently as appropriate.

As part of the effort to educate practitioners about APO practice, the Commission's Secretary issued in September 1991 An Introduction to Administrative Protective Order Practice in Antidumping and Countervailing Duty Investigations. This document is available upon request from the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

I. Title VII Administrative Protective Orders

A. In General

APOs are issued in Commission investigations under Title VII of the Tariff Act of 1930 to provide access to BPI to certain party representatives under conditions designed to protect the confidentiality of such information. The Commission is required to disclose under APO to the authorized representatives of interested parties who are parties to an investigation BPI collected by the Commission in the

course of such investigations. 19 U.S.C. 1677f. The Commission has implemented procedures governing this disclosure, which is accomplished under an APO issued by the Secretary to the Commission. 19 CFR 207.7. An important provision of the Commission's rules relating to APOs is the "one day rule" that provides parties with an extra day in which to file the public version of certain submissions containing BPI. 19 CFR 207.3. The one day rule, which also permits correction of the bracketing of BPI during that extra day, was intended to reduce the incidence of APO breaches caused by inadequate bracketing and improper placement of BPI. The Commission urges parties to make use of the rule.

The Secretary to the Commission provides BPI only to "authorized applicants" who agree to be bound by the terms and conditions of an APO. The standard APO form for antidumping and countervailing duty investigations issued by the Commission requires the applicant to swear that he or she will:

(1) Not divulge any of the BPI obtained under the APO and not otherwise available to him, to any person other than

(i) Personnel of the Commission concerned with the investigation,

(ii) The person or agency from whom the BPI was obtained,

(iii) A person whose application for disclosure of BPI under the APO has been granted by the Secretary, and

(iv) Other persons, such as paralegals and clerical staff, who (a) are employed or supervised by and under the direction and control of the authorized applicant or another authorized applicant in the same firm whose application has been granted; (b) have a need thereof in connection with the investigation; (c) are not involved in competitive decisionmaking for an interested party which is a party to the investigation; and (d) have submitted to the Secretary a signed Acknowledgment for Clerical Personnel in the form attached hereto (the authorized applicant shall also sign such acknowledgment and will be deemed responsible for such persons' compliance with the APO);

(2) Use such BPI solely for the purposes of the above-captioned Commission investigation or for judicial or binational panel review of such Commission investigation;

(3) Not consult with any person not described in paragraph (1) concerning BPI disclosed under the APO without first having received the written consent of the Secretary and the party or the attorney of the party from whom such BPI was obtained;

(4) Whenever materials (*e.g.*, documents, computer disks, etc.) containing such BPI are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container (N.B.: storage of BPI on so-called hard disk computer media is to be avoided, because mere erasure of data from such media may not irrecoverably destroy the BPI and may result in violation of paragraph C of the APO);

(5) Serve all materials containing BPI disclosed under the APO as directed by the Secretary and pursuant to section 207.7(f) of the Commission's rules;

(6) Transmit each document containing BPI disclosed under the APO:

(i) With a cover sheet identifying the document as containing BPI,

(ii) With all BPI enclosed in brackets and each page warning that the document contains BPI,

(iii) If the document is to be filed by a deadline, with each page marked "Bracketing of BPI not final for one business day after date of filing," and

(iv) If by mail, within two envelopes, the inner one sealed and marked "Business Proprietary Information—To be opened only by [name of recipient]", and the outer one sealed and not marked as containing BPI;

(7) Comply with the provisions of the APO and § 207.7 of the Commission's rules;

(8) Make true and accurate representations in the authorized applicant's application and promptly notify the Secretary of any changes that occur after the submission of the application and that affect the representations made in the application (*e.g.*, change in personnel assigned to the investigation);

(9) Report promptly and confirm in writing to the Secretary any possible breach of the APO; and

(10) Acknowledge that breach of the APO may subject the authorized applicant and other persons to such sanctions as the Commission deems appropriate, including the administrative sanctions set out in the APO.

Breach of the protective order may subject an applicant to:

(1) Disbarment from practice in any capacity before the Commission along with such person's partners, associates, employer, and employees, for up to seven years following publication of a determination that the order has been breached;

(2) Referral to the United States Attorney;

(3) In the case of an attorney, accountant, or other professional, referral to the ethics panel of the appropriate professional association; and

(4) Such other administrative sanctions as the Commission determines to be appropriate, including public release of or striking from the record any information or briefs submitted by, or on behalf of, the offender or the party represented by the offender, and denial of further access to business proprietary information in the current or any future investigations before the Commission.

Commission employees are not signatories to the Commission's APOs and do not obtain access to BPI through the APO procedure. Consequently, they are not subject to the APOs' requirements with respect to the handling of BPI. However, Commission employees are subject to strict statutory and regulatory constraints concerning BPI, and face severe penalties for noncompliance. *See* 18 U.S.C. 1905; Title 5, U.S. Code; and Commission personnel policies implementing the statutes. Although the Privacy Act (5 U.S.C. 552a) limits the Commission's authority to disclose personnel actions against agency employees, this should not lead the public to conclude that no such actions have been taken.

B. Investigations of Alleged APO Breaches

In an antidumping or countervailing duty investigation, the investigation of an alleged APO breach generally proceeds as follows. The Secretary, acting under delegated authority, issues to the alleged breacher a letter of inquiry to ascertain the alleged breacher's views on whether a breach has occurred. If, based on the response made to such a letter of inquiry, the Commission determines that a breach has occurred, the Commission issues a second letter asking the breacher to address the questions of mitigating circumstances and possible sanctions or other actions. The Commission then determines what action to take in response to the breach. However, in some cases, the Commission has determined that although a breach has occurred sanctions are not warranted, and therefore has found it unnecessary to issue a second letter concerning what sanctions might be appropriate. The Commission retains sole authority to make final determinations regarding the existence of a breach and the appropriate action to be taken if a breach has occurred.

The records of Commission investigations of alleged APO breaches in antidumping and countervailing duty

cases are not publicly available and are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552, section 135(b) of the Customs and Trade Act of 1990, 19 U.S.C. 1677f(g).

The breach most frequently investigated by the Commission involves the APO's prohibition of the dissemination of BPI to unauthorized persons. Such dissemination usually occurs as the result of failure to delete BPI from public versions of documents filed with the Commission or of transmission of proprietary versions of documents to unauthorized recipients. Other breaches have involved: the failure to properly bracket BPI in proprietary documents filed with the Commission; the failure to immediately report known violations of an APO; and the failure to adequately supervise non-legal personnel in the handling of BPI in certain circumstances.

Sanctions for APO violations serve two basic interests: (a) preserving the confidence of submitters of BPI in the Commission as a reliable protector of BPI, and (b) disciplining breachers and deterring future violations. As the Conference Report to the Omnibus Trade and Competitiveness Act of 1988 observed, "the effective enforcement of limited disclosure under administrative protective order depends in part on the extent to which private parties have confidence that there are effective sanctions against violation." H.R. Conf. Rep. No. 576, 100th Cong., 1st Sess. 623 (1988).

The Commission has worked to develop consistent jurisprudence, not only in determining whether a breach has occurred, but also in selecting an appropriate response. In determining the appropriate response, the Commission generally considers mitigating factors such as whether the breach was unintentional, lack of prior breaches committed by the breaching party, the corrective measures taken by the breaching party, the promptness with which the breaching party reported the violation to the Commission, and any relevant circumstances peculiar to the situation.

C. Specific Investigations in Which Breaches Were Found

The following case studies are presented to illustrate the various types of APO breaches found by the Commission and the actions taken by the Commission. In addition, the case studies discuss the factors considered by the Commission as mitigating the offense in particular instances. The Commission has not included some of the specific facts in the descriptions of investigations where such disclosure could reveal the identity of a particular breacher. Thus, in some cases, apparent inconsistencies in the facts set forth in this notice result from the Commission's inability to disclose particular facts more fully.

The following discussion covers the 9 instances in which breaches of APOs and/or violations of the one day rule in antidumping and countervailing duty investigations were found in 1993:

Case 1: Two attorneys failed to bracket BPI in the confidential version of a submission, and three other attorneys acted in a similar fashion with respect to another submission. The Commission found that breaches had occurred, but found that they were mitigated by the facts that (1) the breaches were inadvertent, (2) expeditious action was taken to correct the errors, (3) only persons under the APO and the Commission received the confidential submissions, and (4) there was no public disclosure of BPI. The attorneys were issued warning letters.

Case 2: Two attorneys and their secretary breached an APO by serving a copy of the BPI version of a prehearing brief on a law firm which was on the public service list but not on the APO list. The secretary apparently confused the two lists. One of the attorneys whose firm was responsible for sending the brief had signed the protective order acknowledgement for clerical personnel, agreeing to exercise direction and control over personnel handling BPI. The error was discovered by the attorney who received it. The Commission issued private letters of reprimand to both attorneys and the secretary.

Case 3: An attorney disclosed BPI at a public Commission hearing. While finding a breach of the APO, the Commission considered as mitigating the inadvertence of the breach and the lack of prior breaches by the attorney. The Commission issued a warning letter to the attorney.

Case 4: One attorney telefaxed BPI to his clients' marketing officials who were not covered by the APO. The Commission found that this breach was mitigated by the unintentional nature of the breach, and the attorney's prompt recovery of the data in question. The Commission issued a private letter of reprimand to the attorney, and in addition required that in his next appearance before the Commission, the attorney must work under the supervision of a more senior attorney who would also be responsible for overseeing the attorney's handling of BPI documents.

Case 5: Two attorneys were involved in the unauthorized release of BPI. A paralegal under their supervision picked up documents from opposing counsel that, unbeknownst to her, included BPI. Although opposing counsel warned the first attorney that the material contained BPI, that attorney failed to inform the paralegal and the second attorney of the inclusion of BPI. Unaware of the existence of the BPI, the second attorney directed the paralegal to distribute copies of the material to the attorneys' clients and to hearing witnesses. In addition to the paralegal's disclosure, the first attorney himself distributed copies of the material to his clients without checking for BPI.

The Commission determined that the two attorneys had breached the APO by improperly disclosing BPI. The first attorney, who knew of the presence of BPI, was held responsible both for the unauthorized disclosure of BPI and for the failure to properly supervise the paralegal, in particular the failure to alert her to the existence of the BPI. The Commission found these mitigating factors: (1) The breach was inadvertent, (2) the attorney had not breached an APO previously, and (3) the attorney took expeditious action to retrieve the data and to notify the Commission. The Commission issued a public letter of reprimand to the first attorney. The Commission found similar factors mitigated the second attorney's breach, and that in addition she had no reason to anticipate the existence of the BPI, which was not prominently marked as such on its cover sheet by opposing counsel. The Commission issued a warning letter to the second attorney.

Case 6: Three attorneys failed to delete fully all BPI from the public version of their prehearing brief. The Commission found a breach, but determined it was mitigated because: (1) The attorneys took immediate steps to notify the Commission and retrieve the pages with BPI and to provide the Commission with the corrected pages, (2) the BPI was not disclosed, and (3) this was the attorneys' first breach of APO. The Commission issued warning letters to the attorneys.

Case 7: One attorney and a secretary served on a law firm not covered by the APO a copy of the BPI version of a prehearing brief. The Commission determined that a breach had occurred, but that it was mitigated by (1) the senders' prompt notification of the Commission and attempts to correct the error, (2) the lack of actual disclosure of BPI, and (3) the fact that this was the first time the individuals had breached an APO. The Commission issued warning letters to both the attorney and the secretary.

Case 8: Two attorneys violated Commission rules regarding timeliness of changes to submitted documents. The first attorney violated the one day rule by making changes in a post-conference brief beyond the bracketing changes allowed by the rule, and failed to request an extension of time to file additions to the brief. The Commission issued a warning letter to the first attorney. The second attorney filed exhibits four days after the filing of the original brief without requesting an extension of time. Because the submission was made four days after the original filing, this was not technically a violation of the one day rule, but according to the rules the filing should have been accompanied by a request for an extension of time. While finding a violation of the rules, the Commission found as a mitigating circumstance the fact that the late filing was not surreptitious, but the attorney explained in a cover letter that the information submitted was not previously available. The Commission issued a warning letter to the second attorney.

Case 9: Two attorneys were found to have violated an APO and the one day rule by failing to bracket BPI contained in confidential submissions. They also failed to include in the confidential version of a brief a warning that bracketing was not final for one business day. The Commission found as mitigating circumstances that this was the attorneys' first violation and that no disclosure of BPI occurred. Warning letters were issued to both attorneys.

D. Investigations in Which No Breach Was Found

During 1993, the Commission completed 14 investigations relating to antidumping and countervailing duty cases in which no breach was found. The reasons for a finding of no breach included:

(1) The information allegedly mishandled by the alleged breacher consisted entirely of information pertaining to the alleged breacher's own client;

(2) The information in question was not BPI; and

(3) The information in question was available to the alleged breacher from sources other than disclosure under the APO.

II. Section 337 Administrative Protective Orders

APOs are issued in section 337 investigations pursuant to statute and the Commission's rules. 19 U.S.C. 1337(n); 19 CFR 210.37. APO practice in section 337 investigations differs in important respects from APO practice in title VII investigations. Notably, in the section 337 context, it is the presiding Administrative Law Judge rather than the Secretary who issues the APO. The terms of the APO may differ from case to case. Further, the one day rule does not apply.

In a section 337 investigation that is no longer before the administrative law judge but is before the Commission, the investigation of an alleged APO breach generally proceeds in the following manner. The Secretary issues a letter of inquiry to ascertain the alleged breacher's views on whether a breach has occurred. If, based on the response made to such a letter of inquiry, the Commission determines that a breach has occurred, the Commission issues a second letter asking the breacher to address the questions of mitigating circumstances and possible sanctions or other actions. The Commission then determines what action to take in response to the breach. The Commission retains sole authority to make final determinations regarding the existence of a breach and the appropriate action to be taken if a breach has occurred.

In section 337 investigations that are before the presiding Administrative Law Judge, it is the judge who presides over the inquiry into any alleged APO breaches.

Breaches have involved the unauthorized dissemination of CBI; the use of CBI for purposes other than the investigation; and the failure to return or destroy CBI in a timely manner. The following are the two instances (of the 8 alleged breaches investigated) in which breaches of APOs in section 337 investigations were found during the period 1988–1993:

Case 10: Eleven attorneys, representing several parties to an investigation, committed a variety of APO breaches. All eleven failed to return or destroy confidential business information after the end of the investigation. The Commission issued private letters of reprimand to the nine attorneys who committed only that breach.

In addition to improperly retaining the confidential business information, two attorneys committed additional violations. The first of the two also used the information in preparing a brief for use in a court action, thus violating the APO's requirement that the information was to be used solely for the purposes of the Commission investigation and any appeals therefrom. The Commission, finding that the first attorney had exhibited a deliberate disregard of his obligations under the APO, issued to the first attorney a public letter of reprimand and barred him from access to confidential business information in any Commission investigation for three months. The second attorney of the two not only improperly retained the confidential business information but also disclosed it to unauthorized persons and failed to report that disclosure promptly to the Commission or the presiding administrative law judge. The Commission found as a mitigating circumstance a terminal illness in his family during the proceedings. The second attorney received a public letter of reprimand.

Case 11: During oral argument before a court, an attorney disclosed confidential business information. The Commission found a breach of APO, although it was mitigated by its inadvertence, the attorney's subsequent cooperation with the Commission to rectify the error, and the fact that this was his first breach of an APO. The Commission issued a private letter of reprimand. The Commission notes that this breach occurred before the Commission had adopted its policy of issuing warning letters where appropriate mitigating circumstances are present.

By order of the Commission.

Issued: April 4, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–8472 Filed 4–7–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–658 (Final)]

Class 150 Stainless Steel Threaded Pipe Fittings From Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–658 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Taiwan of class 150 stainless steel threaded pipe fittings,[1]

[1] For purposes of this investigation, class 150 stainless steel threaded pipe fittings are defined as cast or forged stainless steel products used to connect pipe sections with an ability to withstand normal pressure service (150 pounds per square inch (psi) at 350°F and 300 psi at −20 to 150°F)

Continued

provided for in subheadings 7307.19.90, 7307.22.10, 7307.22.50, and 7307.29.00 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: March 5, 1994.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202–205–3181), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of class 150 stainless steel threaded pipe fittings from Taiwan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on August 2, 1993, by Alloy Stainless Products Co., Totawa, NJ, and Capital Manufacturing Co., Columbus, OH.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on July 11, 1994, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on July 26, 1994, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before July 15, 1994. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on July 19, 1994, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony in camera.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is July 20, 1994. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is August 3, 1994; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before August 3, 1994. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and § 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

By order of the Commission.

Issued: April 5, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–8476 Filed 4–7–94; 8:45 am]

BILLING CODE 7020–02–P

as well as resistance to corrosion or extreme temperatures, or prevention of metallic contamination to materials in the system. Included in the scope of this investigation are both finished and unfinished class 150 stainless steel threaded pipe fittings of any size.

[Investigation No. 337–TA–358]

Certain Recombinantly Produced Human Growth Hormones; Decision To Review and Modify an Initial Determination Designating the Investigation "More Complicated"

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review and modify an initial determination (ID) (Order No. 82) issued on March 2, 1994, by the presiding administrative law judge (ALJ) in the above-captioned investigation designating the investigation "more complicated."

FOR FURTHER INFORMATION CONTACT: Jean H. Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3104.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of section 337 violations in the importation of recombinantly produced human growth hormone on September 29, 1993. Complainant Genentech Inc. ("Genentech") alleges infringement of claims of four U.S. Letters Patent owned by Genentech.

On February 25, 1994, respondents Bio-Technology General Corp. and Biotechnology General (Israel) (collectively, "BTG") filed a motion to designate the investigation "more complicated." The presiding ALJ's ID granting the motion indicated that the investigation should be designated "more complicated" because BTG needed additional time to complete discovery in this investigation, which involves many factually and legally complex issues concerning the validity and enforceability of numerous claims of four patents. The ID extended the deadline for issuance of the ALJ's final ID by one month, or until July 29, 1994, and stated that "[e]xtension of the Commission action by one month would make the Commission's statutory deadline October 31, 1994." No petitions for review of the ID were filed. No agency comments were received.

After consideration of the record, including the ID, the Commission determined on its motion to review the ID and to modify it by striking the statement concerning the statutory deadline for Commission action. This statement is not consistent with section 337(b), which provides that the statutory deadline in "more complicated" investigations is 18 months after the date of institution. The statutory deadline for completion of the investigation is therefore March 29, 1995. However, the Commission expects to complete this investigation prior to the statutory deadline. In all other respects, the Commission adopted the ID as the determination of the Commission.

This action is taken under authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and §§ 210.55 and 210.59(a) of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.55, 210.59(a)). Copies of the ID, the Commission order modifying the ID, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Dated: April 4, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–8473 Filed 4–7–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 701–TA–359 and 731–TA–686–687 (Preliminary)]

Certain Steel Wire Rod From Belgium and Germany

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Belgium of certain steel wire rod,[3] provided for in subheadings 7213.31.30, 7213.31.60, 7213.39.00, 7213.41.30, 7213.41.60, 7213.49.00, 7213.50.00, 7227.20.00, and 7227.90.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Further, the Commission determines,[4] pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Germany of certain steel wire rod, that are alleged to be subsidized by the Government of Germany and sold in the United States at LTFV.

Background

On February 14, 1994, a petition was filed with the Commission and the Department of Commerce by Connecticut Steel Corp., Wallingford, CT; Georgetown Steel Corp., Georgetown, SC; North Star Steel Texas, Inc., Beaumont, TX; Co-Steel Raritan River Steel Co., Perth Amboy, NJ; Keystone Steel & Wire Corp., Peoria, IL; and Northwestern Steel & Wire Co., Sterling, IL, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of certain steel wire rod from Germany and LTFV imports from Belgium and Germany. Accordingly, effective February 14, 1994, the Commission instituted countervailing duty investigation No. 701–TA–359 (Preliminary) and antidumping investigations Nos. 731–TA–686–687 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 22, 1994 (59 FR 8483). The conference was held in Washington, DC, on March 4, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on March 31, 1994. The views of the Commission are contained in USITC Publication 2760 (March 1994), entitled "Certain Steel Wire Rod from Belgium and Germany: Investigations Nos. 701–TA–359 and 731–TA–686–687 (Preliminary)."

Issued: April 4, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–8474 Filed 4–7–94; 8:45 am]

BILLING CODE 7020–02–P

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Vice Chairman Watson and Commissioner Crawford dissenting.

[3] For purposes of these investigations, certain steel wire rod is defined as hot-rolled carbon steel and alloy steel wire rod, in irregularly wound coils, of approximately round cross section, between 5.08 mm (0.20 inch) and 19.0 mm (0.75 inch) in diameter. The following products are excluded from the scope of these investigations:

—Steel wire rod 5.5 mm or less in diameter, with tensile strength greater than or equal to 1040 MPa, and having the following chemical content, by weight: carbon greater than or equal to 0.79 percent, aluminum less than or equal to 0.005 percent, phosphorus plus sulfur less than or equal to 0.04 percent, and nitrogen less than or equal to 0.006 percent (termed "1080 tire cord" quality wire rod);

—Free-machining steel containing 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium;

—Stainless steel rods, tool steel rods, free-cutting steel rods, resulfurized steel rods, ball bearing steel rods, high-nickel steel rods, and concrete reinforcing bars and rods; and

—Wire rod 7.9 to 18 mm in diameter, containing 0.48 to 0.73 percent carbon by weight, and having partial decarburization and seams no more than 0.075 mm in depth (termed valve spring quality wire rod).

[4] Chairman Newquist dissenting.

DEPARTMENT OF JUSTICE

Office for Victims of Crime

Comprehensive Program Announcement for Fiscal Year 1994

AGENCY: Department of Justice, Office of Justice Programs, Office for Victims of Crime.

ACTION: Public announcement of the discretionary program plan for Fiscal Year 1994 and availability of discretionary funds.

SUMMARY: The Office for Victims of Crime (OVC) publishes this notice to: (1) Announce its discretionary program plan for FY 1994, and (2) to announce the availability of new and continuation discretionary funds for training and technical assistance and direct services to victims of crime. Application information is provided in sections III–VIII. Discretionary grants are awarded by OVC to advance its advocacy role on behalf of crime victims and improve services to crime victims.

DATES: Program Announcement is effective April 7, 1994.

ADDRESS: Office for Victims of Crime, Office of Justice Programs, 633 Indiana Avenue, NW., room 1352, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Diane Wells, Administrative Officer, (202) 307–5988, or the OVC staff members identified in relation to identified programs.

SUPPLEMENTARY INFORMATION: This Program Announcement is outlined as follows:

I. Introduction
II. Description of Continuation Programs
III. Description of New, Competitive Programs
IV. Solicitations for FY 95
V. Eligibility Requirements
VI. Application Requirements
VII. Procedures for Selection
VIII. Submission Requirements
IX. Civil Rights Compliance

I. Introduction

Justice is not merely the meting out of punishment but the making whole those who have been harmed. The care and concern for victims is a critical factor in our Federal Government's determination to provide fairness to all our citizens. The Office for Victims of Crime (OVC) is the Federal agency devoted to the needs of crime victims and to making sure that the rest of the criminal justice system recognizes victims' distress and victims' rights.

OVC is a component of the Office of Justice Programs within the U.S. Department of Justice. The Office serves as the Federal focal point for improving the treatment of crime victims and ensuring that their rights and interests are met. In addition to its role as a national victims' advocate, OVC is responsible for administering two formula grant programs authorized by the Victims of Crime Act, as amended (the state victim assistance and compensation grant programs), supporting national scope training and technical assistance activities via discretionary grants, and providing training and technical assistance for Federal and state law enforcement personnel involved in investigations, prosecutions, corrections and the provision of direct services to victims of crime. See 42 U.S.C. 10601–10605.

OVC plays a crucial role in the Justice Department's comprehensive plan to build safe neighborhoods. The Justice Department knows all too well that law enforcement alone can not create safe and secure communities. Consequently, the Justice Department is determined to develop partnerships with other Federal agencies, state and local governments and community based agencies to build an ethic of non-violence on all fronts. OVC is working intimately with OJP programs to insure that attention to victims is well integrated into the anti-violence initiative. Attention to victims helps to build these resilient communities both by assuaging the pain suffered by the victims, and in many instances stirring the conscience of the perpetrator so they are dissuaded from harming again.

OVC will use its discretionary funds in the most cost-effective and creative way possible.[1] This year OVC has developed a program plan that explicitly recognizes the need for partnerships: PARTNERSHIPS WITHIN THE JUSTICE DEPARTMENT, PARTNERSHIPS WITH OTHER FEDERAL AGENCIES, PARTNERSHIPS WITH STATE AND LOCAL GOVERNMENTS, and PARTNERSHIPS WITH NON-PROFIT ORGANIZATIONS.[2] For example, OVC will co-monitor grants with other OJP bureaus and offices, include joint-funded projects within the Department, and provide bonus points to applicants whose proposals complement Department of Justice and other Federal initiatives, including the Pulling American Cities Together (PACT) project, Operation Weed and Seed, Comprehensive Cities Program, etc.

Fiscal Year 1994 grants will be awarded to improve assistance rendered by the Federal, State, local and tribal criminal justice systems and allied professionals. This includes victim assistance programs in Indian country. Upon selection of the successful applications, OVC intends to fund the programs described herein up to the amounts noted. Additional funding may become available and applied to these or other programs. OVC will fund 14 new and 8 continuation programs which include 63 individual projects.

Discretionary grants for new programs are generally awarded through a competitive process. The programs are open to a broad range of organizations. Awards will be made to organizations and agencies that offer the greatest potential for achieving the objectives outlined in the description of each program. Selections will be made on the basis of the information contained in the applications received. All applications will be reviewed and rated by a peer panel of experts in the program areas. The panel will make recommendations for funding to the Director of OVC. The panel will assign numerical values by rating competing applicants based on the point distribution identified in the Selection Criteria section of each program description. As indicated above, additional points will be given to applicants whose site selections and project proposals complement other Federal funding initiatives and whose project proposals build upon previously developed materials as a cost-saving measure and enhancement to existing training materials. Letters will be sent to all applicants notifying them that their proposal has been selected or not selected. OVC will negotiate specific

[1] Discretionary dollars are limited to two purposes—training and direct services to Federal crime victims. These dollars cannot be used to support demonstration projects, research, evaluations or prevention.

[2] The Office for Victims of Crime will award $126,143,000 in Crime Victims Fund dollars to support the two formula grant programs authorized by the Victims of Crime Act—crime victim compensation and crime victim assistance. VOCA crime victims compensation dollars supplement state dollars to provide financial assistance to innocent crime victims for out-of-pocket expenses resulting from a violent crime. VOCA eligible expenses include medical expenses including mental health counseling and care, funeral expenses, and lost wages. VOCA crime victim assistance dollars are awarded to states to support state and local direct services programs such as rape crisis centers, domestic violence shelters, child abuse treatment programs, survivor of homicide victims programs, drunk driving crash victims programs, etc. VOCA victim assistance funds support direct services such as crisis intervention, shelter, criminal justice advocacy, hotline services, etc.

OVC will also commit $240,000 in FY 1994 discretionary dollars to support the National Victims Resource Center, an information clearinghouse for crime victims, victim advocates and service providers, criminal justice professionals, and allied professionals interested in crime victims issues.

terms of the awards with the selected applicants.

For continuation programs, the awards are limited to specific applicants who have previously received at least one year of funding and the program is a multi-year effort. Most of these grantees were selected initially through a competitive process. Continuation awards will be negotiated directly with current grantees to continue program activities or with the designated organizations that are uniquely qualified to provide specific services.

Continuation funding consideration for an additional project period for previously funded discretionary grant programs will be based upon several factors, including:

- The extent to which the project responds to the applicable requirements of the Victims of Crime Act (VOCA);
- Responsiveness to OVC, OJP and Department of Justice FY 1994 program priorities;
- Compliance with performance requirements of prior grant years;
- Compliance with fiscal and regulatory requirements;
- Compliance with any special conditions of award; and
- Availability of funds.

II. Description of Continuation Programs

OVC has not outlined the statement of purpose, goals, objectives, and strategy in this program announcement for continuation funding. This information will be outlined in the application kits, grant award documents, and reimbursable agreements for the programs which follow:

Assistance to Victims of Federal Crime in Indian Country

$775,545

OVC will fund continuation grants for 19 states (Arizona, Colorado, Idaho, Iowa, Kansas, Michigan, Minnesota, Mississippi, Montana, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming) and 46 tribal subgrantee victim assistance programs which were first funded in cycles from FY 1989 to 93. The program objective is to provide continued support to Native American communities in remote sections of Indian country where crime victim assistance services have previously been unavailable or scarce. Program services include crisis intervention and counseling to provide emotional support to victims following a violent crime; emergency, short-term child care or temporary shelter for family violence victims; help in participating in Federal criminal justice proceedings; and payment for forensic medical examinations for sexual assault victims. Funds may also be used for salaries for victim service providers. No applications will be solicited.

Emergency Assistance for Victims of Federal Crimes

$100,000

OVC will support services for victims of Federal crime when assistance that is essential to a victim's recovery cannot be obtained from any other source as authorized by VOCA (42 U.S.C. 10603 (c)(1)(B)). These funds may be accessed by Federal victim-witness coordinators only to support direct services such as emergency shelter, crisis intervention, and counseling. Through the continuation of this program, funds will be made available for victim-witness coordinators in U.S. Attorneys' and FBI offices to assist victims of Federal crime. Funds are made available through Reimbursable Agreements (RA) within the Department; thus, no applications will be solicited.

Training and Technical Assistance for Victim-Witness Coordinators and Prosecutors in U.S. Attorneys' Offices

$193,000

To continue efforts to improve the response of the Federal criminal justice system to the needs and rights of crime victims, OVC will enter into a Reimbursable Agreement (RA) with the Executive Office for United States Attorneys. This OVC initiative will support training and technical assistance programs for Federal victim-witness coordinators and prosecutors as authorized by VOCA (42 U.S.C. 10603 (c)(1)(B)). Funding activities will specifically support: (1) Reimbursement for travel and per diem expenses for attendance at OVC approved or sponsored training sessions and conferences on victim and witness assistance ($137,000); (2) reimbursement to Federal Districts for the provision of specialized district-specific training involving victims' rights legislation, and compliance with the Attorney General Guidelines for Victim and Witness Assistance, the Victim and Witness Protection Act, the Victims' Rights and Restitution Act, and/or the Victims of Child Abuse Act, ($50,000); and (3) reimbursement for participation in the White Collar Crime Victim's Technical Assistance Group which will be convened to discuss and develop an informational pamphlet for Federal victims of white collar crime and fraud ($8,000). As these activities will be implemented through an (RA) within the Department of Justice, no applications will be solicited.

Training and Technical Assistance for Federal Law Enforcement Officers

$176,500

The Victims of Crime Act (VOCA) provides that Crime Victims Fund dollars may be used to provide victim assistance training that improves the Federal criminal justice system response to crime victims (42 U.S.C. 10603 (c)(1)(B)). To promote the rendering of victim services by Federal law enforcement officers, OVC will enter into Reimbursable and Interagency Agreements with the following Federal agencies: The Federal Bureau of Investigation (FBI), the Department of Treasury's Federal Law Enforcement Training Center (FLETC), and the Department of Interior (DOI). The FBI agreement ($75,000) will provide funds to support the expansion of victim assistance programs within the FBI. The FLETC agreement ($50,000) will support basic and advanced training for Federal law enforcement officers at FLETC, a training conference for Federal criminal justice personnel on bias crime, regional train-the-trainer activities, and Federal agency specific training sessions. The Interagency Agreement with DOI ($3,500) will support the publication of 150,000 victim and witness informational brochures, printed in both English and Spanish, for distribution to crime victims by the 6,000 commissioned law enforcement personnel in DOI bureaus.

This program will also provide travel funds ($48,000) to sponsor the attendance of Federal law enforcement personnel at OVC approved training sessions, i.e. Indian Nations: Justice for Victims of Crime Conference, training provided by the National Center for Prosecution of Child Abuse, and the Dallas, Texas, Crimes Against Children Conference. Because these activities will be supported through Interagency Agreements and travel funding, no applications will be solicited.

Reproduction of Federal Victim Assistance Information Materials

$81,000

The Victims of Crime Act (VOCA) authorizes the use of Crime Victims Fund dollars to prepare and disseminate informational materials that describe services and rights due victims and to assist victims to participate in the Federal criminal justice system (42 U.S.C. 10603 (c)(1)(B)). In the past, OVC has supported the development of video tapes, informational materials, and

brochures that assist victims of Federal crime as well as Federal law enforcement officers. These materials explain victim needs, rights and services essential for effective victim participation in the Federal criminal justice system. In FY 1994, OVC will continue to reproduce, develop, and disseminate such informational materials, i.e., brochures that explain crime victim compensation benefits; videos that assist child victims in understanding their role as witnesses; brochures for Federal law enforcement officers that explain services available to Federal crime victims; special materials for victims of white collar crime, robbery, and domestic violence; and handbooks for Federal Victim Witness Coordinators that detail services available at state and local levels. No applications will be solicited as materials will be reproduced within the Department of Justice or as the result of Interagency Agreements.

Crime Victims and Corrections: Agenda for the 90's (Phase IV—Regional Military Correctional Institutions)

$20,000

Continued funding will be provided to support activities to improve services for Federal victims of crime during the post-sentencing phases of criminal cases prosecuted in military courts. Military correctional facilities are a part of the Federal correctional system. Funding will broaden the scope of a current grant with the National Victim Center (NVC) to provide training to regional military correctional institutions. During the current grant (Phase III), NVC provided training at the United States Disciplinary Barracks (USDB) at Fort Leavenworth, Kansas. Funds will be used to provide training at regional military correctional institutions. Because this will support the expansion of an existing grant, applications will not be solicited in FY 94.

The Spiritual Dimension in Victim Services

$40,000

This training and technical assistance project will be implemented by the current OVC grant recipient, the Spiritual Dimension in Victim Services. Victims commonly seek assistance services from clergy in the wake of crime. These professionals are often not trained on how to effectively respond. Thus, the continuing goal of this project is to provide clergy with appropriate skills training on how best to address the needs of crime victims. This supplement will be used specifically to extend the current project into the Denver, Colorado metropolitan area, a designated Weed and Seed site, and also to provide hospital and police chaplains with victim services training, including guidance on death notification. No additional applications will be solicited in FY 1994.

Civil Legal Remedies Against Perpetrators

$20,000

This training and technical assistance program will be implemented by the current OVC recipient, the National Victim Center (NVC). The training curriculum, presented at regional training conferences, apprises non-lawyer victim service providers on how to best assist crime victims in understanding their legal rights and remedies against perpetrators, and in determining how and when to attain qualified legal assistance in appropriate cases. Civil judgements can help crime victims cover expensive, long-term costs that are oftentimes incurred in the aftermath of crime. Additional project funding is awarded in recognition of continued field demand for the training and NVC's successful efforts in raising alternative funding to support this successful project. Fiscal Year 1994 funding will be used to update the training materials and to efficiently present these project products during at least two additional training events.

Children's Justice Act Discretionary Grant Program for Native Americans

$869,119

The Victims of Crime Act (VOCA) (42 U.S.C. 10601(g)(1)) authorizes the award of grants for the purpose of assisting Indian tribes in developing, establishing, and operating programs designed to improve the handling, investigation, and prosecution of child abuse cases, particularly child sexual abuse cases. This funding supports the continuation of three successful projects awarded under the CJA program in FY 1993 and up to eight new projects in FY 1994.

III. Description of New, Competitive Programs

Trainers Bureau

$75,000

Purpose: The purpose of this program is to improve services to crime victims by providing training and technical assistance to victim assistance programs and other agencies that deal with crime victims.

Background: The field of victim services has grown in recent years in response to expanding needs of crime victims for supportive services in the wake of their victimization. In some cases, existing victim assistance agencies have had to expand to serve increasing numbers of victims who need their services. In other cases, new agencies have been created to meet newly emerging needs, such as the needs of victims of campus crime and stalking. In addition, a number of agencies that have not traditionally provided services to crime victims (for example, corrections agencies) are now expected, and sometimes legally mandated, to serve victims.

With the growth of the victim service field has come an increasing demand for technical assistance and staff training. Agencies are stretching their limited resources to be able to make additional services available. Often, few resources are left to ensure that the services offered are appropriate and effective in meeting clients' needs, and that the organization is operating efficiently.

In past years, OVC has sponsored regional and state training conferences to address the needs of service providers for training in basic job skills. New mechanisms are needed, however, if OVC is to flexibly respond to the emerging needs of an increasingly sophisticated and complex field.

The Trainers Bureau is being developed as one such mechanism. This evolving program resource is being officially initiated with this program announcement.

Goals and objectives: (A) To stimulate the development of professional expertise in the field of victim services by:

1. Identifying consultants that can serve as a resource for OVC and the field;

2. Providing assistance in developing model programs, policies and practices; and

(B) To provide effective, high quality training and short-term technical assistance by:

1. Encouraging agencies to articulate specific, limited training and technical assistance needs;

2. Designing training and technical assistance support individually tailored to meet agency needs;

3. Identifying qualified consultants to deliver the training and technical assistance; and

4. Promoting administrative support for the skills and/or technology being transferred.

(C) To create a mechanism for delivering cost-effective training and technical assistance by:

1. Targeting resources to meet specific, high priority needs; and

2. Using all discretionary funds to pay direct costs of consultants.

Program strategy: This training initiative creates a mechanism for supporting cost-effective training and technical assistance to victim assistance programs and other agencies that deal with crime victims. OVC will serve as a broker for expert consulting services in response to requests for assistance from eligible agencies.

Through the Trainers Bureau OVC will respond to requests for training and technical assistance by providing consultants who are experts in the field of victim services. This will include skilled trainers capable of conducting high quality workshops on a wide range of victim-related topics at conferences, seminars, and other types of training events. It will also include professionals capable of providing appropriate, effective on-site technical assistance to address significant operational problems or needs commonly experienced by agencies. The experts will have agreed to make their services available, upon request of OVC, whenever possible within the constraints of their professional and personal schedules.

Eligible agencies can request assistance by submitting the following information:

- A description of the problem to be addressed and an explanation of why it cannot be addressed with existing resources;
- A suggested plan or specific action to address the problem;
- An estimate of the number of hours/days of assistance needed;
- The name of an agency contact person;
- The signature of the executive officer of the agency.

Applications for assistance should be sent to: Trainers Bureau, Office for Victims of Crime, 633 Indiana Avenue, NW., Washington, DC 20531.

Applications will be reviewed within 30 days of their receipt. Once an application has been approved, the request will be matched for assistance with appropriate available consultants. The recipient agency may select one or more consultants or request the services of another individual or individuals who will be approved by OVC as qualified to provide the assistance. The designated consultant(s) will draw up a training/technical assistance plan that responds directly to the identified needs of the agency; all parties (i.e., OVC, the recipient agency and the consultant) must agree to the plan.

Within 30 days after the training or technical assistance has been provided, the recipient agency will submit to OVC an evaluation of the trainer/consultant. The evaluation will assess the extent to which the planned assistance was executed, as well as the effectiveness of the consultant(s) and the intervention.

Eligibility requirements: Agencies eligible for training and technical assistance through the Trainers Bureau include state and local victim service agencies, state and national victims coalitions, criminal justice system agencies, U.S. Attorneys Offices, Native American subgrantees, and other agencies that regularly assist crime victims.

Applications will be reviewed and selected based upon the following criteria:

- Clarity of the request, including the description of the problem;
- Potential impact of the assistance;
- Commitment of resources from other sources to support the training and technical assistance request; and
- Need for Federal support to provide the assistance.

Special consideration will be given to requests where the assistance would have statewide or regional impact, or build inter-agency or multi-disciplinary capacity to deliver services.

Over the course of the award period, OVC anticipates receiving requests from a variety of types of agencies providing services that address a range of crimes (e.g., homicide, sexual assault, domestic violence) and categories of victims (e.g., children, women, the elderly).

Award period: Funds will be available to address requests throughout the duration of Fiscal Years 1994 and 1995.

Award amount: No money will be directly awarded to successful applicants. OVC will pay consultants a daily rate of up to $200 per day and reimburse them for travel expenses in accordance with Federal guidelines throughout Fiscal Years 1994 and 1995. Approved on-site assistance will be short-term, generally between one and three days in duration. A maximum of $2,500 will be allocated to each training or technical assistance event.

Due date: Applications will be accepted for consideration throughout the award period.

Contact: For further information, either as an agency wishing to apply for assistance or a party interested in serving as a consultant, contact Susan Laurence, Special Projects Division, OVC, (202) 514–6444.

Immediate Response to Emerging Problems

$100,000

Purpose: The purpose of this program is to improve services to victims of violent crime in communities that have experienced crimes resulting in multiple victimizations.

Background: Violence in America is becoming more frequent, leaving thousands of traumatized crime victims in its wake. Although communities understand the devastation caused by violent crime and usually are able to respond effectively to individual victims, incidents resulting in multiple victimization often tax existing service delivery systems beyond their capabilities. Crimes such as mass murders, serial rapes, terrorist bombings, and street violence create situations that require increased technical assistance and staff training to respond effectively to the large number of crime victims.

The Victims of Crime Act (VOCA) of 1984, as amended (42 U.S.C. 10601, et seq.), provides funding from the Crime Victims Fund for programs that provide training and technical assistance to Federal criminal justice agencies, states, units of local government, and other public and private organizations in activities related to crime victims. VOCA also requires the coordination of victim services provided by the Federal government with victim services offered by public agencies and nonprofit organizations.

OVC supports many grant programs and Federal Interagency Agreements to fulfill these requirements. One program, the "Emergency Assistance for Victims of Federal Crime," supports direct services for victims of Federal crime when essential services cannot be obtained from any other source. This program is available to offices of U.S. Attorneys. The Immediate Response to Emerging Problems Program is modeled after the Emergency Assistance for Victims of Federal Crime Program, but will allow OVC the flexibility to respond to requests for training or technical assistance from communities and Federal, state, and local agencies that have unique multiple-victim needs. This jointly funded OVC/BJA program will provide a victim assistance rapid response mechanism previously unavailable to communities.

Goals:

- To improve services to multiple victims of violent crime by providing training and short-term technical assistance to communities that have experienced an incident or incidents resulting in large numbers of crime victims;
- To respond to the specific needs of agencies and communities in crisis situations in a timely manner; and
- To increase the coordination among Federal, state, and local agencies to

provide effective victim assistance services; and

• To maximize available resources and reduce duplication of efforts.

Objectives:

• To provide specific, limited training and technical assistance based on the articulated needs of a community requiring immediate assistance to provide services to multiple victims of a violent crime;

• To encourage agencies or communities to articulate specific, limited training and technical assistance needs;

• To individually tailor training and technical assistance to the requestor's needs; and

• To identify qualified individuals to deliver the training and technical assistance in a timely manner.

Program strategy: This initiative creates a mechanism for offering technical assistance to communities suffering from the results of violent crime and multiple-victim cases. OVC and BJA will arrange technical assistance services in response to requests for assistance from eligible agencies.

This program will accept requests from victim service agencies, Federal, state, and local criminal justice system agencies, U.S. Attorneys Offices, Native American tribes, and other agencies that regularly deal with crime victims. Requests for assistance will be submitted on agency letterhead and signed by the executive director/officer of the agency. The letter will include the following information:

• A clear statement of the facts surrounding the current situation;

• A description of how the request for assistance is supported by major community agencies, including a list of the local, state, and Federal agencies involved and a description of their support for the request;

• A description of the "victimization" issues, numbers of victims, and the impact of the crime on the victims and the community;

• Applicants may also attach copies of newspaper articles or other documentation to provide background information;

• An explanation of why the community cannot address the situation with existing resources;

• A description of the specific technical assistance requested, the expected recipients of the technical assistance, and the desired outcome;

• If known, a description of the knowledge or skills required by the consultants providing the technical assistance;

• An estimate of the anticipated timeframe for the provision of the technical assistance;

• A description of the final product(s) sought from those providing technical assistance upon the completion of the delivery of such services (e.g., written report, verbal report, workshops, written assessment); and

• The name and phone number of the agency contact person who will be responsible for answering additional questions and coordinating with OVC, should the request be approved.

Requests should be sent to: Immediate Response for Emerging Problems, Office for Victims of Crime, 633 Indiana Avenue, NW, Washington, DC 20531.

Requests may also be transmitted by facsimile to OVC at (202) 514–6383.

OVC will review the requests within 48 hours (2 working days) of receipt. The OVC Director will approve or disapprove requests. If applicable, requests will be coordinated with other Office of Justice Program (OJP) bureaus. After the request has been approved or disapproved, OVC will contact the requesting agency by telephone and then follow-up with a written reply.

If a request is approved, names of appropriate individuals consultants will be selected, as appropriate. Consultants have agreed to make their services available, upon request of OVC or another OJP Bureau, whenever possible within the constraints of their professional and personal schedules. Requesting agency may request the services of particular individuals who can be approved by OVC as qualified to provide the assistance.

Because this program requires timely responses to requests for assistance for victim issues and problems relating to recent acts of violence, OVC envisions a flexible program format. Communities will be able to request site-specific training and technical assistance including, but are not limited to, crisis intervention, victim assistance staff augmentation, death notifications, critical incident stress debriefings, and community coordination.

Within 30 days after the technical assistance has been provided, the recipient agency will submit to OVC a brief assessment of the assistance provided. The assessment will describe the extent to which the training or technical assistance helped to address the community's need, as well as the effectiveness of the consultant(s) and the intervention.

Eligibility requirements: Requests will be accepted from victim service agencies, Federal, state, and local criminal justice system agencies, U.S. Attorneys Offices, Native American tribes, and other agencies that regularly deal with cases involving multiple crime victims.

Selection criteria: Requests will be reviewed and selected based upon the following criteria:

• Clarity of the request, including the description of the problem and need for the assistance;

• Potential impact of the assistance;

• Need for Federal support to provide the assistance; and

• Ability for OVC to respond.

Award period: Funds will be available to address requests submitted throughout Fiscal Years 1994–1995, or until such date as the limited funds ($100,000) are depleted.

Award amount: No money will be awarded directly to successful applicants. OVC and BJA will absorb all costs in accordance with Federal guidelines. Approved on-site assistance will be short-term, generally between one and three days in duration. No funding limitation has been established for this program, although it is anticipated that the funding of requests for assistance will not exceed $10,000. OVC and BJA have designated only $100,000 for this program and large awards could exhaust available resources to the detriment of other communities seeking assistance.

Due date: Applications will be accepted for consideration, beginning 60 days after publication of this notice, and throughout FY 94–95.

Contact: For further information, contact Sue Shriner, Federal Crime Victims Division, or David Osborne at (202) 514–6444.

Anti-Stalking Initiative

$18,000

OVC will partially support a regional seminar series for states on implementing anti-stalking codes and the provision of services to stalking victims to include the preparation and filing of restraining orders. The overall project will assist policy makers in assessing the strengths and weaknesses of existing state laws as well as in reviewing alternative approaches to achieving enforcement objectives. OVC's contribution will allow for a subject-matter expansion to include civil protection orders and other victim-related issues so as to encourage national and state victim advocate participation and provide technical assistance on the effective implementation of protective orders. Because this initiative complements an existing Bureau of Justice Assistance grant awarded to the National Criminal Justice Association, this project is not open to competition.

Resource Packages for Children Required To Testify in Federal Court

$70,000

Purpose: The purpose of this project is to develop and print four camera-ready products for inclusion in a child victim assistance resource package. The package will be distributed to Federal criminal justice personnel in their effort to assist child victims and witnesses of Federal crime.

The child victim assistance resource package will include: (1) A camera-ready Instructors' Guide on effective approaches when working with children within the Federal court process; (2) two separate camera-ready "Going-To-Court Answer and Activity Books" for child victims/witnesses—one for Native American children who are required to testify in either Federal or Tribal court and one specific to the Federal court process; and (3) camera-ready brochures for parents/guardians that outline the child's role in Federal court, child victims' and witnesses' rights, answers to typical questions asked by child victims/witnesses, and a description of the Federal criminal justice process. The products will be disseminated to Federal victim-witness coordinators from the 94 U.S. Attorneys' Offices and will be made available for use by other Federal jurisdictions and service providers as well. Applications will be solicited.

Background: Children who report or witness abuse not only suffer emotional ramifications of the abuse, but are often called on to participate in an adversarial and adult-oriented criminal justice system. Children are routinely exposed to confusing information, adult-oriented courtroom procedures, and unfamiliar language. Without careful coordination and attention to their needs, children can easily be victimized by the criminal justice system.

Congress recognized the need to accommodate the needs and abilities of child witnesses when it enacted the Crime Control Act of 1990, Public Law 101–647, which includes the Victims of Child Abuse Act of 1990. This legislation places responsibility on Federal investigators, prosecutors and victim-witness coordinators to develop procedures and services that allow children to participate as witnesses in the Federal criminal justice system. Federal victim-witness coordinators are responsible for the Federal victim/witness program and for implementing the new provisions of the law for victims of Federal crime. Fortunately, coordinators can provide in-office and/or in-court preparation material and orientation activities that may help to alleviate the potential trauma experienced by children who are required to testify in court. This program is authorized under 42 U.S.C. 10603 (c)(1)(B).

Goals:

- Improve the response of Federal criminal justice personnel to the rights and needs of children required to testify in Federal court;
- Develop four separate booklets for inclusion in one child victim assistance resource package intended for distribution to Federal victim-witness coordinators; and
- Help alleviate the potential trauma experienced by children required to testify in Federal court.

Objectives:

- To produce a child victim assistance resource package and material that can be utilized by Federal victim-witness coordinators;
- To design and print camera-ready Instructors' Guides (to be included in the resource packages) on effective approaches when working with children within the Federal court process and effective methods on how to tailor victim assistance services to meet the district-specific needs of child victims and their families. The Instructor's Guide should include state-of-the-art information for victim-witness coordinators on setting up a courtroom-orientation class, creating their own district-specific court-orientation material (word games, puzzles, and other material that can be personalized to the district, etc.), and how-to primers for working with special needs victims, i.e., physically and developmentally disabled, hearing/sight impaired, etc.);
- To design and print camera-ready "Going-To-Court Answer and Activity Books" for child victims/witnesses (to be included in the resource packages). The first book should be designed for Native American children who are required to testify in either Federal or Tribal court and should closely parallel the characters and information provided in the Department of Justice (DOJ) video entitled, "B. J. Learns About Federal and Tribal Court." The second book should be specific to the Federal court process and closely parallel the characters and information provided in the DOJ video entitled, "Inside Federal Court;"
- To design and print camera-ready brochures for parents/ guardians (to be included in the resource packages) that outline the child's role in Federal court, child victims' and witnesses' rights, answer typical questions asked by child victims/witnesses, and describe the Federal criminal justice process;
- To produce child victim assistance resource packages that contain the printed resource material; and
- To develop a plan to disseminate the developed products to Federal victim-witness coordinators nationwide.

Program strategy: This solicitation invites applications for a grantee to develop resource packages composed of printed material that will enhance the ability of Federal victim-witness coordinators to assist child victim/witnesses. The overall objective is to combine the expertise of an organization that is well experienced in assisting child victims and witnesses with the expertise within DOJ to produce information and products each Federal District can use to improve the response to children who are required to testify in Federal court. Accordingly, the grantee must review two existing DOJ videos for child witnesses and work closely with the OVC program specialist throughout the grant period as the products are developed (the "Instructors Guide" to implementing child victim-witness services; the two "Going -to-Court" answer and activity books; and the brochure for parents/guardians). Project activities will need to be carefully coordinated within the Department of Justice prior to final approval of project products.

The grant activities and products include:

- A review of existing material, including DOJ material and videos, that help orient child victim/witnesses to the Federal criminal justice system;
- An identification of child victim/witness needs (by developmental/age level and by special needs), and the development and printing of camera-ready Instructors' Guides for victim-witness coordinators that references these victim needs and details how victim-witness coordinators may help child victim/witnesses prepare for court;
- The development and printing of camera-ready "Going-To-Court Answer and Activity Books" for child victims/witnesses who are required to testify in Federal court;
- The development and printing of camera-ready brochures for parents/guardians that explain their child's role and what they as parents can do to support and assist the child. The brochures will also outline the phases of the criminal justice process and the various child victims' and witnesses' rights associated with each step or phase of the criminal justice process;
- The development of the package that will contain the printed products;

Eligibility criteria: In order to be eligible for funding, each applicant must

demonstrate experience in the following areas:

- Experience in developing model material for use by criminal justice personnel;
- Experience in/knowledge of child development issues;
- Demonstrated knowledge in assessing the needs and abilities of child victims/witnesses; and
- Demonstrated knowledge in researching and developing appropriate strategies for preparing children to testify in court.

Selection criteria: All applicants will be evaluated and rated based on the extent to which they meet the following criteria:

- The goals and objectives of the proposed project are clearly defined (10 points)
- Clarity and appropriateness of program implementation plan and time-task plan (25 points).
- Cost effectiveness of the proposed budget and investment of applicant's own research capability (25 points).
- Qualifications of the Program Staff (30 points)
- Organizational capability (10 points)

Award period: This award will provide support for the development and distribution of child victim assistance resource material over a 12 month period.

Award amount: Up to $70,000 has been allocated to support one cooperative agreement.

Due date: Applications must be received no later than 60 days from the date of this published announcement.

Contact: For further information, or to obtain a copies of *"B. J. Learns About Federal and Tribal Court," and "Inside Federal Court,"* contact Laura Federline, Federal Crime Victims Division, OVC, (202) 514–6444.

Victim Assistance Training for Military Victim Assistance Providers

$100,000

Purpose: The purpose of this program is to improve direct services to victims of crime on military installations by providing training to military criminal justice personnel and service providers.

Background: The Victims of Crime Act of 1984, as amended (42 U.S.C. 10601 et seq.), earmarked a portion of the Crime Victims Fund to provide direct services to victims of Federal crime, train Federal criminal justice personnel in responding to victims of Federal crime, and support the preparation of informational material regarding services to victims of Federal crime. The Victims Rights and Restitution Act of 1990 (42 U.S.C. 10606, 10607) strengthens this mandate by establishing a Federal Victims Bill of Rights and enhancing government responsibility and authority to ensure that Federal crime victims are treated with compassion, dignity, and respect.

OVC is responsible for training Federal criminal justice personnel in the delivery of services to victims of Federal crimes (42 U.S.C. 10603 (d)(3)(A)). For programmatic purposes, crimes that occur on military installations are considered to be within Federal jurisdiction.

OVC routinely coordinates victim and witness assistance programs and training activities with all Federal agencies that have law enforcement functions. The Department of Defense (DOD), like the Department of Justice (DOJ), is a multi-faceted agency with investigative, prosecutorial, and correctional responsibilities. Because of these similarities, it is mutually beneficial to both DOD and DOJ to share resources and expertise.

In the past year, OVC has coordinated various training and technical assistance efforts with DOD. Examples include: a Memorandum of Understanding with the DOD Office of Family Policy, Support, and Services to share resources to improve the Federal response to child abuse and neglect; a training session for the Air Force's Office of Special Investigations on sexual assault and rape; a training for Federal prosecutors, including military prosecutors, on handling child abuse and exploitation cases; and a joint DOJ–DOD Symposium on Victim and Witness Assistance. This project will continue these cooperative efforts between DOJ and DOD.

Goals:

- To provide victim assistance training to military criminal justice personnel and direct service providers in the areas of program development, program management, and direct services to victims of Federal crime;
- To combine the expertise and resources of the grantee, OVC, and the Department of Defense to provide comprehensive skills training on crime victims' issues;
- To disseminate effective strategies for improving services to crime victims; and
- To increase the coordination among military communities, state and local victim assistance agencies, and Federal criminal justice personnel to provide effective victim assistance services.

Objectives:

- To develop and implement a cost-effective strategy for providing training to military service providers, utilizing existing victim assistance training curricula i.e., developed previously by the applicant, in the public domain, or which the applicant has permission to use;
- To identify military specific topical areas for the training agenda (using an Advisory Board of military representatives identified by OVC);
- To develop three identical cost-effective training conferences (Eastern, Western, and Midwest sections of the United States) for approximately three days each for 200 personnel at each location;
- To identify potential trainers;
- Conduct training;
- To evaluate the training; and
- To develop conference reports assessing the results of the training conferences and making recommendations for future activities with military service providers.

Program strategy: This solicitation invites applications for a grantee to provide comprehensive victim assistance training to military criminal justice personnel and direct service providers, based on a previously developed curriculum.

The grantee will work with OVC staff and a Project Advisory Committee of representatives from the various military services to expand the core curriculum to meet the unique needs of military communities. Training conferences supported by this grant will address the provision of direct services to crime victims, including unique aspects of jurisdictional issues, and the development of victim assistance programs that include various Federal, state, and local resources for crime victims.

Because the training will employ existing curriculum materials, OVC envisions that a major portion of the proposed budget will be allotted for conference trainers. Selected trainers should include representatives from the military services. A limited portion of the budget will be allotted for the reproduction of the training manual/materials or reproduction of supplemental materials as well as for conference logistics, grantee staff time, and travel.

The applicant should attach copies of the existing victim assistance training materials that the applicant proposes to use as the core curriculum for the military conferences. The applicant may also suggest and describe supplemental materials for the training conferences.

Eligibility requirements: Applications will be accepted from public and non-profit organizations which have:

- Experience in the management and development of large victim assistance training conferences;

• Knowledge of the issues associated with the criminal justice system's handling of crime victims; and

• Organizational experience and financial capability to administer this training initiative.

Selection criteria: In determining which applicant to fund, OVC will consider the following:

• Experience in developing and delivering victim assistance training. (20 points)

• Project design that constitutes an effective approach to meet the goals and objectives of this program. (20 points)

• Clarity and appropriateness of the program implementation plan & time-task plan. (20 points)

• Budget: Cost effectiveness of the proposed training—i.e. appropriateness of costs in relation to the proposed strategy. (20 points)

• Qualifications of staff identified to implement the program. (20 points)

Award period: The award will provide support over a 12 month period.

Award amount: OVC will make up to $100,000 available for this program initiative.

Due date: Applications must be received no later than 60 days from the date of this published announcement.

Contact: For further information contact Sue Shriner, Federal Crime Victims Division, OVC, (202) 514–6444.

State Crime Compensation Program Training Initiative

$63,000

Purpose: The purpose of this training and technical assistance project is to improve the effectiveness and efficiency of services received by state and Federal crime victims from state crime compensation programs.

Background: The training component of this initiative—a national compensation conference—will address the on-going need for training and technical assistance for State victim compensation programs including the need for outreach to victims of Federal crimes. This national training conference will focus on enhancing program management and evaluation techniques with the goal of improving services to crime victims.

The second component of this initiative will support the development of model crime victim compensation program standards to better assess program performance and services to crime victims. Currently, no such standards exist. The standards that are developed through this initiative will assist State compensation programs in evaluating and improving their performance against a set of model victim compensation program standards.

Goals:

• To provide for a national training and technical assistance conference for staff and administrators of State crime compensation programs;

• To convene a National Training Conference for State compensation program staff and administrators.

• To encourage the development and implementation of model State compensation program standards; and

Objectives:

• To conduct a needs assessment, or survey, of State compensation programs which identifies particular topics for inclusion in a national training conference.

• To establish a Project Planning Committee for the development of model program standards. Members of the committee shall include, but shall not be limited to, compensation program administrators and staff; Victim Witness Coordinators; representatives from the victim services field, such as rape crisis centers and domestic violence shelters; and prosecutor-based victim witness programs.

• To develop program performance standards which address the following critical elements:

1. Maintenance of fiscal stability;
2. Expeditious and efficient claims processing;
3. Efficient decision-making process; and
4. Effective outreach and sensitive communication.

• To conduct workshops on the implementation of the program standards at regional and national training conferences for State crime victim compensation administrators and staff.

• To draft, at the completion of the project, a report which delineates the model program standards.

Program strategy: This solicitation invites applications for the development and support of a national training conference, and the development of comprehensive program standards.

In connection with the training conference, the grant funds may be used to support the salary of the conference coordinator and a part-time administrative assistant; development and reproduction of training materials including brochures and letters; the use of audio visual/equipment; a survey of states regarding training needs; costs to use training presenters and facilitator which may include state compensation administrators, staff, and Federal victim-witness coordinators; travel expenses for the project coordinator and assistant only; conference administrative costs including the site, telephones, rent, postage, photocopying, supplies, etc.

Prior to the conference, the grantee will survey state compensation programs regarding specific training needs; identify and develop a training curriculum and conference agenda; select conference presenters and a facilitator; and will develop a conference resource handbook and evaluation questionnaire.

Project funds will be allocated for the development of comprehensive model program standards. The grantee will establish an Advisory Committee consisting of various representatives from the victim services field, including at least one person employed in a victim assistance agency such as a sexual assault center or domestic violence shelter. The Advisory Committee will survey state compensation programs on the development of program performance standards. A draft of proposed program standards will be distributed to State program administrators, the National Organization for Victim Assistance, and the National Victim Center for comment. A discussion section will be incorporated in the preamble to the final report which will address any comments received from the draft. Once developed, these standards can be used as an assessment tool, to improve services, expand programs, and justify the need for increased resources.

Eligibility requirements: Applicants will be accepted from any State agency and/or public nonprofit agency. However, applicants must adequately substantiate the following:

• Understanding of the purpose and operation of state compensation programs;

• Understanding of VOCA program requirements for state compensation programs;

• Understanding of diversity of state compensation programs based on administrative structure and staffing;

• Experience in developing standards;

• Experience in organizing and implementing conferences; and

• Understanding of government cost principles.

Selection criteria: In determining which applicant to fund, OVC will consider the following:

• Letters of commitment from two-thirds of the state compensation programs to participate in grant related activities. (30 points)

• Past experience in organizing national conferences. (25 points)

• Commitment of resources to support conference. (15 points)

• Knowledge of and experience in addressing needs of state compensation programs. (30 points)

Award period: The award period will provide support over an 24 month period. Thus, funding for this project will not be available until October 1, 1994.

Award amount: OVC will make a total of $63,000 available for this program initiative, as follows: $45,000 for a national state compensation program training conference; and $18,000 for developing model program standards.

Due date: Applications must be received no later than 60 days from the date of this published announcement.

Contact: For further information contact Cheryl Grosso, Acting State Compensation and Assistance Director, OVC, (202) 307–5948.

State/Regional Conference Training Initiative

$200,000

Purpose: The purpose of this program is to provide Federal support for state and regional victim assistance training conferences.

Background: OVC is continuing, on a competitive basis, the mini-grant conference training initiative that was launched in 1993. Grants of up to $10,000 each will be awarded to selected applicants for the purpose of conducting statewide training conferences as well as launching a multi-state/regional training initiative. A maximum of $30,000 will be awarded to selected applicants to support regional training conferences.

This program provides a cost-efficient method for rendering Federal support to training events conducted on a state or regional level that includes participation by victim advocates and service providers at the Federal, state and local levels. OVC will use it as a vehicle for disseminating information on model programs, policies and practices, many of which have been developed through OVC sponsored training and technical assistance projects. States/regions will have access to Federal training and technical assistance dollars to address locally identified training needs. The initiative is also responsive in that it supports existing professional networks of victim assistance providers and advocates; at least half of the states have networks and/or coalitions that annually convene a training event for professionals who assist crime victims. Simultaneously, in state/regions where the network or coalition may be unable to convene an annual event, it sparks interest and offers resources for other organizations to conduct local training events. Training offered locally conserves vital resources by limiting the amount of funds and staff time spent on travel, and it also offers an important networking value.

Crime victims often require effective referrals and assistance as they move among the various agencies of the criminal justice system and allied professions: from filing a complaint with law enforcement to undergoing direct examination, as a witness, by a prosecutor; from filing an application with the state to obtain compensation to addressing subrogation issues subsequent to recovering on a civil judgement. These conferences will bring multi-disciplinary professionals together representing Federal, state, local and tribal agencies and provide training on how each profession might better work with the others to address the critical needs of crime victims.

Goals and objectives:

(A) To offer cost efficient victim assistance training and technical assistance to professionals at regional, Federal, state and local levels by:

1. Financially supporting professional victim assistance networks organized for the purpose of offering training at state or regional victim assistance conferences;

2. Making experienced, high quality trainers available locally;

3. Offering OVC staff expertise on training issues and effective trainers, and materials developed through OVC-sponsored national scope training and technical assistance projects available to local service providers; and

4. Supporting training that focuses on strengthening practical job skills.

(B) To provide training support that is responsive to locally identified needs:

1. Allowing victim serving agencies to determine the appropriate scope, either statewide or regional, for the training event;

2. Encouraging representatives of local agencies to tailor the conference to address what they have assessed as important local needs;

3. Supporting a conference that selects skilled trainers from the local area and from other parts of the country to present important topics; and

4. Providing minimal budget requirements so that local conference cost concerns can be accommodated.

(C) To promote coordination and collaboration among the various professions interacting with crime victims by:

1. Encouraging victim advocates across disciplines to be actively involved in planning the conference;

2. Encouraging the inclusion of training that features multi-disciplinary approaches to dealing with crime victims;

3. Stimulating interaction among professionals and volunteers from the many different disciplines that deal with crime victims by bringing them together as conference participants; and

4. Promoting training topics that target the unique needs of a range of crime victims who are served in Federal, state, local and tribal criminal justice systems.

(D) To promote coordination and collaboration across jurisdictions by:

1. Encouraging victim advocates from Federal, state, local and tribal criminal justice systems to plan a training conference that addresses the unique needs of victims in each criminal justice system; and

2. Providing information on the needs of victims that participate in the Federal criminal justice system so that local service providers are able to respond to those needs.

Program strategy: States and groups of contiguous states are invited to apply for funds under this program to support state or regional victim assistance training conferences. Conferences are to be multi-disciplinary in scope, incorporating training for personnel from victim service, criminal justice, medical and mental health agencies and other allied professions. Training should include both basic skills building workshops and more advanced seminars for experienced service providers. Applicants are encouraged to design conferences that include a wide range of victim-related topics and address specific, locally identified needs. A portion of workshop time must be devoted to Federal crime victim issues that are priorities for participating Federal agencies (bank robbery, bias-related crimes, white collar crime, crimes occurring on Federal enclaves such as military or Indian reservations).

Grantee agencies are required to identify a conference planning committee to carry out the task of planning the conference. The committee is to include representatives from the variety of professional disciplines that deal with crime victims and from different geographic areas of the state or region to be served. It is recommended that the committee include representatives from state agencies that administer victim assistance and compensation (VOCA) programs; state and local criminal justice agencies; when applicable, victim assistance coordinators from military and Indian reservations; and private non-profit

organizations such as state coalitions on sexual assault, domestic violence and child abuse, as well as local chapters of Mothers Against Drunk Driving and Parents of Murdered Children. In addition, all selected applicants will be required to involve their respective Federal victim-witness coordinators in the planning process.

OVC has developed a broad menu of training topics on subjects considered by the Office to be significant to the field of victim services. Many of these topics are related to prior OVC funded training and technical assistance projects and Federal Crime victim issues. Grantees will be expected to include in their conference agenda a number of workshops from the OVC list. At least 30 percent of the fund award must be used to cover cost of workshops selected from the OVC menu; these funds will cover consultant fees of up to $200 per day and travel expenses for trainers, and the cost of training materials and audio-visual equipment. The remainder of the grant funds may be used to cover other conference-related costs allowable under Federal guidelines, such as facility expenses, printing and mailing costs, etc.

OVC does not expect applicant agencies to include in their grant applications a detailed conference agenda, listing specific workshop topics or proposed presenters. Rather, the conference planning committee will be responsible for developing the agenda in collaboration with OVC program managers. In preparing proposed budgets for the conference, however, it is important to allocate the appropriate amount of funds to cover OVC approved workshops.

For more information about OVC's menu of training topics and to discuss cost-related details, all interested applicants are encouraged to contact the OVC contact person.

Eligibility requirements: Eligible applicants include state agencies and qualified private organizations with sufficient capability to manage a statewide or a regional victim assistance training conference. To be eligible for funding, the applicant must also be designated, in writing, by the Victim Compensation and Victim Assistance (VOCA) Administrators of the applicant state(s) as the appropriate organization to sponsor the conference. Letters of designation must be included in the application. Agencies responsible for administering the State Victim Assistance and State Victim Compensation (VOCA) programs are also eligible applicants.

Selection criteria: All applicants will be evaluated and rated based on the extent to which they meet the following weighted criteria. In general, all applications received will be reviewed in terms of their responsiveness to the minimum program application requirements and the program goals and objectives. Applications will be evaluated by a peer review panel according to the OVC competition and Peer Review Guidelines. The selection criteria and their point values are as follows:

- The training needs of the applicant are clearly stated and thoughtfully identified. Applications should reflect a responsiveness to the specific needs of each state and federal district and the constituencies within the state or region, taking into consideration types of crime, gaps in services and knowledge, lack of coordination among service providers and legislative mandates. (15 points)

- The goals and objectives of the proposed project are clearly defined. (15 points)

- The project design is sound and the management structure is adequate to the successful implementation of the project. (Total 25 points) This criterion includes:

1. Adequacy of the project management structure and feasibility of the time task plan. (15 points)

2. The qualifications of staff identified to manage and implement the program. (10 points)

- Organizational capability is demonstrated at a level sufficient to support the project successfully. (25 points)

- Budgeted costs are reasonable, allowable and cost effective for the activities to be undertaken. (10 points)

- Funding preference will be given to applications received from applicants who have not previously benefitted from grant project support. (10 points)

Award period: The award will provide support over no longer than a 12 month period.

Award amount: OVC will make awards in amounts up to $10,000 to selected applicants for the state grants. Awards in amounts up to $30,000 will be made to applicants submitting proposals for regional victim assistance training conferences.

Due date: Applications must be received no later than 60 days from the date of this published Announcement.

Contact: For further information contact Cheryl Gross, Acting Director, State Compensation and Assistance Division at (202) 307–5947.

Training and Technical Assistance for Native American Children's Justice Act Grantees

$100,000

Purpose: The purpose of this program is to provide comprehensive, skills-building training and technical assistance to Indian tribes and organizations that have received a grant from the Children's Justice Act Grant Program for Native Americans (CJA).

Background: The CJA program is designed to develop model projects in Native American communities for the purpose of improving the investigation, prosecution and handling of cases of child abuse, especially child sexual abuse, in a manner that increases support for and reduces trauma to child victims. Due to the uniqueness of each tribe and variations in size, location, availability of resources and services, legal structures and law enforcement jurisdictions, OVC believes training and technical support is critical to allowing these programs to achieve their stated goals and objectives.

Child sexual abuse cases on Indian reservations may be handled a myriad of different ways. The cases may be investigated by state police, tribal police, BIA criminal investigators, the FBI or others. Cases may be prosecuted in Federal, state, tribal, or a combination of these courts. Formal protocols may or may not exist between agencies. In instances where they exist, they may be fragmented rather than incorporate a multi-disciplined approach for handling child sexual abuse. OVC seeks to ensure that all tribal programs funded by the CJA initiative are provided the training and technical assistance necessary to implement the projects successfully.

This grant will provide the necessary training and/or technical assistance for the tribes to develop a multidisciplinary approach to investigating, prosecuting, treating and advocating for child sexual abuse victims. Training efforts will focus on a multi-disciplinary approach that minimizes the trauma suffered by the child victim and maximizes the opportunity to provide assistance and services needed to support the child's recovery. Coordination of all tribal, Federal and state agencies involved in child abuse cases as well as strategies for accomplishing systemic change so that the improvements become part of an institutionalized tribal response should also be addressed in the training and technical assistance.

Goal:

- To assist CJA grantees to meet the goals of their grants and to improve the handling of child victim cases through the provision of culturally relevant

training and technical assistance services. It is anticipated that eight different grantees will require these services.

Objectives:

- To identify and assess CJA grantees' needs for training and technical assistance (OVC anticipates that there will be eight active CJA programs in Native American communities that will need training and technical assistance);
- To develop a training plan and curriculum for each grantee based upon the assessment; the curriculum will be composed of the agenda and training materials to be used on site;
- To provide on-site training and technical assistance, including telephone technical assistance, to the grantees that enables them to successfully implement changes to improve the handling of child abuse cases;
- To assist the grantees develop protocols, manuals, curriculum and other victim related materials that can be adapted by different tribes;
- To identify and collect exemplary program materials such as protocols, training agendas, and brochures describing available services, tribal codes, etc., and make the materials available to CJA grantees as examples of workable implementation materials;
- To design, develop, and disseminate Indian-specific resource materials to the grantees, and;
- To work with OVC staff to develop skills-building workshops for the OVC/NCCAN training seminar for CJA grantees in November of 1994.

Program strategy: The recipient of this grant will be expected to establish communication with each of OVC's current CJA grantees, review their grant applications, develop a needs assessment form, and complete a needs assessment survey that identifies the grantees' training and technical assistance needs. The recipient will then be expected to categorize, establish priorities and develop a comprehensive training and technical assistance strategy and/or delivery plan. The plan would be based upon information collected during the assessment phase of the project and should include such information as: The types of technical assistance to be provided, the steps necessary to adapt suitable resources to the grantee's needs, the location for providing the assistance, the consultants that will be used as presenters, anticipated attendance at the training, the reason such training/technical assistance was selected, the cost of such training, the method to be used to assess the effectiveness of such training, the period during which the training/technical assistance is to be provided, and a plan for responding to follow-up training and technical assistance requests. Additionally, the grantee will work with OVC staff to develop several workshops to be included in the OVC/NCCAN training seminar for CJA grantees.

The training and technical assistance delivery plan is subject to review and approval by OVC. Upon OVC's final approval of the plan, the recipient will provide a 2-day on-site, individualized training session at each tribe or a regional training session for several tribes if regional training would accomplish the same objectives.

OVC recognizes that the requests for training and technical assistance may exceed the availability of resources. Therefore, it is critical that the recipient develop a delivery plan that maximizes available resources. The recipient of this grant can assume that the CJA grantees have the necessary funds for travel, lodging and per diem expenses for one regional training session, if regional training is selected. Project costs will cover up to 16 visits per year to reservation sites (2 trips to 8 projects), the development and printing of materials needed to implement the training, travel and per diem for staff and consultants, and consultant's fees.

Eligible applicants: Public or private, non-profit agencies or organizations are eligible to apply. Applicants must demonstrate knowledge of the subject matter and have expertise and experience in providing training and technical assistance on multidisciplinary responses to child sexual abuse. During the selection process, preference will be given to organizations which have staff members who are experienced in working with Native American organizations and who have expertise in handling child sexual abuse cases and related issues.

Selection criteria:

- The goals and objectives of the proposed project are clearly defined. (15 points)
- The project design is sound and contains program elements directly linked to the achievement of project objectives. This criterion includes:

(1) Adequacy of the project management structure and feasibility of the time task plan. (15 points)

(2) The qualifications of staff identified to manage and implement the program. (10 points)

- In-depth knowledge of the multidisciplinary approach to child sexual abuse investigation, prosecution, and treatment as well as an understanding of the jurisdictional issues involved in law enforcement and criminal prosecution of child sexual abuse cases in Indian country is demonstrated at a level sufficient to support the project successfully. (20 points)
- Experience in organizing and implementing conferences and experience in the ability to adapt suitable victims related materials and resources to the cultural diversity of Indian tribes is clearly delineated. (20 points)
- A detailed budget which demonstrates the cost-effectiveness of the project including the use of available resources, and which indicates the time commitment of the key staff of the project. Budgeted costs must be reasonable, allowable and cost effective for the activities to be undertaken. (20 points)

Award period: This recipient will be eligible for funding for 24 months.

Award amount: This is planned as a 24 month effort. OVC will make $100,000 available for the first 12 months of this program initiative. Continuation funding of $100,000 will be available for an additional 12 months if the grantee demonstrates success in the first 12 month award period.

Due date: Applications must be received no later than 60 days from the date of this published announcement.

Contact: For further information contact Cathy Sanders, Federal Crime Victims Division, (202) 514–6445.

National-Scope Training on Implementation of Victim Services Within Community Policing

$250,000

Purpose: Within the context of community policing, to promote an effective response to the needs of crime victims by law enforcement officers.

Background: Law enforcement contact with the victim should not cease upon apprehension of an offender, particularly within a community policing jurisdiction where officers may very well know the victim and will likely come into contact with him or her after case closure. Thus, victim services is key to effective community policing. Indeed, victim satisfaction with law enforcement's response is a good evaluation measure of the success of a community policing approach.

Both OVC and Bureau of Justice Assistance (BJA) funding will be used to fund the awarded project.

Goals:

- OVC will complement on-going and new Office of Justice Programs community policing projects through this training and technical assistance project.

• This project is designed to institutionalize victim services as an essential component of community policing approaches.

Objectives:

• Within the context of community policing, to identify services necessary for an effective law enforcement response to crime victims.

• To present the identified services within the context of a community policing protocol, offering agencies implementation guidance.

• To effectively present and disseminate all project products through training within at least four community policing jurisdictions.

Project strategy: All project products will be developed under the guidance and subject to the approval of a multi-disciplinary project steering committee. Membership will be subject to OVC and BJA approval and will include a broad representation from law enforcement organizations.

The principal project product is a victim services protocol for community policing law enforcement officers. This "how to" protocol will identify critical victim services as well as alternate strategies for addressing the needs of various types of crime victims including sexual assault victims, survivors of homicide victims, domestic violence victims, etc. Annotations will be developed to guide agency implementation and will address agency variances such as considerations unique to rural and urban law enforcement agencies. The protocol will include, as well, strategies for providing community residents and victims with protection from harassment and intimidation, strategies for offering long-term support to victimized community members and suggested ways for generating trust between victimized residents and law enforcement officers. The protocol will be based on the results of a literature assessment as well as input from model community policing agencies which offer victim services.

Additional products will be derived from the protocol, including a corresponding video-tape which would be suitable for roll call presentation, pilot training presentations of the protocol, development and presentation(s) of a train-the-trainers' curriculum and development of prototype law enforcement information materials for crime victims, such as a pocket card identifying local referrals and victim rights. At a minimum, the grantee will conduct a pilot training of officers within four community policing jurisdictions on protocol elements, and based on the results, will refine the protocol and training products, if necessary. The protocol will be printed in the form of a "How To" resource manual for community policing law enforcement agencies. Project funding will be used to disseminate broadly all products including to new and existing Weed and Seed sites, jurisdictions participating in the PACT and Comprehensive Cities projects. The number of training curriculum presentations conducted and the number of protocol manuals printed and disseminated will be as permitted under the budget.

The selected grantee will also be asked to incorporate substantive elements of OVC hate crime and elder abuse training curricula into the project products. The selected grantee will also undertake all necessary efforts to institutionalize basic protocol elements into basic and in-service law enforcement training.

Upon the conclusion of the project, the grantee will draft a report summarizing the project protocol, capable of nationwide distribution in the form of an OVC Bulletin. All products will be subject to OVC and BJA approval.

Eligibility requirements: To be eligible for funding, the applicant must have a capacity to train, nationwide, and must have experience in training law enforcement officers.

Selection criteria: All applicants will be evaluated and rated based on the extent to which they meet the following weighted criteria.

• The problem to be addressed by the project is clearly stated. (5 points)

• The goals and objectives of the proposed project are clearly defined. (10 points)

• The project design or strategy is sound and contains program elements directly linked to the achievement of project objectives. (20 points)

• The project management structure is adequate to the successful implementation of the project. (Total 25 points). This criterion includes:

1. Adequacy of the project management structure and feasibility of the time task plan, particularly in relation to identified project products. (15 points)

2. The qualifications of staff identified to manage and implement the program. (10 points)

• Organizational capability is demonstrated at a level sufficient to support the project successfully. Previous experience and history with providing law enforcement training, particularly within the context of victim services and community policing, will be taken into account during the selection process. (25 points)

• Budgeted costs are reasonable, allowable, and cost-effective for the activities to be undertaken. (15 points)

Award period: The award will provide support over no longer than a 24 month period. Thus, funding for this project will not be available until October 1, 1994.

Award amount: OVC will make up to $250,000 available for this project.

Due date: Applications must be received no later than 60 days from the date of this published Announcement.

Contact: For further information contact Duane Ragan, Special Projects Division, OVC at (202) 514–6444.

Victim Assistance Academy

$125,000

Purpose: The purpose of this project is to make high quality intensive training available to OVC staff and victim service providers who are committed to serving crime victims and the victim services profession.

Background: This project will provide victim assistance professionals with intensive skills training over a two week period. The Academy training presentation will be conducted in Washington, DC during the Summer of 1995. OVC anticipates that this project will be an initial step toward establishing a regular training event on an annual basis. The annualized event may serve as a precursor for the eventual establishment of a victim assistance academy or institute in Washington, DC.

Goals:

• Subject to OVC approval, to develop and present a one-week, 40 hour long intensive, skills training for the victim assistance providers.

• To recruit and involve qualified trainers to present the training topics.

• To invite and facilitate the attendance of a select group of 30 victim assistance advocates, as well as OVC staff, to participate in the training academy; grant funds will be used to cover travel and per diem costs of participants and trainers.

• To develop and make available all necessary training materials, including trainee evaluation survey.

• To develop and broadly disseminate the substance of the training.

Objectives:

• To develop a training topic list, which will serve as a rudimentary agenda, as well as specific learning objectives for the OVC Director's approval.

• To identify, recommend and upon OVC approval, to retain qualified

trainers to address the learning objectives.

• Upon OVC approval, to prepare a fair and equitable method for soliciting and selecting victim assistance trainees.

• To handle all logistics related to conducting the training.

• To produce a video capturing the highlights of the training event.

• To evaluate participant satisfaction with the training and to present recommendations for similar future events.

Program strategy: The selected grantee will work closely with OVC to establish a training agenda and will take appropriate measures to recruit qualified trainers. A fair and equitable process for selecting trainees will also be developed and implemented by the selected applicant. OVC will approve all selection requirements, selected trainee candidates—professionals demonstrating a commitment to making a long-term contribution to the victims movement and trainers. Among other things, project funds will be used to recruit trainers; cover travel and per diem costs of selected trainees as well as materials compilation. OVC will work with the selected grantee to locate adequate Federal facilities to conduct the training. The project products will include a one week training event for victim assistance professionals, and OVC staff, and training materials as well as a video tape of training highlights and intended for broad dissemination.

Eligibility requirements: The selected applicant must have experience in developing an appropriate victims assistance training agenda, the administrative capacity to implement the project, as well as a willingness to work in close collaboration with OVC to implement this project.

Selection criteria: All applicants will be evaluated and rated based on the extent to which they meet the specified weighted criteria.

• The goals and objectives of the proposed project are clearly defined. (10 points)

• The project design or strategy is sound and contains program elements directly linked to the achievement of project objectives. (20 points)

• The project management structure is adequate to the successful implementation of the project. (Total 25 points). This criterion includes:

1. Adequacy of the project management structure and feasibility of the time task plan, particularly in relation to identified project products (15 points).

2. The qualifications of staff identified to manage and implement the program. (10 points)

• Organizational capability is demonstrated at a level sufficient to support the project successfully. Previous experience and history with providing victim assistance will be taken into account during the selection process. (25 points)

• Budgeted costs are reasonable, allowable, and cost-effective for the activities to be undertaken. (20 points)

Award period: The award will provide support over no longer than a 18 month period. Thus, funding for this project will not be available until October 1, 1994.

Award amount: OVC will make up to $125,000 available for this project.

Contact: For further information contact Bob Hubbard, OVC at (202) 307–5950.

Multi-Purpose Educational Curriculum for Young Victims

$175,000

Purpose: To develop curricula and training materials for victim advocates, school personnel and youth groups to (1) teach adolescents to outreach and provide peer support for young victims of crime and (2) to identify effective ways of resolving interpersonal conflict without violence.

Background: While statistics reveal a reduction in overall rates of violent crime during the past few years, victimization among youth has skyrocketed. This project will assist victim service providers in conducting outreach to youth and in identifying the range of choices available when conflict arises. Youth confide in and seek support from peers; they look for assistance from friends who care but often do not know how best to respond to critical needs that emerge as a result of victimization. The absence of coping skills oftentimes results in inappropriate responses to violence, such as retaliation, truancy, suicide, etc.

The need for victim assistance and youth service organizations to develop approaches to heighten victimization awareness and provide guidance regarding effective conflict resolution cannot be underscored. This can be accomplished through curricula and training materials that allows victims of crime to share the physical and emotional impact of their victimization and to channel their desire for retribution in non-violent ways. This project has multiple benefits: crime victims gain a therapeutic benefit in sharing with others who might be spared similar suffering; youth learn about the consequences of crime in their lives—how it affects family and friends and how they might best respond to such crises; youth are provided with a forum to explore, possibly, their own victimization and to empathize with others who have been victimized; they are apprised of local service providers and the types of supportive services that they offer; and youth are exposed, as well, to the victim assistance profession and may be inspired to volunteer with local providers. Once apprised of the personal and often long-term injuries sustained by crime victims, and alternative means for resolving conflicts, potential offenders may also very well become dissuaded from committing crime.

Goals:

• To develop training curricula and materials for victim service providers, youth groups and school personnel on ways to provide outreach and assistance to victimized youth.

• To train victim services providers on ways to strengthen the support network for victimized youth.

• To train professionals who interact with young people to implement conflict-resolution training.

Objectives:

• The development and/or integration of an existing multi-purpose curriculum on conflict-resolution and victimization to: (a) Instruct youth on appropriate responses to victimization and the availability of local resources and referrals, (b) discourage youth from victimizing others, and (c) to encourage youth cooperation with law enforcement.

• To conduct pilot training presentations and refine project products.

• To provide victim assistance providers with technical assistance strategies to guide on-going relations with schools and youth groups.

• To educate youth on the devastating impact of crime on victims, their families, friends and the community.

Program strategy: This project will produce an assessment and consolidation of existing literature on victimization and conflict resolution curricula; a stand alone curricula, replete with implementation annotations for a variety of settings, capable of presentation by victim service providers, educational professionals, and youth groups urban and suburban settings; the development of training tools to assist in the presentations; pilot presentations of the curriculum within a cooperating high-crime school district and, at least one youth service organization (e.g., Boys and Girls Clubs of America, Scouts, etc.). Youth service professionals, law enforcement and juvenile criminal justice professionals will also be

involved in presentations of the curriculum and in guiding discussion among youth. The recipient will widely disseminate project products and will also draft a monograph summarizing the essence of project for publication by OVC as a bulletin.

The target audience will consist of junior high and high school students as well as youth participating in activities sponsored by private youth services agencies (focusing on youth at risk of becoming victims of crime).

A Project Advisory Committee consisting of professionals experienced in this subject area and with these audiences will be convened to guide the project and approve all products. Appointment of Project Advisory Committee members will be subject to OVC approval.

Eligibility requirements: Qualified recipients must, at a minimum, demonstrate a comprehensive knowledge of the impact of crime and victim services, conflict-resolution techniques as well as appropriate teaching methods. Applicants should also be able to demonstrate a familiarity with previously developed curricula on this subject and an expertise in developing curricula for public school settings.

Selection criteria: All applicants will be evaluated and rated based on the extent to which they address the following weighted criteria.

- Statement of the problem to be addressed by the project. (5 points)
- The goals and objectives of the proposed project are clearly defined. (10 points)
- The project design or strategy is sound and contains program elements directly linked to the achievement of project objectives. Adequacy of the project management structure and feasibility of the time task plan, particularly in relation to identified project products. (35 points)
- The project management structure is adequate to the successful implementation of the project. The qualifications of staff identified to manage and implement the program. (10 points)
- Organizational capability is demonstrated at a level sufficient to support the project successfully. Previous experience and history with providing victim assistance and a background in conflict resolution will be taken into account during the selection process. (25 points)
- Budgeted costs are reasonable, allowable, and cost-effective for the activities to be undertaken. (15 points)

Award period: The award will provide support over an 18 month period. Thus, funding for this project will not be available until October 1, 1994.

Award amount: OVC will make up to $175,000 available for this project.

Due date: Applications must be received no later than 60 days from the date of this published Announcement.

Contact: For further information contact Susan Laurence, Special Projects Division, OVC at (202) 307–5950.

Support for Grieving and Bereaved Children

$75,000

Purpose: The goal of this project to assist victim service providers in effectively responding to the needs of children who are grieving as a result of violence.

Background: Victim assistance providers are often called upon to support survivors of homicide victims and others who grieve as a result of violent crime. Grieving children have special needs that victim assistance providers are not always prepared to address. It is critical that children receive support and assistance throughout the grieving process. This project will help by providing victim assistance providers with appropriate guidance and technical assistance, in the form of age appropriate videotapes and literature.

Goals:

- To assist victim assistance providers in effectively responding to the special needs of children grieving as a result of crime.

Objectives:

- To produce age appropriate videotapes for presentation by victim assistance providers for children trying to effectively cope with grief issues.
- To develop a guidebook and two hour training curriculum for victim service providers, assisting them in using the project products and in guiding discussions about grief and violent crime issues.
- To broadly disseminate the products through a mailing, presentations of a training curriculum and a monograph reflecting brief, substantive guidance for victim assistance professionals.

Program strategy: Project products will entail the development of a "How To" guidebook and two-hour training curriculum for victim service providers as well as a videotape series for use by victim service providers (including school counsellors, youth program personnel, etc.) when responding to grieving children who have survived or witnessed homicide or other violent crimes, such as domestic and spousal abuse.

The guidebook will address topics such as a description of the grieving process in children; appropriate death notification for children; building effective school and community support services for grieving children; sensitive interviewing techniques for child witnesses of violence; and appropriate expectations of grieving children by teachers and other adult supervisors. The book will offer age specific guidance and will assist the user in discussing issues after a videotape viewing. Victim service providers will be able to make effective use of the guidebook even if they do not have the benefit of project training.

Three short (20 to 25 minute) videotapes will be developed for 4–6, 7–11, and 12–16 year old children, respectively. Each will help "predict and prepare" child viewer audiences for the range of emotions that they may experience as part of the grieving process. All tapes will be focussed on grief issues experienced as a result of violent crime.

Finally, the grant recipient will produce a training curriculum designed to enable OVC speakers (and other trainers) to impart to teachers, school administrators, social workers, victim service providers, and others, reliable and practical information on how to effectively assist grieving children and how to best use the other project products.

All grant products will be subject to OVC approval and designed to respond to the needs of children from diverse cultural and ethnic backgrounds.

Eligibility requirements: Qualified applicants should possess expertise in assisting child survivors of homicide and other violent crimes.

Selection criteria: All applicants will be evaluated and rated based on the extent to which they meet the following weighted criteria.

- Statement of the problem to be addressed by the project. (5 points)
- The goals and objectives of the proposed project are clearly defined. (10 points)
- The project design or strategy is sound and contains program elements directly linked to the achievement of project objectives. (20 points)
- The project management structure is adequate to the successful implementation of the project. (Total 25 points). This criterion includes:

1. Adequacy of the project management structure and feasibility of the time task plan, particularly in relation to identified project products (15 points).

2. The qualifications of staff identified to manage and implement the program. (10 points)

• Organizational capability is demonstrated at a level sufficient to support the project successfully. Previous experience and history with providing victim assistance to children will be taken into account during the selection process. (25 points)

• Budgeted costs are reasonable, allowable, and cost-effective for the activities to be undertaken. (15 points)

Award period: The award will provide support over no longer than a 12 month period.

Award amount: OVC will make up to $75,000 available for this project.

Due date: Applications must be received no later than 60 days from the date of this published Announcement.

Contact: For further information contact Duane Ragan, Special Projects Division, OVC at (202) 514–6444.

Training and Technical Assistance on Media Issues Impacting Crime Victims

$50,000

Purpose: To promote an effective and sensitive media response to crime victim concerns and needs.

Background: Both crime victims and their survivors are at risk of secondary victimization through exposure to media questions that intrude on the victim's private grief, jarring photographic images of injured or slain victims, as well as public disclosure by the media of their identities (particularly in sensitive cases, such as sexual assaults). The goal of this project is to train victim service providers, at the state and local level, on effective strategies for encouraging sensitive and dignified media reporting and visual depictions involving victims and survivors of homicide, sexual assault, and other violent crimes, and ways to minimize victim suffering commonly experienced as a result of insensitive press coverage of the crime.

Goal:

• To train victim assistance providers on ways to encourage effective and sensitive media coverage and treatment of crime victims.

Objectives:

• To develop a resource guide, for use by victim service providers, on strategies for sensitizing the media to victim needs, concerns and rights.

• To test pilot the substance of the resource guide at a presentation on victim issues before members of the media and based thereon, to refine the project products.

• To develop a monograph, capable of being re-printed in the form of an OVC Bulletin, that provides the reader with a condensed version of the substance of the resource guide.

Program strategy: The project's goal will be achieved through the development and, to the extent allowed under the budget, the printing of a resource guide for victim service providers. This product will include strategies for achieving an effective professional relationship with the media—one that serves to protect crime victims and addresses their concerns. The guide will also contain a presentation curriculum for formally sensitizing members of the media about victim issues. The curriculum section of the resource guide will be pilot tested at a professional gathering of media professionals and then refined. Substantively, the developed product will assist victim service providers in educating state and local media professional groups about victim issues, i.e, the trauma of victimization; victim privacy; confidentiality of victim identities in sexual assault and abuse cases; and approaches to investigating and reporting news stories that minimize the risk of additional trauma to crime victims. Finally, the substance of the resource guide will also be redrafted in a condensed version—a monograph capable of being reprinted as an OVC Bulletin.

Eligibility requirements: Qualified applicants possess expertise in victim issues, as well as contacts within the print and broadcast media.

Selection criteria: All applicants will be evaluated and rated based on the extent to which they meet the following weighted criteria.

• Statement of the problem to be addressed by the project. (5 points)

• The goals and objectives of the proposed project are clearly defined. (10 points)

• The project design or strategy is sound and contains program elements directly linked to the achievement of project objectives. (20 points)

• The project management structure is adequate to the successful implementation of the project. (Total 25 points). This criterion includes:

1. Adequacy of the project management structure and feasibility of the time task plan, particularly in relation to identified project products (15 points).

2. The qualifications of staff identified to manage and implement the program. (10 points)

• Organizational capability is demonstrated at a level sufficient to support the project successfully. Previous experience and history in providing victim assistance and in establishing effective relations with the media will be taken into account during the selection process. (25 points)

• Budgeted costs are reasonable, allowable, and cost-effective for the activities to be undertaken. (15 points)

Award period: The award will provide support over no longer than a 12 month period.

Award amount: OVC will make up to $50,000 available for this project.

Due date: Applications must be received no later than 60 days from the date of this published announcement.

Contact: For further information contact Melanie Smith, Special Projects Division, OVC at (202) 514–6444.

Training Mental Health Providers to Assist Crime Victims

$60,000

Purpose: To promote an effective response to crime victim needs by mental health professionals and to bridge a professional gap between mental health professionals and victim service providers.

Background: Victims of crime often seek out support and counselling from mental health professionals in the aftermath of crime. Emotional and psychological trauma suffered as a result of crime is unique. Mental health professionals are not always trained to provide an effective response. Thus, this project is intended to enhance treatment by making such professionals aware of crime victimization issues.

This training and technical assistance project is also intended to bridge a gap between the victim assistance and mental health counselling professions. There is an overlap between the two professions in that counselling is offered to crime victims by members of both. This project will identify the goals of each profession and will suggest strategies, to be implemented at the state and local level, for enhancing the professional relationship between mental health professionals and victim service providers.

Goal:

• To enhance the provision of appropriate mental health services to crime victims and to facilitate effective referrals by victim assistance providers to mental health practitioners.

Objectives:

• To develop a training manual and training curriculum for mental health service providers and victim service providers on mental health issues uniquely experienced by crime victims.

• To develop strategies on creating an effective relationship among both the victim assistance and mental health profession—one that serves crime victims well.

• To present the developed curriculum at a professional gathering of mental health professionals, i.e. a conference workshop conducted by the American Psychological Association.

• Within the context of service crime victims' needs, to make mental health professionals and victim assistance providers familiar with each other's professional objectives.

• To assist victim assistance professionals in identifying specific behaviors or circumstances that might merit victim referral to a mental health practitioner.

• To develop a monograph, capable of being re-printed in the form of an OVC Bulletin, that provides the reader with a condensed version of the substance of the manual.

Program strategy: The grant recipient will convene a one or two-day working group of mental health and victim assistance professionals to outline the content of the grant products. The developed training manual will cover basic topics such as the trauma of victimization; identifying and assessing signs of crisis and post-traumatic stress disorder that arise from crime victimization; and developing treatment plans for specific kinds of victimization, (e.g., domestic violence, sexual assault, sexual abuse, homicide survivors, etc.). It will also identify both written and institutional sources of more in-depth, current information for practitioners treating crime victims. The companion, training curriculum will serve as a training guide for participants in OVC's Trainers Bureau, as well as other instructors, who wish to provide training on crime victims' mental health needs. The grant recipient will present the training products at one or a series of conferences involving members of national psychological organizations, as well as victim service providers. To the extent allowed under the budget, copies of the project manual will be printed. Finally, a condensed version of the manual, capable of being distributed in the form of an OVC Bulletin, will be drafted.

Victims of Federal as well as state and local crime will be assisted through the project products.

Eligibility requirements: Qualified applicants must possess expertise in mental health treatment for victims in a clinical setting and must demonstrate a commitment to present the developed curriculum and materials at a national conference attended by mental health practitioners. Review criteria will include the applicant's plan to select and consolidate existing, relevant information on victims' mental health issues into a concise and practical training manual; and its proposed plan to present the training products to as wide a national audience as possible.

Selection criteria: All applicants will be evaluated and rated based on the extent to which they meet the following weighted criteria.

• Statement of the problem to be addressed by the project. (5 points)

• The goals and objectives of the proposed project are clearly defined. (10 points)

• The project design or strategy is sound and contains program elements directly linked to the achievement of project objectives. (20 points)

• The project management structure is adequate to the successful implementation of the project. (Total 25 points). This criterion includes:

1. Adequacy of the project management structure and feasibility of the time task plan, particularly in relation to identified project products. (15 points)

2. The qualifications of staff identified to manage and implement the program. (10 points)

• Organizational capability is demonstrated at a level sufficient to support the project successfully. Previous experience and history in providing victim assistance and contacts with mental health organizations capable of disseminating project products throughout the country. (25 points)

• Budgeted costs are reasonable, allowable, and cost-effective for the activities to be undertaken. (15 points)

Award period: The award will provide support over no longer than a 12 month period.

Award amount: OVC will make up to $60,000 available for this project.

Due date: Applications must be received no later than 60 days from the date of this published Announcement.

Contact: For further information contact Duane Ragan, Special Projects Division, OVC at (202) 514–6444.

Field-Initiated, Topic-Specific Training and Technical Assistance

$100,000

Purpose: The purpose of this program is to provide funding support for up to two projects at $50,000 each that will improve the quality of services to crime victims. The awarded funding will be used to support the development of training materials and the provision of training on a variety of specific topics relating to crime victims and of concern to victim service providers, law enforcement, mental health practitioners, the clergy, and others who play a critical role in responding to victims.

Background: Violent crime and the knowledge that any person, without provocation or warning can become a victim of crime, has increased the need for competent personnel to assist crime victims in the aftermath of a crime. A fundamental component to providing high-quality services to crime victims is trained, competent direct service providers.

To expand the cadre of skilled professionals and volunteers providing high quality services, each year OVC funds training for direct service providers. With this program, OVC is again soliciting proposals for developing and conducting training and technical assistance. However, the focus of this program is the provision of training on specific topics relating to crime victims. OVC expects that such a training format will serve as an opportunity to address timely, relevant issues relating to crime victims and appropriate for concentrated examination, discussion, and instruction. Examples of specific topics may include, but are not limited to, how to provide effective services for survivors of homicide victims, victims of gang violence, elderly abuse victims, adults molested as children, drunk driving crash victims, spouse abuse, child abuse, etc. Previous years topic-specific solicitations have yielded grant awards for training and technical assistance in the areas of drug-related crimes, bias crimes, and elder abuse.

There are many new and innovative approaches to assisting victims in the aftermath of a crime. OVC is soliciting applications which will improve the quality of victim services. Targeted personnel to be trained include, but are not limited to, victim service providers, mental health practitioners, judges, prosecutors, clergy, law enforcement, etc. Since the amount of money available for such training is limited and the on-going need for training is extensive, preference will be given to proposals which utilize or build upon existing training curriculums focused on the specific topic or audience.

Goal:

• To develop and offer topic-specific training to direct victims service providers, mental health practitioners, judges, prosecutors, clergy and others so that services to victims of crime will be improved.

Objectives:

• To assess existing research and training programs on the topic.

• To develop a training curriculum.

• To develop a training and technical assistance package for presentation.

• To provide training and technical assistance.

Program strategy: Specific products will be produced at each stage of each funded project.

Stage I—Assessment

As part of the assessment, the selected applicant's first quarterly report will describe efforts to ensure that the topical materials to be presented are up-to-date, comprehensive, and adequate in scope.

Stage II—Curriculum Development

As a result of work undertaken during the training curriculum development stage, a training curriculum will be developed based on material collected and reviewed during stage one.

Stage III—Development of Training and Technical Assistance Package

The training and technical assistance package for presentation will include, at a minimum:

- Identification of training and technical assistance personnel.
- The development of a training agenda.
- The development of a draft and final training manual. Comprehensive training manuals that detail the project's design and operation must be developed to encourage and facilitate replication of the training event.
- The development of a report summarizing the project, capable of nationwide distribution in the form of an OVC Bulletin.

Stage IV—Provision of Training and Technical Assistance

Finally, during the training and technical assistance provision stage, the applicant will be expected to explain the methods and approaches to be employed to implement this stage. Products to be completed will include, at a minimum:

- A training event(s);
- An evaluation of the training; and
- A final report.

Eligibility requirements: Applications are invited from public and private agencies and organizations having an in depth knowledge and expertise in the subject of their application. Applicants must demonstrate that they have ample expertise and/or prior experience in the design and conduct of a project of a nature similar to that for which they are applying.

Selection criteria: In determining which applications to fund, OVC will consider the following:

A. The topic to be addressed by the project is clearly stated. Applicants should include a background section demonstrating a clear understanding of the state-of-the-art regarding the topic and a statement justifying the need of victim service providers and other professionals for the proposed training. (15 points)

B. Goals and objectives of the proposed project are clearly defined. (10 points)

C. The project design is sound and contains program elements directly linked to the achievement of project objectives. (20 points)

D. The project management structure is adequate to the successful conduct of the project. This criterion includes: adequacy and appropriateness of the project management structure and the feasibility of the time task-plan; and, the qualifications of staff identified to manage the project, and develop and deliver training in the proposed topical area to be addressed by the grant project, including the clarity and appropriateness of position descriptions, required qualifications and selection criteria relative to the specific functions set out in the implementation plan. (20 points)

E. Organizational capability is demonstrated at a level sufficient to successfully support the project. This criterion includes the extent and quality of organizational experience in the development, delivery, and coordination of programs of a similar nature. (15 points)

F. Budgeted costs are reasonable, allowable and cost-effective for the activities to be undertaken. This criterion includes completeness and appropriateness of the proposed costs in relation to the proposed strategy and tasks to be accomplished. The use of materials already proven to be effective and their contribution to cost containment will be considered. (20 points)

Award period: The award period will provide support over a 12 month period.

Amount of award: OVC will make up to $100,000 available for this program effort. Grants up to $50,000 each will be awarded for individual projects.

Due date: Applications must be received no later than 60 days from the date of this published announcement.

Contact: For further information contact Jo Morrow, Special Projects Division, OVC at (202) 514–6444.

IV. Solicitations for FY 1995

Children's Justice Act Discretionary Grant Program for Native Americans

$698,771

The Victims of Crime Act (VOCA) authorizes the award of grants for the purpose of assisting Indian tribes in developing, establishing, and operating programs designed to improve the handling, investigation, and prosecution of child abuse cases, particularly child sexual abuse cases (42 U.S.C. 10601 (g)(1)). This funding will support the continuation of successful projects awarded under the CJA program in FY 1994. Only the current, active CJA grantees need apply. These funds will be awarded early in FY 1995. Current grantees may contact Cathy Sanders, Federal Crime Victims Division, (202) 514–6445.

Investigation and Handling of Child Sexual Abuse Cases

$30,000

The goal of this project is to provide support for specialized training for Federal criminal justice professionals at the National Symposium on Child Sexual Abuse. The grant will be awarded in early FY 1995 and the training will be offered in the Spring of 1995 at the Eleventh National Symposium. A Federal Training Day preceding the symposium and a separate Federal training curriculum to address issues uniquely experienced by Federal criminal justice professionals will be supported with this funding (42 U.S.C. 10603(c)(1)(B)). Funds will cover registration fees for the Federal criminal justice personnel selected to attend the training symposium. Teams of Federal prosecutors, DOJ Victim-Witness Coordinators, criminal investigators, and other members of Federal District multidisciplinary teams will attend. The training will promote a comprehensive multi-disciplinary approach among these professionals.

This program will be implemented by the National Children's Advocacy Center of Huntsville, Alabama, the sponsor of the National Symposium on Child Sexual Abuse. No other applications will be solicited in FY 94.

Twelve Years Later Symposium

$20,000

OVC will use $20,000 in training and technical assistance dollars to host a symposium to present findings and offer technical assistance to victim service providers on the implementation of the 68 recommendations found in the President's Task Force on Victims of Crime. OVC plans to contract for the services of experts in the field to author articles assessing the implementation of victims rights and services and forwarding recommendations to further improve the plight of crime victims. Potential article authors include medical professionals, judges, psychologists, law enforcement officers, and other representatives from the many professions who interface with victims

of crime. The consultant/authors' article would reflect their perceptions based on extensive expertise in the victims' field. OVC will review their work and arrange for a formal release of the publication via a symposium hosted by the Attorney General. This project would serve to stimulate the effective provision of victim services throughout the country. This project will be managed in-house, therefore, no applications are being solicited.

For further information regarding participation as either an author of an article for the report or attendance at the symposium, please contact: Melanie Smith, Special Projects Division, (202) 514–6444.

Resources for National Crime Victims' Rights Week 1995

$20,000

Purpose: The purpose of this project is to draw national attention to National Crime Victims Rights Week, 1995, through the development and dissemination of materials in the form of a kit and in the development of appropriate public relations strategies.

Background: Compared to prior years, OVC is allocating additional OVC resources for the purpose of assisting in the publication of a National Crime Victims Rights Week kit. OVC hopes that funding and a competitive award process will generate innovative ideas for commemorating this important annual event. National Crime Victims Rights Week heightens public awareness on the plight of innocent victims of crime. We hope that the kit produced under this project will effectively assist victim service providers in igniting public advocacy efforts for victim rights. The product will be subject to OVC approval and will be distributed to at least 5,000 organizations, including OVC victim assistance subgrantees, state victim compensation programs and others throughout the United States.

Goal:

- This project is proposed to solicit creative, innovative ideas for commemorating National Crime Victims' Rights Week, 1995 and heightening public awareness of victim issues nationwide.

Objectives:

- To address the goal of this project through the development and dissemination of a Crime Victims Rights Week kit.
- To disseminate the project product nationwide and in a timely manner.

Program strategy: Though appropriations will be solicited and received in 1994, an award will not be made until early Fiscal Year 1995. Project applications should include ideas for effectively and creatively conducting outreach to the public in all areas of the country. Project applications may also include strategies for obtaining public service announcement scripts; suggestions for observance of the Week at the state, local and Federal levels; detailed suggested logistics for carrying out an observance on a community-wide basis; ideas on the development of a commemorative poster; implementation of a product distribution plan, etc. Drafts will be accepted in a form of the applicant's choosing: a concept paper; an annotated table of contents; outline for the resource book; art work or sketches to be included in the guidebook, and/or cover design; or a rough draft of the contents to show writing ability, style and format.

Eligibility requirements: Knowledge of victim issues and previous work in generating public awareness with respect to National Crime Victims Rights Week.

Selection criteria: All applicants will be evaluated and rated based on the extent to which they meet the following weighted criteria. In general, all applications received will be reviewed in terms of their responsiveness to the minimum program application requirements as well as the stated program goals and objectives. Applications will be evaluated by a peer review panel according to the OVC Competition and Peer Review Guidance. The selection criteria and their point values are as follows:

- Statement of the problem to be addressed by the project. (5 points)
- The goals and objectives of the proposed project are clearly defined. (10 points)
- The project design or strategy is sound and contains program elements directly linked to the achievement of project objectives. (20 points)
- The project management structure is adequate to the successful implementation of the project. (Total 25 points). This criterion includes:

1. Adequacy of the project management structure and feasibility of the time task plan, particularly in relation to identified project products (15 points).

2. The qualifications of staff identified to manage and implement the program. (10 points)

- Organizational capability is demonstrated at a level sufficient to support the project successfully. Previous experience and history in providing victim assistance and in commemorating National Crime Victims Rights week through the publication of materials will be taken into account during the selection process. (25 points)
- Budgeted costs are reasonable, allowable, and cost-effective for the activities to be undertaken. (15 points)

Award period: The award will provide support over no longer than a 12 month period.

Award amount: OVC will make up to $20,000 available for this project.

Due date: Applications must be received no later than 60 days from the date of this published Announcement.

Contact: For further information contact Jo Morrow, Special Projects Division, OVC at (202) 514–6444.

Solicitation of Concept Papers for FY 1995

OVC is soliciting concept papers (5–10 pages) for innovative training and technical assistance programs that may be considered for funding in FY 1995. The purpose of this effort is to identify innovative ideas to improve the response to the nation's crime victims through the provision of training and technical assistance. Often, successful victim assistance approaches are fashioned to address a unique need in a particular community. OVC is seeking input from the victim assistance field by soliciting innovative ideas that describe new ways of meeting the needs of crime victims.

Concept papers may focus on the needs of a specific group of crime victims, such as victims of workplace violence, may focus on improving the quality of services, or may focus on a new concept or design for providing services (e.g., child advocacy centers). Such concept papers will permit OVC to identify program areas of primary interest to the field, to determine program funding priorities, to identify emerging issues, and to explore innovative ideas that address crime victims needs.

Concept papers will be reviewed as part of OVC's FY 1995 program planning process. The papers should support the development of training materials and the delivery of training on specific topics relating to crime victims. Topics discussed in the concept papers also should address the needs of victim service providers, law enforcement, mental health practitioners, the clergy, or others who play a critical role in responding to victims of crime.

A brief program narrative should be included to describe the need for any project described in a concept paper, the process by which the project would be undertaken, the method of determining the effects and quality of the project, and the possible products arising from the project.

The submission of a concept paper does not in any way constitute a commitment by OVC to award a grant to support any program proposed in the concept paper.

Concept papers should be submitted to David Osborne, OVC, (202) 307–5947 for consideration. The concept papers will be reviewed in conjunction with Administration priorities, OVC legislative mandates, and staff input during the development of OVC's FY 1995 discretionary program planning priorities. Invitations to submit applications for funding on a competitive basis will be announced in OVC's FY 1995 program plan. A specific invitation by OVC to submit a grant application as a result of the concept paper review process will not in any way constitute a commitment by OVC to award a grant to support that proposed project.

IV. Eligibility Requirement

In addition to special eligibility requirements listed within the individual program descriptions above, the following will apply. Applications are invited from public and private agencies and organizations. Applications will be accepted from for-profit agencies as long as they agree to waive any profit and accept only actual allowable costs. Applicants must demonstrate that they have ample expertise and/or prior experience in the design and conduct of projects of a nature similar to that for which they are applying.

Applicants must also demonstrate that they have the management capability, fiscal integrity, and financial responsibility, including but not limited to an acceptable accounting system and internal controls, and compliance with grant fiscal requirements. Applicants who fail to demonstrate that they have the capability to manage the program will be ineligible for funding consideration.

V. Application Requirements

All applicants must submit a completed Application for Federal Assistance (Standard Form 424), including a program narrative. All applications must include the information outlined in this section of the solicitation (Section V, Application Requirements) in Part IV, Program Narrative of the application (SF–424). The program narrative of the application should not exceed 35 double-spaced pages in length.

In accordance with Executive Order No. 12549, 28 CFR 67.510, applications must also provide Certifications Regarding Lobbying, Debarment, Suspension, and other Responsibility Matters; and Drug-Free Workplace Requirements (OJP Form 4061/6), which will be supplied with the application package, and must be submitted with the application.

Applications that include non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $25,000.

The following information must be included in the application (SF–424) Part IV Program Narrative:

A. *Organizational Capability.* Applicants must demonstrate that they are eligible to compete for this grant on the basis of the eligibility criteria established in Section IV of this solicitation. Applicants must concisely describe their organizational experience with respect to the eligibility criteria specified in each program description listed above. Applicants must demonstrate how their organizational experience and capabilities will enable them to achieve the goals and objectives of this initiative. Applicants are invited to append examples of prior work products of a similar nature to their application.

Applicants must demonstrate that their organization has or can establish fiscal controls and accounting procedures which assure that Federal funds available under this agreement are disbursed and accounted for properly. Applicants who have not previously received Federal funds will be asked to submit a copy of the Office of Justice Programs Accounting System and Financial Capability Questionnaire (OJP Form 7120/1). Copies of the form will be provided in the application kit and must be prepared and submitted along with the application. Other applicants may be requested to submit this form. The CPA certification (Section H) is required only of those applicants who have not previously received Federal funding.

B. *Program Goals and Objectives.* A brief statement of the applicant's understanding of the goals and objectives of the program should be included. The application should also include a problem statement and a discussion of the potential contribution of this program to the field.

C. *Program Strategy.* Applicants should describe the proposed approach for achieving the goals and objectives of each program. A detailed discussion of how the activities and products of each program would be accomplished should be included.

D. *Program Implementation Plan.* Applicants should prepare a plan that outlines the major activities involved in implementing the program, describe how they will allocate available resources to implement the project, and also describe how the program will be managed.

The plan must also include an organizational chart depicting the roles and describing the responsibilities of key organizational and functional components and a list of key personnel responsible for managing and implementing the major stages of the project. Applicants must present detailed position descriptions, qualifications, and selection criteria for each position. This documentation and individual resumes may be submitted as appendices to the applications.

E. *Time-Task Plan.* Applicants must develop a time-task plan for the duration of the project periods, clearly identifying major milestones and products. This must include designation of organizational responsibility and a schedule for the completion of the activities and products. Applicants should also indicate the anticipated cost schedule per month for the entire project period.

F. *Products.* Applicants must concisely describe the interim and final products of each stage of the program.

G. *Program Budget.* Budgets must be accompanied by a detailed justification for all costs, including the basis for computation of these costs. Applications containing contract(s) must include detailed budgets for each organization's expenses.

H. *Evaluation.* Each grant recipient will be required to submit formal findings from an assessment or evaluation, within 60 days of the completion of each year's activities and within 90 days of project completion. Each application must provide a plan for assessing or evaluating the project.

VI. Procedures for Selection

All applications will be evaluated and rated based on the extent to which they meet the established weighed criteria. In general, all applications received will be reviewed in terms of their responsiveness to the minimum program application requirements set forth in Section IV. Applications will be evaluated by a peer review panel according to the OVC Competition and Peer Review Guidance.

Applications submitted in response to the competitive announcements will be evaluated by a peer review panel. The results of the peer review will be a relative aggregate ranking of applications in the form of "Summary of Ratings." These will ordinarily be based on numerical values assigned by individual peer reviewers. Peer review recommendations, in conjunction with

the results of internal review and any necessary supplementary reviews, will assist OVC in considering competing applications and in selection of the application for funding. The final award decision will be made by the OVC Director.

VII. Submission Requirements

All applicants responding to this solicitation are subject to the following requirements:

1. Upon request to OVC, the necessary forms for application will be provided, along with Department of Justice certification information.

2. Applicants must submit the original signal application (Standard Form 424) and two copies to OVC. Applicants should also include Certifications Regarding Lobbying; Debarment; Suspension and other Responsibility Matters; and Drug-Free Workplace Requirements (Form 4061/6), in order to meet the requirements of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, title V, subtitle D) and the Disclosure of Lobbying Activities Form (SF LLL) in accordance with 31 U.S.C. 1352.

3. All applications must be received by mail or hand delivered to OVC by 5 p.m. E.S.T. by the established deadline. Those applications sent by mail should be addressed to: Office for Victims of Crime, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531. Hand delivered applications must be taken to OVC, 633 Indiana Avenue, NW., room 1352, Washington, DC between the hours of 8 a.m. and 5 p.m. except Saturdays, Sundays or Federal holidays.

OVC will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letters as to the decision made regarding whether or not their submission will be recommended for funding. Applications will be reviewed as Peer Review Panels can be convened. Every effort will be made to review applications in a timely manner.

VIII. Civil Rights Compliance

A. All recipients of OVC assistance, including and contractors, must comply with the non-discrimination requirements of the Victims of Crime Act of 1984, as amended, 42 U.S.C. 10604 (e); title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, et seq.; section 504 of the Rehabilitation Act of 1973, as amended; subtitle A, title II of the Americans with Disabilities Act (ADA of 1990), 42 U.S.C. 12101, et seq.; title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681–1683; the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101, et seq.; Department of Justice non-Discrimination Regulations, 28 CFR part 42, subparts C, D, E, and G; and Department of Justice regulations on disability discrimination, 28 CFR part 35 and part 39.

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, sex, or disability against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs.

Carolyn A. Hightower,

Acting Director, Office for Victims of Crime.

[FR Doc. 94–8298 Filed 4–7–94; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determination in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume I

New York

NY940062 (Apr. 8, 1994)
NY940063 (Apr. 8, 1994)
NY940064 (Apr. 8, 1994)
NY940065 (Apr. 8, 1994)
NY940066 (Apr. 8, 1994)
NY940067 (Apr. 8, 1994)
NY940068 (Apr. 8, 1994)
NY940069 (Apr. 8, 1994)

Volume IV

Indiana
IN940022 (Apr. 8, 1994)
IN940023 (Apr. 8, 1994)
IN940024 (Apr. 8, 1994)
IN940025 (Apr. 8, 1994)
IN940026 (Apr. 8, 1994)
IN940027 (Apr. 8, 1994)
IN940028 (Apr. 8, 1994)
IN940029 (Apr. 8, 1994)
IN940030 (Apr. 8, 1994)
IN940031 (Apr. 8, 1994)
IN940032 (Apr. 8, 1994)
IN940033 (Apr. 8, 1994)
IN940034 (Apr. 8, 1994)

Volume V

Louisiana
LA940050 (Apr. 8, 1994)
Texas
TX940111 (Apr. 8, 1994)

Volume VI

North Dakota
ND940027 (Apr. 8, 1994)
ND940028 (Apr. 8, 1994)
ND940029 (Apr. 8, 1994)
ND940030 (Apr. 8, 1994)
ND940047 (Apr. 8, 1994)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

Florida
FL940045 (Feb. 11, 1994)
Georgia
GA940050 (Feb. 11, 1994)
GA940053 (Feb. 11, 1994)

Volume IV

Illinois
IL940018 (Feb. 11, 1994)
Wisconsin
WI940018 (Feb. 11, 1994)
WI940020 (Feb. 11, 1994)

Volume V

Kansas
KS940006 (Feb. 11, 1994)
KS940007 (Feb. 11, 1994)
KS940008 (Feb. 11, 1994)
KS940009 (Feb. 11, 1994)
KS940012 (Feb. 11, 1994)
KS940013 (Feb. 11, 1994)
KS940015 (Feb. 11, 1994)
KS940016 (Feb. 11, 1994)
KS940017 (Feb. 11, 1994)
KS940018 (Feb. 11, 1994)
KS940019 (Feb. 11, 1994)
KS940020 (Feb. 11, 1994)
KS940021 (Feb. 11, 1994)
KS940022 (Feb. 11, 1994)
KS940023 (Feb. 11, 1994)
KS940026 (Feb. 11, 1994)
Nebraska
NE940001 (Feb. 11, 1994)
NE940003 (Feb. 11, 1994)
NE940009 (Feb. 11, 1994)
Texas
TX940011 (Feb. 11, 1994)
TX940050 (Feb. 11, 1994)
TX940073 (Feb. 11, 1994)
TX940107 (Feb. 11, 1994)

Volume VI

California
CA940001 (Feb. 11, 1994)
CA940002 (Feb. 11, 1994)
CA940004 (Feb. 11, 1994)
Oregon
OR940004 (Feb. 11, 1994)
Washington
WA940010 (Feb. 11, 1994)
WA940019 (Feb. 11, 1994)
WA940026 (Feb. 11, 1994)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 1st day of April 1994.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 94–8294 Filed 4–7–94; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the Attestation Process

Chief, Division of Foreign Labor Certifications, U.S. Employment Service. Telephone: 202–219–5263 (this is not a toll-free number).

Regarding the Complaint Process

Questions regarding the complaint process for the H–1A nurse attestation program shall be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202–219–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The

law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H–1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR Part 655 and 29 CFR Part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 14th day of the March 1994.

Robert A. Schaerfl,

Director, United States Employment Service.

Division of Foreign Labor Certifications Approved Attestations

[01/01/94 to 02/24/94]

CEO-name/facility name/address	State	Approval date
Ms. Marie Belen Rosales, Valley Health Ctr., Inc., 115 N. Somerton Avenue, Somerton, 85350, 602–627–8108	AZ	01/19/94
Mr. Tim J. Badgley, Thunderbird Health Care Ctr., Sunrise Healthcare Corp., Phoenix, 85040, 602–243–6121	AZ	01/24/94
Mr. Mark A. Meyers, AMI Garden Grove Hospital and Medical Ctr., Garden Grove, 92643, 714–537–5160	CA	01/05/94
Mr. Russell Stromberg, Centinela Hospital Medical Ct., 555 East Hardy Street, Inglewood, 90307, 213–419–3624	CA	01/05/94
Mr. Douglas Schultz, Life Care Center of San Gabriel, 909 West Santa Anita Street, San Gabriel, 91776, 818–289–5365	CA	01/10/94
Mr. Edward L. Martinez, Los Angeles County & U. of S. California Medical Center, Los Angeles, 90033, 213–226–6501	CA	01/12/94
Ms. Ellen L. Kuykandall, El Dorado Convalescent Hospital, 3280 Washington Street, Placerville, 95667, 916–622–6848	CA	01/12/94
Mr. Frank Puglisi, Merrithew Memorial Hospital, 2500 Alhambra Avenue, Martinez, 94553, 510–370–5130	CA	01/13/94
Mr. Steven R. Pavlow, Quality Long Term Care, 14122 Hubbard Street, Sylmar, 91342, 818–361–0191	CA	01/14/94
Mr. June Hernandez, Apache Junction Health Ctr., Foot Hill Care Center, Torrance, 90502, 602–983–0700	CA	01/21/94
Ms. Remy Tibayan, Fruitvale Care Conval. Hospital, 3020 E. 15th Street, Oakland, 94601, 510–261–5613	CA	01/26/94
Mr. Kenneth Berg, Century City Hospital, 2070 Century Park East, Los Angeles, 90067, 310–201–6660	CA	01/27/94
Mr. Chris DiCicco, Doctors Medical Center, 1441 Florida Avenue, Modesto, 95350, 209–578–1211	CA	02/01/94
Mr. Michael Kerr, Lakewood Regional Medical Ctr., 3700 E. South Street, Lakewood, 90712, 310–531–2550	CA	02/01/94
Mr. Richard Matros, Care West Park Central, Care Enterprises West, Fremont, 94536, 714–544–4443	CA	02/16/94
Mr. Richard Matros, Care West Anza, Care Enterprises West, El Cajon, 92020, 714–544–4443	CA	02/16/94
Mr. Richard Matros, Care West Garfield, Care Enterprises West, Huntington Beach, 92648, 714–544–4443	CA	02/16/94
Mr. Richard Matros, Care West Washington Manor, Care Enterprises West, San Leandro, 94578, 714–544–4443	CA	02/16/94
Mr. Richard Matros, Care West Burlingame, Care Enterprises West, Burlingame, 94010, 714–544–4443	CA	02/16/94
Mr. Richard Matros, Care West Huntington, Valley, Care Enterprises West, Huntington Beach, 92647, 714–544–4443	CA	02/16/94
Mr. Douglas Shepherd, National Rehabilitation Hospital, Washington, 20010, 202–877–1680	DC	01/05/94
Sister Carol Keehan, Providence Hospital, 1150 Varnum Street, NE., Washington, 20017, 202–269–7000	DC	01/05/94
Ms. Marie Cameron, Howard University Hospital, 2041 Georgia Avenue, NW., Washington, 20060, 202–865–1521	DC	01/05/94
Ms. Deborah Ransom, Washington Hospital Center, 110 Irving Street, NW., Washington, 20010, 202–877–7560	DC	02/01/94
Ms. Jackie Dykes, Landmark Health Care, Inc., 1510 Crozier Street, Blountstown, 32424, 904–674–5464	FL	01/05/94
Mr. Bradley K. Grover, Sr., Northside Hospital, Galencare Inc., St. Petersburg, 33709, 813–521–5073	FL	01/24/94
Mr. Edward J. Rosasco, Jr., Mercy Hospital, 3663 South Miami Avenue, Miami, 33133, 305–285–2100	FL	01/31/94
Mr. Martin E. Casper, Greynolds Park Manor, Inc., 17400 West Dixie Highway, North Miami Beach, 33160, 506–944–2361.	FL	01/31/94
Mr. Pete Lawson, St. Petersburg General Hospital, 6500 38th Avenue North, St. Petersburg, 33710, 813–384–1414	FL	02/01/94
Ms. Josefina B. Lardizabal, Gem Care Center, 550 9th Street, Miami Beach, 33139, 305–531–3321	FL	02/09/94
Mr. Fred D. Hirt, Mount Sinai Medical Ctr., 4300 Alton Road, Miami Beach, 33140, 305–674–2406	FL	02/09/94
Mr. Ralph Aleman, Cedars Medical Center, 1400 NW. 12th Avenue, Miami, 33136, 305–325–4991	FL	02/16/94
Mr. Thomas F. Jones, Miami Children's Hospital, 6125 SW. 31st Street, Miami, 33155, 305–666–6511	FL	02/16/94
Ms. Roberta Agner, Madison County Memorial Hospital, 201 East Marion Street, Madison, 32350, 904–973–2271	FL	02/17/94
Mr. Dan Maddock, Taylor Regional Hospital, Macon Highway, Hawkinsville, 31036, 912–783–0200	GA	01/12/94
Mr. Dale D. Pelton, Chattahoochee Health Care, 3700 Cascade Palmetto Rd., Atlanta, 30331, 404–964–6950	GA	01/25/94
Mr. Gary K. Kajiwara, Kuakini Health System, 347 N. Kuakini Street, Honolulu, 96817, 808–547–9148	HI	02/01/94
Mr. Jack Schnell, Clark Manor Convalescent Ctr., 7433 N. Clark Street, Chicago, 60626, 312–338–8778	IL	01/05/94
Mr. Shimon K. Goldstein, Carrington Care Center, Ltd., 759 Kane Street, South Elgin, 60177, 708–697–3310	IL	01/05/94
Ms. Wanda Bowling, Kenwood Health Care Ctr., 6125 S. Kenwood Avenue, Chicago, 60637, 312–752–6000	IL	01/05/94
Mr. Martin J. Bukacek, St. Joseph Home of Chicago, I, 2650 N. Ridgeway Avenue, Chicago, 60647, 312–235–8600	IL	01/05/94
Ms. Dolores C. Schroder, Lake Shore Nursing Centre, 7200 N. Sheridan Rd., Chicago, 60626, 312–973–7200	IL	01/06/94
Mr. Marvin Mermelstein, Parklane Nursing Centre, 9125 South Pulaski, Evergreen Park, 60642, 708–425–3400	IL	01/31/94
Mr. Michael Elkes, Lakeview Nursing and Geriatric Centre, Inc., Chicago, 60614, 312–348–4055	IL	02/01/94
Ms. Joann Birdzell, St. Elizabeth's Hospital, 1431 N. Claremont Avenue, Chicago, 60622, 312–633–5917	IL	02/02/94
Mr. Bryan Barrish, Columbus Park Inc., 901 South Austin Boulevard, Chicago, 60644, 312–287–5959	IL	02/03/94
Mr. Fred Oskin, Northwest Home for the Aged, 6300 N. California, Chicago, 60659, 312–973–1900	IL	02/07/94
Mr. Stephen Weinstein, Doctors Hospital of Hyde Park, 5800 South Stony Island Ave., Chicago, 60637, 312–643–9200	IL	02/09/94

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[01/01/94 to 02/24/94]

CEO-name/facility name/address	State	Approval date
Mr. Michael Kaplan, Forest Villa, Ltd., 6840 W. Touhy Avenue, Niles, 60648, 708–647–8994	IL	02/14/94
Mr. Michael Kaplan, York Convalescent Center, 127 W. Diversey, Elmhurst, 60126, 708–530–5225	IL	02/16/94
Mr. David J. Fine, Tulane University Medical Ctr., Administrators of the Tulane Ed., New Orleans, 70112, 504–588–5471	LA	01/14/94
Mr. Larry Beck, The Good Samaritan Hospital of Maryland, Baltimore, 21239, 410–532–3755	MD	02/14/94
Ms. Darlene Grover, Int'l Nurses Alliance, RR #5, Box 2635, Brunswick, 04011, 207–729–5895	ME	02/01/94
Ms. Betsy J. Perry, Ridgeview Manor Nursing Home, HCR, Kalamazoo, 49006, 616–375–4550	MI	01/13/94
Mr. James E. Miller, Detroit Riverview Hospital, 7733 East Jefferson Avenue, Detroit, 48214, 313–499–4145	MI	01/26/94
Mr. Rod C. Panyik, Silverbrook Manor, Horizon Healthcare Corp., Niles, 49120, 616–684–4320	MI	02/07/94
Mr. Thomas Yardic, West Side Health Care, Inc., 153 Concord Street, St. Paul, 55107, 612–222–1816	MN	01/11/94
Mr. Shael Bellows, Woodbine Healthcare Centre, 2900 Kendalwood Parkway, Gladstone, 64119, 816–453–1222	MO	02/16/94
Ms. Patsy Johnson, Sharkey/Issaquena Community H, P.O. Box 339, Rolling Fork, 39159, 601–873–4396	MS	01/05/94
Mr. Lewis T. Peeples, Parkview Regional Medical Ctr., 100 McAuley Drive, Vicksburg, 39180, 601–631–2131	MS	01/21/94
Mr. H.J. Blessit, South Sunflower County Hospital, 121 East Baker Street, Indianola, 38751, 601–887–5235	MS	01/31/94
Mr. Gary C. Morse, Tyler Holmes Memorial Hosp., 409 Tyler Holmes Drive, Winona, 38967, 601–283–4114	MS	02/14/94
Mr. Cecil A. Butler, Brookshire Nursing Center, Brookshire, Inc., Hillsborough, 27278, 919–644–6714	NC	01/26/94
Ms. Francine Ehrlich, Waterview Healthcare, 536 Ridge Road, Cedar Grove, 07009, 201–239–9300	NJ	01/05/94
Mr. Lester M. Bornstein, Newark Beth Israel Medical Ct., 201 Lyons Avenue, Newark, 07112, 201–926–7000	NJ	01/24/94
Mr. Gaudalupe L. Dagayday, Alfa Health Care Group, Inc., 1429 Chestnut Avenue, Hillside, 07205, 908–687–1143	NJ	02/01/94
Ms. Leonora Pilao-Dwyer, King David Care Ctr. of Atlantic City, Atlantic City, 08401, 609–344–2181	NJ	02/01/94
Mr. Irv J. Diamond, South Amboy Memorial Hospital, 1540 Bordentown Avenue, So. Amboy, 08879, 908–721–1000	NJ	02/04/94
Mr. John G. Magliaro, Columbus Hospital, 495 N. 13th Street, Newark, 07107, 201–268–1495	NJ	02/24/94
Sr. Paola Canziani, Casa Angelica, 5629 Isleta Blvd. SW., Albuquerque, 87105, 505–877–5763	NM	02/04/94
Mr. John Schaper, NYE Regional Medical Ctr., P.O. Box 391, Tonopah, 89049, 702–482–6233	NV	01/10/94
Mr. Richard Munger, Mt. Grant General Hospital, 1st and A Sts., Hawthorne, 89415, 702–945–2461	NV	01/24/94
Mr. James E. Majerus, JPM Corporation, 931 Tahoe Blvd. #4, Incline Village, 89451, 702–831–7720	NV	01/27/94
Elaine Berg, The New York Eye and Ear Infi., Second Ave. at 14th Street, New York, 10003, 212–979–4000	NY	01/03/94
Mr. Michael Meinicke, Rockaway Care Center, 353 Beach 48th Street, Edgemere, 11691, 718–471–5000	NY	01/12/94
Ms. Anisha K. Casimir, Hurtig Evans International, I, 200 North Ave., Suite 5, New Rochelle, 10801, 914–636–5600	NY	01/13/94
Ms. Susana Dugay, Lifeline Health Services International Corp., Jamaica Estates, 11432, 718–479–1100	NY	01/21/94
Mr. John W. Rowe, The Mount Sinai Hospital, One Gustave L. Levy Place, New York, 10029, 212–241–8875	NY	01/24/94
Ms. Louise Kane, Community Hospital of Brooklyn, Inc., Brooklyn, 11229, 718–377–7900	NY	01/31/94
Mr. Belen Sering, Global Employment and Management Inc., Flushing, 11354, 718–321–8736	NY	02/03/94
Mr. Henry Olshin, Astoria General Hospital, 25–10 30th Avenue, Long Island, 11102, 718–932–1000	NY	02/04/94
Mr. Paul Svensson, The Parkway Hospital, 70–35 113 Street, Forest Hills, 11375, 718–990–4170	NY	02/09/94
Ms. Jody Meddy, Haym Salomon Home for the Aged, 2300 Cropsey Avenue, Brooklyn 11214, 718–373–1700	NY	02/09/94
Mr. Jacob Reingold, Hebrew Home for the Aged at Riverdale/Palisade Nursing Home, Bronx, 10471, 718–549–8700	NY	02/14/94
Ms. Lucy Sarkis, South Beach Psychiatric Ctr., NYS Office of Mental Health, Staten Island, 10305, 718–667–2300	NY	02/16/94
Mr. John R. Ahearn, The Hospital for Special Surgery, New York, 10021, 212–606–1000	NY	02/16/94
Mr. William L. Stewart, Autumnwood of Sylvania, 4111 Holland-Sylvania Rd., Toledo, 53623, 419–882–2087	OH	01/26/94
Mr. Sherwin D. Welch, Cheraw Healthcare, Inc., P.O. Box 967, Cheraw, 29520, 803–537–5253	SC	01/12/94
Ms. Jolyn West Scheirman, JWS Health Consultants, Inc., 3730 Kirby Drive, Houston, 77030, 713–522–5355	TX	01/05/94
Mr. Orville B. Ramsey, Jr., Diviserfied Medical Staffing, Inc., Corpus Christi, 78472, 512–853–6004	TX	01/05/94
Mr. Barrett L. Brown, Terrell Community Hospital, 1551 Highway 34 South, Terrell, 75160, 214–583–7611	TX	01/06/94
Dr. Ron J. Anderson, Parkland Memorial Hospital, 5201 Harry Hines Blvd., Dallas, 75235, 214–590–8011	TX	01/07/94
Mr. David B. Dildy, East Texas Medical Ctr.—Tyler, 1000 S. Beckham, Tyler, 75701, 903–531–8016	TX	01/12/94
Mr. Alan Homes, Frio Hospital, 320 Berry Ranch Rd., Pearsall, 78061, 210–334–3617	TX	01/21/94
Mr. Thomas Kennedy, Rolling Plains Memorial Hosp., Nolan County Hospital District, Sweetwater, 79556, 915–235–1701	TX	02/01/94
Mr. Spencer Guimaein, Mary Dickerson Memorial Hosp., 1001 Dickerson Drive, Jasper, 75971, 409–384–2575	TX	02/02/94
Mr. B.J. Neely, Parmer County Community Hospital, 1307 Cleveland Avenue, Friona, 79035, 806–247–2754	TX	02/04/94
Ms. Lois Jean Moore, Harris County Hospital District, Houston, 77054, 713–746–6435	TX	02/04/94
Mr. Charles N. Butts, East Texas Med. Ctr.—Pittsburg, 414 Quitman Street, Pittsburg, 75686, 903–856–4500	TX	02/07/94
Mr. Charles V. Rice, Int'l Health Services, Inc., 5160 Parkstone Drive, Chantilly, 22021, 703–222–3900	VA	02/01/94
Ms. Jane C. Elliott, Bel Air Health Care Center, 9350 W. Fond du Lac Avenue, Milwaukee, 53225, 414–438–4360	WI	01/05/94
Mr. Forrest W. Calico, Man Appalachian Reg'l Hospital, Appalachian Reg'l Healthcare, Inc., Man, 25635, 606–281–2440	WV	02/16/94

Total Attestations: 102.

[FR Doc. 94–8389 Filed 4–7–94; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either that an alternate

method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the **Federal Register**. Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons, and a field investigation of the conditions at the mine. MSHA has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances the decisions are conditioned upon compliance with stipulations stated in the decision.

FOR FURTHER INFORMATION CONTACT: Petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations and Variances, MSHA, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: March 30, 1994.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M–80–91–M.
FR Notice: 45 FR 61396.
Petitioner: ASARCO, Inc.
Reg Affected: 30 CFR 57.4260 (previously 57.4–27).

Summary of Findings: Petitioner's granted petition for modification was reviewed and it was noted that conditions at the mine remain unchanged from conditions in existence when the petition was granted. Based on this review, MSHA has issued a Proposed Amended Decision and Order. The petitioner's proposal to locate 20-lb fire extinguishers throughout underground stopes instead of on mobile equipment considered acceptable alternate method. Granted with conditions.

Docket No.: M–81–17–M.
FR Notice: 46 FR 25726.
Petitioner: Mississippi Potash, Inc.
Reg Affected: 30 CFR 57.4260 (previously 57.4–27).

Summary of Findings: Petitioner's granted petition for modification was reviewed and it was noted that conditions at the mine remain unchanged from conditions in existence when the petition was granted. Based on this review, MSHA has issued a Proposed Amended Decision and Order. The petitioner's proposal to provide fire protection equivalent to fire extinguishers on certain types of mobile equipment with trailing cables considered acceptable alternate method. Granted with conditions.

Docket No.: M–81–41–M, M–81–42–M, and M–81–43–M.
FR Notice: 46 FR 45453.
Petitioner: United Salt Corporation.
Reg Affected: 30 CFR 57.4131 (previously 57.4–42); 57.4560 (previously 57.4–62); 57.4533 (previously 57.4–43).

Summary of Findings: Petitioner's granted petitions for modification were reviewed and it was noted that conditions at the mine remain unchanged from conditions in existence when the petitions were granted. Based on this review, MSHA has issued Proposed Amended Decisions and Orders. The petitioner's proposal, in the event of a fire in the structure which houses the mine opening and main fan, to immediately shut off the fan, sound an alarm, and activate a diesel blower on the surface, connected to the escape shaft, to positive-pressure ventilate the escape shaft and refuge room and reverse the usual flow of air so that combustion products are not drawn into the mine, considered acceptable alternate method. Granted with conditions.

Docket No.: M–84–14–M.
FR Notice: 49 FR 23256.
Petitioner: Western Ag-Minerals Company (previously Duval Corp.).
Reg Affected: 30 CFR 57.4260 (previously 57.4–27).

Summary of Findings: Petitioner's granted petition for modification was reviewed and it was noted that conditions at the mine remain unchanged from conditions in existence when the petition was granted. Based on this review, MSHA has issued a Proposed Amended Decision and Order. The petitioner's proposal to mount fire extinguishers on each of the face electrical safety centers in lieu of mounting them on the equipment, and to have fire extinguisher-equipped diesel equipment accompany trailing cable-type equipment when it is moved from one section to another, considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–3–M.
FR Notice: 51 FR 8377.
Petitioner: Homestake Mining Company.
Reg Affected: 30 CFR 57.14105 (previously 57.14029).

Summary of Findings: Petitioner's granted petition for modification was reviewed and it was noted that conditions at the mine remain unchanged from conditions in existence when the petition was granted. Based on this review, MSHA has issued a Proposed Amended Decision and Order. The petitioner's proposal to replace worn out brushes on the generators of Ross and Yates Hoist MG sets while the power is off but the armatures are rotating considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–01–M.
FR Notice: 52 FR 7946.
Petitioner: Montana Resources, Inc.
Reg Affected: 30 CFR 56.14132 (previously 56.9087).

Summary of Findings: Petitioner's granted petition for modification was reviewed and it was noted that conditions at the mine remain unchanged from conditions in existence when the petition was granted. Based on this review, MSHA has issued a Proposed Amended Decision and Order. The petitioner's proposal to equip all trucks with highly visible back up lights which operate automatically when trucks are in reverse and to use audible horns to communicate considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–20–M.
FR Notice: 56 FR 65514.
Petitioner: Cyprus Thompson Creek Mining Co.
Reg Affected: 30 CFR 56.6309.

Summary of Findings: Petitioner's proposal to design and construct an oil recycling system that filters used oil and blends the recycled product with fuel oil for use in blasting considered acceptable alternate method. Granted with conditions.

Docket No.: M–92–11–M.
FR Notice: 57 FR 43477.
Petitioner: Magma Copper Company.
Reg Affected: 30 CFR 57.11059.

Summary of Findings: Petitioner's proposal to use an independent ventilation system that converts to a one-hour self-contained breathing apparatus instead of a two-hour breathing apparatus considered acceptable alternate method. Granted with conditions.

Docket No.: M–92–35–C.
FR Notice: 57 FR 13763.
Petitioner: Cordero Mining Company.
Reg Affected: 30 CFR 77.1607(u).

Summary of Findings: Petitioner's proposal to use a portable hydraulic unit (power pack) for towing heavy equipment instead of tow bars considered acceptable alternate method. Granted during the towing operation of large disabled trucks that are equipped with steering systems and brake systems that require hydraulic or air pressure for normal operation, with conditions.

Docket No.: M–92–120–C.
FR Notice: 57 FR 47123.
Petitioner: Eastern Associated Coal Corporation.
Reg Affected: 30 CFR 75.364(b) (previously 75.305).

Summary of Findings: Petitioner's proposal to establish evaluation points to monitor the quantity and quality of air entering and leaving the affected area in lieu of weekly examinations considered acceptable alternate method. Granted with conditions.

Docket No.: M–92–126–C.
FR Notice: 57 FR 47124.
Petitioner: Freeman United Coal Mining Company.
Reg Affected: 30 CFR 75.902.

Summary of Findings: Petitioner's proposal to use a vacuum contactor circuit device instead of a circuit breaker considered acceptable alternate method. Granted for the one 995-volt, 150 horsepower pump motor, that is mounted on separate rubber tired carrier, located at the hydraulic pumping stations for the longwall working sections of the Orient No. 6 Mine, with conditions.

Docket No.: M–92–129–C.
FR Notice: 57 FR 47124.
Petitioner: Consolidation Coal Company.
Reg Affected: 30 CFR 75.364(b)(2) (previously 75.305).

Summary of Findings: Petitioner's proposal to establish check points to evaluate the quantity and quality of air leaving and entering the affected area in lieu of weekly examinations considered acceptable alternate method. Granted for the establishment of air monitoring stations in the No. 1 entry

(return) of the Mains East intake, with conditions.

Docket No.: M–92–152–C.
FR Notice: 57 FR 56377.
Petitioner: Shadle Coal Company.
Reg Affected: 30 CFR 75.340 (previously 75.1105).

Summary of Findings: Petitioner's proposal to use an underground battery-charging station to charge the motor when the mine is idle and to deenergize the station while the mine is in operation.

Docket No.: M–92–161–C.
FR Notice: 57 FR 59360.
Petitioner: Drummond Company, Inc.
Reg Affected: 30 CFR 75.1002.

Summary of Findings: Petitioner's proposal to use high-voltage cables to power longwall equipment considered acceptable alternate method. Granted with conditions.

Docket No.: M–92–177–C.
FR Notice: 57 FR 62391.
Petitioner: Consolidation Coal Company.
Reg Affected: 30 CFR 75.364(b).

Summary of Findings: Petitioner's proposal to establish check points to monitor the quantity and quality of air entering and leaving the affected area in lieu of weekly examinations considered acceptable alternate method. Granted with conditions.

Docket No.: M–93–02–C.
FR Notice: 58 FR 8065.
Petitioner: Cyprus Shoshone Coal Corporation.
Reg Affected: 30 CFR 75.503.

Summary of Findings: Petitioner's proposal to increase the maximum length of the dual longwall input cables from 1,000 feet to 1,250 feet to supply 2,400 volt alternating current from the load center to the longwall controller considered acceptable alternate method. Granted with conditions.

Docket No.: M–93–07–C.
FR Notice: 58 FR 8065.
Petitioner: McElroy Coal Company.
Reg Affected: 30 CFR 75.364(b) (formerly 75.305).

Summary of Findings: Petitioner's proposal to establish monitoring stations at the 1–North Return and the Left Return of 2–North before they enter the affected aircourses and continue using monitoring stations at the 1–South entries of the affected return aircourse daily, as described in petition for modification, docket number M–92–142–C considered acceptable alternate method. Granted with conditions.

Docket No.: M–93–11–C.
FR Notice: 58 FR 9575.
Petitioner: Baylor Mining, Inc.
Reg Affected: 30 CFR 75.350.

Summary of Findings: Petitioner's proposal to install a low-level carbon monoxide detection system in all belt entries used as intake aircourses considered acceptable alternate method. Granted for the use of the slope haulage conveyor belt in a return aircourse, with conditions.

Docket No.: M–93–16–C.
FR Notice: 58 FR 9575.
Petitioner: Utah Fuel Company.
Reg Affected: 30 CFR 75.333(d)(3).

Summary of Findings: Petitioner's proposal to use single drive-through doors in the longwall and longwall development sections of the mine and to open them only during non-mining in the inby section and only to gain access considered acceptable alternate method. Granted for the use of single drive-through haulageway doors in longwall panels which use yield pillar design for ground control purposes, with conditions.

Docket No.: M–93–31–C.
FR Notice: 58 FR 16554.
Petitioner: Black Beauty Coal Company.
Reg Affected: 30 CFR 75.1700.

Summary of Findings: Petitioner's proposal to plug and mine through oil and gas wells considered acceptable alternate method. Granted with conditions.

Docket No.: M–93–39–C.
FR Notice: 58 FR 16554.
Petitioner: Martinka Coal Company.
Reg Affected: 30 CFR 75.364(b)(1).

Summary of Findings: Petitioner's proposal to establish evaluation points to monitor the quantity and quality of air entering and leaving the affected area and have a certified person examine the evaluation points on a weekly basis considered acceptable alternate method. Granted with conditions.

Docket No.: M–93–44–C.
FR Notice: 58 FR 18419.
Petitioner: Western Mingo Coal Co.
Reg Affected: 30 CFR 75.350.

Summary of Findings: Petitioner's proposal to install a low-level carbon monoxide detection system in all belt entries used as intake air courses considered acceptable alternate method. Granted with conditions.

Docket No.: M–93–49–C.
FR Notice: 58 FR 26166.
Petitioner: Coal Miners, Inc.
Reg Affected: 30 CFR 75.360(b)(6).

Summary of Findings: Petitioner's proposal to test for methane and oxygen deficiency during the preshift examination at each main split of air to each working section and examine at least one entry of the intake air course once a week considered acceptable alternate method. Granted for the area of the mine developed prior to November 15, 1992, where entries and rooms were driven more than 20 feet off the intake aircourse without a crosscut or more than 2 crosscuts off the intake aircourse without permanent ventilation controls where intake air passes through or by these entries or rooms to a working section where anyone is scheduled to work during the oncoming shift, with conditions.

Docket No.: M–93–50–C.
FR Notice: 58 FR 26166.
Petitioner: Consolidation Coal Company.
Reg Affected: 30 CFR 75.364(b)(2).

Summary of Findings: Petitioner's proposal to establish evaluation check points to monitor the quantity and quality of air entering and leaving the affected area considered acceptable alternate method. Granted with conditions.

Docket No.: M–93–53–C
FR Notice: 58 FR 26166.
Petitioner: Gridner Mining Company.
Reg Affected: 30 CFR 75.342.

Summary of Findings: Petitioner's proposal to use hand-held continuous-duty methane and oxygen indicators instead of machine mounted methane monitors on permissible three-wheel tractors with drag bottom buckets considered acceptable alternate method. Granted for the permissible three-wheel battery-powered tractors used to load coal, with conditions.

Docket No.: M–93–54–C (superseding Docket No. M–91–013–C).
FR Notice: 58 FR 26166.
Petitioner: Trapper Mining, Inc.
Reg Affected: 30 CFR 75.1304(a).

Summary of Findings: Petitioner proposed that certain provisions in MSHA's December 9, 1991, Decision and Order, docket number M–91–13–C, be amended. One of the terms of that Decision and Order required an on-site inspection by MSHA before the oil recycling and blending facility was put into operation. During the course of this on-site inspection, several discrepancies with the Decision and Order were discovered. This revised petition for modification supersedes docket number M–91–13–C. The alternate method is considered acceptable and the petition is granted with conditions.

Docket No.: M–93–56–C.
FR Notice: 58 FR 26167.
Petitioner: Tanglewood Energy, Inc.
Reg Affected: 30 CFR 75.380(d)(4).

Summary of Findings: Petitioner's proposal to maintain a wide clearance of less than 6 feet between crosscuts No. 8 and No. 9 adjacent to two cribs, between crosscuts No. 10 and No. 11 adjacent to one crib, and between crosscuts No. 11 and No. 12 adjacent to one crib and timber considered acceptable alternate method. Granted for the No. 2 belt entry of South Mains, with conditions.

Docket No.: M–93–58–C.
FR Notice: 58 FR 29640.
Petitioner: B and B Coal Company.
Reg Affected: 30 CFR 75.340.

Summary of Findings: Petitioner's proposal to charge batteries on the mine's locomotive when all miners are out of the mine and to have intake air ventilating the charging stations, at the No. 1 chute of the active gangway level, continue through the last open crosscut and into the monkey airway (return) considered acceptable alternate method. Granted with conditions.

Docket No.: M–93–64–C.
FR Notice: 58 FR 29640.
Petitioner: U.S. Steel Mining Company, Inc.
Reg Affected: 30 CFR 75.804(a).

Summary of Findings: Petitioner's proposal to install SHD+GC, SHD-CGC, or SHD-Center-GC cable on its high-voltage longwall system considered acceptable alternate method. Granted for the high-voltage longwall system located in the Cumberland Mine, with conditions.

Docket No.: M–93–69–C.
FR Notice: 58 FR 32728.
Petitioner: The Pittsburgh and Midway Coal Mining Company.
Reg Affected: 30 CFR 77.1605(k).

Summary of Findings: Petitioner's proposal to eliminate berms or guardrails and to install and maintain reflectors near the outer edge of the roadway in areas where there is a recovery zone between the outer edge of the traveled roadway and the tangent of the embankment slope considered acceptable alternate method. Granted with conditions.

Docket No.: M–93–73–C.

FR Notice: 58 FR 32728.
Petitioner: Philippi Development, Inc.
Reg Affected: 30 CFR 75.380(d)(4).
Summary of Findings: Petitioner's proposal to post signs along the relevant portion of the escapeway where there is an indication of a tight clearance, and to install two switches that would allow for immediate deenergization of the belt lines in an emergency or when the belt needs to be stopped immediately considered acceptable alternate method. Granted for the No. 2 belt conveyor of 1 Northeast belt lines, with conditions.

Docket No.: M–93–157–C.
FR Notice: 58 FR 41294.
Petitioner: Clinchfield Coal Company.
Reg Affected: 30 CFR 75.1710–1(a).
Summary of Findings: Petitioner's proposal that the use of canopies not be required considered acceptable alternate method. Granted for the end-driven Joy 21–SC shuttle car and the end-driven Joy 10SC–22 shuttle cars in mining heights less than 54 inches and the center-driven Joy 21–SC shuttle cars in mining heights less than 48 inches.

Docket No.: M–93–209–C.
FR Notice: 58 FR 51388.
Petitioner: Jim Walter Resources, Inc.
Reg Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to use 2300 A.C. high-voltage cable to supply power to permissible longwall face equipment in or inby the last open crosscut considered acceptable alternate method. Granted for the permissible longwall equipment located in the No. 3 Mine and No. 4 Mine, with conditions.

Docket No.: M–93–278–C.
FR Notice: 58 FR 58566.
Petitioner: Baylor Mining, Inc.
Reg Affected: 30 CFR 75.352.
Summary of Findings: Petitioner's proposal to install a low-level carbon monoxide detection and methane monitoring system in all belt entries used as return air courses and to maintain ventilation at 50 fpm or greater in the belt conveyor entry considered acceptable alternate method. Granted for the use of the slope haulage conveyor belt in the return air course during initial mine development, with conditions.

[FR Doc. 94–8419 Filed 4–7–94; 8:45 am]
BILLING CODE 4510–43–P

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of information collection that will affect the public. Interested persons are invited to submit comments by May 9, 1994. Comments may be submitted to:

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, or by telephone (703) 306–1243. Copies of materials may be obtained at the above address or telephone.

Comments may also be submitted to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: Survey of Earned Doctorates in the United States.

Affected Public: Individuals.

Respondents/Reporting Burden: 39,500 respondents annually: 20 minutes per response.

Abstract: Data collected from research doctorates when they earn their degree is used by five Federal agencies for program planning, program evaluation, policy, and data dissemination. These data are especially used to describe the participation of women, racial/ethnic minorities, and foreign citizens.

Dated: April 4, 1994.

Herman G. Fleming,

Reports Clearance Officer.

[FR Doc. 94–8390 Filed 4–7–94; 8:45 am]
BILLING CODE 7555–01–M

Advisory Panel for Anthropological and Geographic Sciences; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub.L. 92–463, as amended), the National Science Foundation (NSF) announces the following Five meetings.

Name: Advisory Panel for Anthropological and Geographic Sciences # 1757.

Date & Time: April 24–25, 1994; 9 a.m.–5 p.m.

Place: Disneyland Hotel, 1150 West Cerritos Avenue, Villa 14, Anaheim, CA 92802.

Contact Person: John E. Yellen, Program Director for Archaeology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1759.

Agenda: To review and evaluate Archaeology proposals as a part of the selection process for awards.

Date & Time: May 6, 1994; 9 a.m.–5 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, room 310.2, Arlington, VA 22230.

Contact Person: John E. Yellen, Program Director for Archaeometry, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1759.

Agenda: To review and evaluate archaeometry proposals as part of the selection process for awards.

Date & Time: May 13, 1994; 1 p.m. (EST)

Place: Via Conference call with Program Director.

Contact Person: John E. Yellen at the National Science Foundation, 4201 Wilson Boulevard, room 995, Arlington, Virginia 22230. Telephone: (703) 306–1759.

Agenda: To review and evaluate systematic collections proposals as part of the selection process for awards.

Date & Time: April 25–26, 1994; 9 a.m.–5 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 370, Arlington, VA 22230.

Contact Person: Dr. Stuart Plattner, Program Director for Cultural Anthropology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1758.

Agenda: To review and evaluate cultural anthropology proposals as part of the selection process for awards.

Date & Time: May 3, 1994; 8:30 a.m.–5 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, room 320, Arlington, VA 22230.

Contact Person: Dr. Robin Cantor of Dr. Thomas J. Baerwald, Coordinators for Human Dimensions/Economics of Global Change, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1754.

Agenda: To review and evaluate human dimension and global change proposals as part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 5, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–8449 Filed 4–7–94; 8:45 am]
BILLING CODE 7555–01–M

Special Emphasis Panel in Astronomical Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Astronomical Sciences (#1186)

Date and Time: April 26, 1994

Place: Room 1060, NSF, 4201 Wilson Blvd., Arlington, VA

Type of Meeting: Closed

Contact Person: Dr. James P. Wright, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1819.

Purpose of Meeting: To provide advice and recommendations concerning nominations/applications submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the NSF Young Investigator Awards as part of the selection process for awards.

Reason for Closing: The nominations being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the nominations. These matters are exempt under 5 U.S.C. 552 b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 5, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–8447 Filed 4–7–94; 8:45 am]

BILLING CODE 7555–01–M

Engineering Advisory Committee; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Engineering.

Date and Time: April 21–22, 1994: 9:30 a.m.–5:00 p.m., Thursday, April 21; 8:30 a.m.–12:00 Noon, Friday, April 22.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 375, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. William S. Butcher, Advisory Committee for Engineering, National Science Foundation, 4201 Wilson Boulevard, Room 505, Arlington, VA 22230.

Minutes: Dr. William S. Butcher at the above address.

Purpose of Meeting: To provide advice, recommendations, and counsel on major goals and policies pertaining to Engineering programs and activities.

Agenda: Discussion on issues, opportunities and future directions for the Engineering Directorate; discussion of Engineering Directorate budget situation as well as other items.

Reason for late notice: Difficulty in scheduling an acceptable meeting date for all members.

Dated: April 5, 1994.

M. Rebecca Winkler,

Committee Management.

[FR Doc. 94–8448 Filed 4–7–94; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Systematic and Population Biology; Correction

The dates for the meeting of the Advisory Panel for Systematic and Population Biology were incorrect. The correct dates are April 26–29, 1994.

The notice for this meeting originally appeared in the March 10th issue of the **Federal Register**, Vol. 59, No. 47, p. 11329.

Dated: April 5, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–8450 Filed 4–7–94; 8:45 am]

BILLING CODE 7550–01–M

POSTAL RATE COMMISSION

[Docket No. R90–1]

Postal Rate and Fee Changes, 1990; Notice

April 4, 1994.

Notice is hereby given that the Presiding Officer has rescheduled the hearing in the above-designated proceeding previously scheduled for Friday, April 8, 1994, to June 9–10, 1994, at 9:30 a.m., in the Commission's Hearing Room, suite 300, 1333 H Street, NW., Washington, DC.

Charles L. Clapp,

Secretary.

[FR Doc. 94–8466 Filed 4–7–94; 8:45 am]

BILLING CODE 7710–FW–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title*: Application for Hospital Insurance Benefits.
(2) *Form(s) submitted*: AA–6, AA–7, AA–8.
(3) *OMB Number*: 3220–0082.
(4) *Expiration date of current OMB clearance*: Three years from date of OMB approval.
(5) *Type of request*: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.
(6) *Frequency of response*: On occasion.
(7) *Respondents*: Individuals or households.
(8) *Estimated annual number of respondents*: 575.
(9) *Total annual responses*: 575.
(10) *Average time per response*: .1322 hours.
(11) *Total annual reporting hours*: 76.
(12) *Collection description*: The Board administers the Medicare program for persons covered by the railroad retirement system. The collection obtains information about non-retired employees and survivor applicants needed for enrollment in the plan.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 94–8394 Filed 4–7–94; 8:45 am]

BILLING CODE 7905–01–M

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Survivor Questionnaire.
(2) *Form(s) submitted:* RL–94–F.
(3) *OMB Number:* 3220–0032.
(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.
(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.
(6) *Frequency of response:* On occasion.
(7) *Respondents:* Individuals or households.
(8) *Estimated annual number of respondents:* 26,500.
(9) *Total annual responses:* 26,500.
(10) *Average time per response:* .17377 hours.
(11) *Total annual reporting hours:* 4,605.
(12) *Collection description:* Under section 6 of the Railroad Retirement Act, benefits are payable to the survivors or the estates of deceased railroad employees. The collection obtains information about the survivors if any, payment of burial expenses and administration of estate when unknown to the Railroad Retirement Board. The

information will be used to determine whether and to whom benefits are payable.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 94–8395 Filed 4–7–94; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Under Review by the Office of Management and Budget

Agency Clearance Officer: John J. Lane, (202) 942–8800.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

Extension: Rule 15Ba2–1 and Form MSD: File No. 270–88.

Proposed Revisions: Rule 204–2: File No. 270–215.

New: Proposed Rule 10b–10—File No. 270–389; Proposed Rule 15c2–13—File No. 270–390.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted to the Office of Management and Budget approval for following rules and forms:

Rule 15Ba2–1 and Form MSD, pursuant to the Securities Exchange Act of 1934, provides the form of application for registration with the Commission by bank municipal securities dealers. Approximately forty respondents incur an estimated average of one and one-half burden hours to comply with this rule.

Proposed amendments to Rule 204–2 is the general recordkeeping rule under the Investment Advisers Act of 1940 ("Advisers Act"). Proposed paragraph (a)(17) of rule 204–2 would require investment advisers subject to the recordkeeping requirements of the Advisers Act to retain in their records any documents that the advisers receive describing their clients' financial situations, investment experience, and investment objectives. Proposed paragraph (a)(18) of rule 204–2 would require advisers to retain in their records copies of custodian account statements received by the advisers.

The Commission estimates that the total increase in the annual burden associated with rule 204–2 would be 1,150,511 hours. Approximately 818,048 hours are attributable to an increase in the number of registered investment advisers, and 332,463 hours are attributable to the proposed amendments to rule 204–2. The total burden for rule 204–2 would be increased from 3,703,616 hours to 4,854,127 hours.

Proposed Rule 10b–10 pursuant to the Securities Exchange Act of 1934, requires broker-dealers effecting transactions in securities to provide written notification to the customer at or before the completion of the transaction that discloses information about the transaction. It is estimated that 3,900 broker-dealers currently spend 84.6 million hours complying with Rule 10b–10 annually.

Proposed Rule 15c2–13 pursuant to the Securities Exchange Act of 1934, requires broker-dealers effecting transactions in municipal securities to provide written notification to the customer at or before the completion of the transaction that discloses information about the transaction. It is anticipated that 400 brokers, dealers, and municipal securities dealers will spend 49.8 million hours complying with Rule 15c2–13 annually.

General comments may be directed to Gary Waxman at the address below. Comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms should be directed to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Information and Regulatory Affairs, Paperwork Reduction Act Numbers 3235–0083, and 3235–0278, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 23, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–8436 Filed 4–7–94; 8:45 am]

BILLING CODE 8010–01–M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer—John J. Lane (202) 942–8800.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Form 12b–25	File No. 270–71.
Form 13E4H	File No. 270–355.
Form 14D1C, REG 14D & 14E.	File No. 270–356.
Form F–12	File No. 270–354.
Rule 15g–3	File No. 270–346.
Rule 15g–4	File No. 270–347.
Rule 15g–5	File No. 270–348.
Rule 15g–6	File No. 270–349.
Rule 15g–7(a)	File No. 270–350.
Rule 45	File No. 270–164.
Form N–SAR	File No. 270–292.
Rule 17Ac2–1, Form TA–1.	File No. 270–95.
Rule 17Ac2–2, Form TA–2.	File No. 270–298.
Rule 17a–8	File No. 270–53.

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), that the Securities and Exchange Commission ("Commission") has submitted to the Office and Management Budget request for extension on the following rules and forms:

Form 12b–25 is a notification of a late filing by a registrant. It is estimated that 4,266 respondents will file Form 12b–25 annually at 2.5 burden hours per response with a total annual burden of 10,665 hours.

Proposed Form 13E4H is used by issuers incorporated or organized under laws of a foreign country that are making a tender offer for their own securities where less than 10 percent of the class of such securities are held by U.S. holders. It is estimated that 20 respondents will file Form 13E4H annually at 2 burden hours per response with a total annual burden of 40 hours.

Proposed Form 14D1C would be used by third parties making a cash tender or exchange offer for a class of securities of a foreign issuer in order to furnish home country disclosure documents. It is estimated that 17 respondents will file Form 14D1C annually at 2 burden hours per response with a total annual burden of 34 hours.

Proposed Form F–12 would be used by foreign private issuers to register securities in an exchange offer. It is estimated that 20 respondents will file Form F–12 annually at 2 burden hours per response with a total annual burden of 40 hours.

Rule 15g–3 requires that brokers and dealers disclose to customers current quotation prices or similar market information in connection with transactions in certain low-priced, over-the-counter securities ("penny stocks"). It is estimated that approximately 270

respondents incur an average burden of 100 hours annually to comply with the rule.

Rule 15g–4 requires brokers and dealers effecting transactions in penny stocks for or with customers to disclose the amount of compensation received by the broker-dealer in connection with the transaction. It is estimated that approximately 270 respondents incur an average of 100 hours annually to comply with the rule.

Rule 15g–5 requires brokers and dealers to disclose to customers the amount of compensation to be received by their sales agents in connection with penny stock transactions. It is estimated that approximately 270 respondents incur an average burden of 100 hours annually to comply with the rule.

Rule 15g–6 requires brokers and dealers that sell penny stocks to their customers to provide monthly account statements containing information with regard to the penny stocks held in customer accounts. It is estimated that approximately 270 respondents incur an average burden of 90 hours annually to comply with the rule.

Proposed rule 15g–7(a) would require brokers and dealers that effect transactions in penny stocks and are the only market makers with respect to such securities to disclose this fact in connection with such transactions. It is estimated that approximately 270 respondents would incur an average burden of 50 hours annually to comply with the rule.

Rule 45 sets forth the requirements for loans and capital contributions to associate companies in a registered holding company system, including reporting requirements to enable the Commission to monitor intrasystem loans. It is estimated that approximately 14 respondents incur an average burden of 45.5 hours annually to comply with the rule.

Form N–SAR is used by registered investment companies for annual or semi-annual reports required to be filed with the Commission. Approximately 4,400 registered investment companies each spend from 6 to 31.5 hours annually complying with the requirements of the form.

Rule 17Ac2–1(c) and Form TA–1 is used by transfer agents to register with the Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation, and to amend their registration. Approximately 350 respondents incur an estimated average burden of one and one-half hours annually to comply with the rule, for a total annual burden of 525 hours.

Rule 17Ac2–2 and Form TA–2 requires registered transfer agents to file an annual report of their business activities. Approximately 1,000 respondents that are exempt from providing certain information contained in the form incur an estimated average burden of one hour annually to comply with the rule. An additional 400 respondents incur an estimated average burden of five hours annually to comply with the rule.

Rule 17a–8 clarifies the authority of self-regulatory organizations to assure compliance by brokers and dealers with the requirements of the Currency and Foreign Transactions Reporting Act of 1970 (31 U.S.C. 1051–1143) ("Currency Act"). It is anticipated that approximately 8,600 broker-dealers are subject to the rule, which does not impose any burden in addition to that imposed under the Currency Act. See OMB file number 1505–0063.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, (Paperwork Reduction Act Nos. 3235–0058, 3235–0400, 3235–0401, 3235–0402, 3235–0392, 3235–0393, 3235–0394, 3235–0395, 3235–0396, 3235–0154, 3235–0330, 3235–0084, 3235–0337, 3235–0092), Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 31, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–8403 Filed 4–7–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Boston Stock Exchange, Incorporated

April 4, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Emerging Markets Income Fund II, Inc.
Common Stock, $.001 Par Value (File No. 7–12188)

Eott Energy Partners L.P.
Units of LP Interest, No Par Value (File No. 7–12189)

Latin American Discovery Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–12190)

Storage USA, Inc.
Common Stock, $.01 Par Value (File No. 7–12191)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 25, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–8439 Filed 4–7–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Chicago Stock Exchange, Incorporated

April 4, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Cold Metal Products, Inc.
Common Stock, $.01 Par Value (File No. 7–12192)

Frontier Adjusters of America, Inc.
Common Stock, $.01 Par Value (File No. 7–12193)

Highlander Income Fund, Inc.
Common Stock, No Par Value (File No. 7–12194)

Hi Shear Technology Corporation

Common Stock, $.001 Par Value (File No. 7–12195)
Rhodes Incorporated
Common Stock, $.01 Par Value (File No. 7–12196)
Titan Holding, Inc.
Common Stock, $.01 Par Value (File No. 7–12197)
Executive Risk, Inc.
Common Stock, $.01 Par Value (File No. 7–12198)
Emerging Markets Floating Rate Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–12199)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 25, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–8440 Filed 4–7–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33853; File No. SR–CBOE–93–19, Amendment No. 1]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 1 to Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to a Proposal To Extend Market Maker Margin and Capital Treatment to Certain Market Maker Orders Entered Off the Trading Floor

April 1, 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 March 16, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") Amendment No. 1 to 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

On April 20, 1993, the CBOE submitted to the Commission a proposal to extend market maker capital and margin treatment to orders entered by CBOE market makers from off the Exchange floor, provided that at least 75% of their total transactions on the Exchange are executed in person and not through the use of orders.[1] In Amendment No. 1 the CBOE proposes to modify its proposal to require that 80%, rather than 75%, of a market maker's total transactions on the Exchange be executed in person on the CBOE's floor. In addition, Amendment No. 1 states that the off-floor orders for which a market maker receives market maker treatment shall be subject to the obligations of CBOE 8.7(a), "Obligations of Market Makers," and in general shall be effected for the purpose of hedging, reducing the risk of, rebalancing or liquidating open positions of the market maker.

The text of the proposal is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, under CBOE Rule 8.1, "Market Maker Defined," only transactions initiated on the floor of the CBOE count as market maker transactions. Thus, only market maker transactions initiated on the CBOE's floor qualify for favorable capital treatment and for favorable margin treatment under CBOE Rule 12.3(b)(2), even if such orders are entered to adjust or hedge the risk of positions of the market maker that result from his on-floor market making activity.[2]

The CBOE states that the purpose of its proposal is to accommodate the need of CBOE market makers occasionally to adjust or hedge options positions in their market maker accounts at times when they are not physically present on the trading floor, without diluting the requirement that the trading activity of market makers must fulfill their market making obligations and must contribute to the maintenance of a fair and orderly market on the Exchange. Under current CBOE Rule 8.7, "Obligations of Market Makers," and Interpretations adopted thereunder, all CBOE market makers are obligated to effect no less than 75% of their total contract volume in their appointed classes of options, and to effect not less than 25% of their total transactions in person on the trading floor and not by entry of orders.

The Exchange believes that limiting market maker treatment to on-floor orders is contrary to the practical reality that market makers cannot reasonably be expected to be physically present on the trading floor every minute of every day that the market is open. Yet, as a practical matter, that is essentially what the current rules require. Since a market maker cannot effectively adjust his positions or engage in hedging or other risk limiting opening transactions from off the Exchange floor without incurring a significant economic penalty, CBOE market makers must either be physically present on the Exchange floor at all times while the market is open, or face significant risks of adverse market movements during those times when they must necessarily be absent from the trading floor.

Further, CBOE Rule 8.1 currently disallows market maker treatment for all off-floor orders without regard to the individual market maker's overall level of commitment toward meeting his market making responsibilities, as evidenced by his record of engaging in in-person transactions. Thus CBOE Rule 8.1 not only disallows market maker treatment in circumstances where the market maker is more than adequately meeting his obligations, but by imposing costs on certain hedging or risk-adjusting transactions of market makers, the rule may actually prevent CBOE market makers from effectively

[1] See Securities Exchange Act Release No. 32500 (June 23, 1993), 58 FR 35060.

[2] Questions of margin and capital treatment do not arise in connection with closing transactions initiated from off the floor, since they only reduce or eliminate existing positions.

discharging their market making obligations and may expose them to unacceptable levels of risk.

The proposed rule change would remedy this situation by imposing a more stringent in-person requirement on those market makers who choose to receive market maker treatment for transactions executed as a result of off-floor orders. In place of the existing 25% in-person requirement of Exchange Rule 8.7, Interpretation .03, the amended proposal would require market makers who choose to receive market maker treatment for off-floor orders to satisfy the more stringent requirement that 80% of their total transactions must be executed in person and not through the use of orders. In addition, the market makers would be required to satisfy all of the other existing obligations imposed on market makers, including the requirement that 75% of their total contract volume in each calendar quarter be in appointed classes. Amendment No. 1 also clarifies that the off-floor transactions of a market maker should constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market and that no market maker should enter into off-floor transactions or enter off-floor orders that are inconsistent with such a course of dealings as prescribed in CBOE Rule 8.7(a) for all market maker transactions.[3] Further, Amendment No. 1 states that such off-floor market maker transactions in general should be effected for the purpose of hedging, reducing the risk of, rebalancing or liquidating open market maker positions.

The CBOE believes that the amended proposal represents a more appropriate and realistic treatment of market maker transactions initiated from off the trading floor than what is provided for under existing Exchange Rule 8.1. The CBOE believes that extending favorable margin and capital treatment for off-floor transactions only to those market makers who submit to an 80% in-person requirement should have the effect of increasing the extent to which market maker transactions contribute to liquidity and to the maintenance of fair and orderly markets on the CBOE by providing for a greater degree of in-person trading by market makers and by enabling market makers to better manage the risk of their market making activities. Thus, the CBOE believes that the proposed amendment is consistent with and in furtherance of the objectives of section 6(b)(5) and section 11(a) of the Act in that it will promote the maintenance of fair and orderly markets on the CBOE and will contribute to the protection of investors and the public interest.

[3] CBOE Rule 8.7(a) states that the transactions of a market maker should constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and no market maker should enter into transactions or make bids or offers that are inconsistent with such a course of dealings.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days after the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 29, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-8442 Filed 4-7-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-33849; File No. SR-CSE-94-01]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Cincinnati Stock Exchange, Inc. Relating to the Exchange's Policy Governing Quality of Markets

April 1, 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 February 25, 1994, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE hereby proposes to amend the policy of the Exchange governing the quality of its markets.

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.

[4] 17 CFR 200.30-3(a)(12) (1993).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CSE has grown as a direct result of the mandate in section 11A of the Act, 15 U.S.C. 78k–1, to modernize this country's securities market. The CSE states that, through its automated trading system, the National Securities Trading System ("NSTS"), the CSE has eliminated the need for a physical, centralized trading floor, replacing it, and all its attendant overhead, with an efficient, computerized auction market which provides market information and trading interaction equivalent to that provided on the traditional floors of the other exchanges. The CSE also has replaced the specialist system with a competing specialist/open book system. Finally, the CSE states that it is the only exchange that provides automatic executions to other stock exchanges in the Intermarket Trading System ("ITS"). According to the CSE, this makes the CSE's quotes the firmest quotes in the national market system.

The CSE is no longer the smallest regional stock exchange, having recently passed both of its two closest regional rivals in trade and share volume. Drawing upon the value of the CSE's preferencing initiative and the strength of the Exchange's affiliation with the Chicago Board Options Exchange, which manages the CSE's computer facility, Cincinnati has experienced a fourfold growth in trade volume and a threefold growth in share volume during the past two years. The CSE currently receives seven to nine times as many ITS commitments to trade from the primary market as it generates to the primary market, a standard unmatched by any other regional exchange.

In order to continue this trend of increasing participation as a competitive alternative marketplace in the national market system, the CSE proposes to make two major changes to its quality of markets policy. First, the Exchange proposes to eliminate the use of autoquoting. The CSE will define autoquoting as the computerized tracking of either the primary market quote or the national best bid or offer. Elimination of autoquoting, in combination with the new spread parameter policy described below, will encourage all CSE market makers to make deeper, more competitive markets.

Consistent with its character as an electronic marketplace, the CSE will permit its specialists to generate their quotes with computers as long as they do not autoquote and as long as their quotes are accessible. Accessibility will be defined by quantifiable standards involving ITS inbound activity, price improvement, and the number of quotes generated. In addition, all CSE market makers, whether they generate their quotes automatically or manually, will be limited to a specific number of quotes depending on the number of issues they trade and the number of trades they produce.

The second change to the Exchange's quality of markets policy is a proposal to narrow the maximum allowable quotation spread that may be entered by a CSE specialist in a particular security to 125% of the average of the three narrowest quotation spreads for that security then being disseminated by the CSE and all the other ITS participant market centers.[1] The proposal also reaffirms the CSE's commitment to minimum size quotations of 500 shares for "active" stocks (*ie.*, stocks with greater than five million shares of consolidated monthly volume) and 200 shares for "inactive" stocks. The CSE believes that its proposal will make the CSE the most stringent of any regional exchange with respect to its spread and size parameters.

In combination, the elimination of autoquoting and the narrowing of allowable quotation spread parameters represent a serious commitment by the CSE to improve the quality and credibility of its marketplace. These changes will add liquidity to the national market system, provide a better opportunity for order interaction, and improve the CSE's ability to compete.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is intended to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

[1] The Commission has requested data from the Exchange showing that the rule change will result in narrower maximum allowable quotations spreads.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR–CSE–94—01 and should be submitted by April 29, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–8402 Filed 4–7–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Incorporated

April 4, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Almi Residential Properties Trust
Shares of Beneficial Interest, $.01 Par Value (File No. 7–12215)
Bowater, Inc.
Depositary Shares (rep. ⅓ sh. PRIDES Ser. B Cv. Pfd., $1.00 Par Value) (File No. 7–12216)
Bowater, Inc.
Depository Shares (rep. ¼ sh. 8.40% Ser. C Cm. Pfd., $1.00 Par Value) (File No. 7–12217)
Capital RE LLC
7.65% Mon. Inc. Pfd. Shs. (MIPS) (File No. 7–12218)
Cristalerias de Chili S.S.
American Depositary Shares (rep. 3 shs. Com. Without Par Value) (File No. 7–12219)
Empresas La Moderna, S.A. de C.V.
American Depositary Shares (rep. Ord. Partic. Certificates) (File No. 7–12220)
Glimcher Realty Trust
Common Shares of Beneficial Interest (File No. 7–12221)
Instituto Mobiliare Italiano, SPA
American Depositary Shares (rep. 3 sh. Com., LIT 5,000) (File No. 7–12222)
Kaiser Aluminum Corp.
8.255% PRIDES, Cv. Pfd., $.05 Par Value (File No. 7–12223)
Mid-America Apartment Communities, Inc.
Common Stock, $.01 Par Value (File No. 7–12224)
Morgan Stanley Africa Investment Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–12225)
Morgan Stanley Finance, PLC
7.80% Cap. Units (File No. 7–12226)
National Health Investors, Inc.
8.5% Cm. Cv. Pfd., $.01 Par Value (File No. 7–12227)
O'Sullivan Industries Holdings, Inc.
Common Stock, $1.00 Par Value (File No. 7–12228)
Occidental Petroleum Corp.
$3.00 Cm. EXY-Indefed Cv. Pfd. Stock, $1.00 Par Value (File No. 7–12229)
Pacific Gulf Properties, Inc.
Common Stock, $.01 Par Value (File No. 7–12230)
Playtex Products, Inc.
Common Stock, $.01 Par Value (File No. 7–12231)
Public Service Electric & Gas Co.
6.75% Cm. Pfd. $25.00 Par Value (File No. 7–12232)
Security Connecticut Corp.
Common Stock, $.01 Par Value (File No. 7–12233)
Walden Residential Properties, Inc.
Common Stock, $.01 Par Value (File No. 7–12234)
Great Western Financial
8.75% Cm. Cv. Dep. Pfd., $1.00 Par Value (File No. 7–12235)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 25, 1994, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–8444 Filed 4–7–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33851; File No. SR–MCC–94–01]

Self-Regulatory Organizations; Midwest Clearing Corporation; Order Approving a Proposed Rule Change Relating to the Processing of Basket Trades

April 1, 1994.

On January 7, 1994, the Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–MCC–94–01) under Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] to amend its rules relating to the processing of basket trades. Notice of the proposal was published in the **Federal Register** on February 15, 1994.[2] No comment letters were received. This order approves the proposal.

I. Description

The proposal amends MCC's rules relating to the processing of trades in the Chicago Basket ("CXM") product which is traded on the Chicago Stock Exchange ("CHX").[3] The CXM is a basket of stocks that is comprised of twenty-five shares of each of the stocks included in the Chicago Mercantile Exchange's MMI stock index futures contract.[4]

Basket trades are defined by MCC as trades in a group of securities that an exchange or market place self-regulatory organization ("SRO") has designated as eligible for execution in a single trade. MCC's current rules relating to basket trades permit MCC to accept from an exchange or marketplace SRO locked-in basked trade data. On T+1, MCC reports the locked-in basket trades to participants on a basket purchase and sales report. For each participant, MCC aggregates the trade data to arrive at an aggregate basket purchase figure and an aggregate basket sale figure. Aggregate buy side and aggregate sell side basket transactions are then "burst" into their component securities, which are eligible for MCC's continuous net settlement ("CNS") system, for clearance and settlement. The CNS system nets all component securities of the burst basket with each participant's other transactions in the component securities. This results in an individual participant being either a net buyer or a net seller in each of a basket's component securities. These positions are reflected on the appropriate CNS purchase and sales report.

The proposed rule provides an alternative clearing process for trades in the CXM. The alternative must be elected on an account-by-account basis (as opposed to a trade-by-trade basis). Under this alternative, rather than aggregating all buy transactions and all sell transactions in one account prior to the separation of the CXM into its component stocks, MCC will separate each basket transaction into its component securities without the aggregation process. MCC will report this information to the electing participant instead of the participant's aggregate net buy and aggregate net sell basket information. According to MCC, the proposed alternative will make it easier for participants to allocate the correct number of shares with the proper execution prices to customers and will make it easier for participants

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[1] 15 U.S.C. 78(b)(1) (1988).

[2] Securities Exchange Act Release No. 33595 (February 8, 1994), 59 FR 7274.

[3] For a detailed description of the CXM product, refer to Securities Exchange Act Release No. 33053 (October 15, 1993), 58 FR 4610 [File No. SR–CHX–93–18] (order approving proposed rule change).

[4] The Chicago Mercantile Exchange's MMI is a stock index futures contract which is based on the American Stock Exchange's Major Market Index. The Major Market Index is a broad-based, price-weighted index currently based on twenty stocks listed on the New York Stock Exchange.

to identify trades for cancellation and correction.

II. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[5] The Commission believes that the alternative settlement process is consistent with MCC's obligations under this section because the alternative settlement process will make it easier for participants to allocate the correct number of shares with the proper execution prices to customers and will make it easier for participants to identify trades for cancellation or correction.

In addition, the Commission believes that the alternative settlement process is consistent with MCC's other obligation under section 17A(b)(3)(F) to assure the safeguarding of securities and funds that are in its custody or control or for which it is responsible.[6] MCC participants who trade or have customers who trade baskets and choose the alternative settlement process will be subject to the same financial responsibility and reporting requirements as other MCC participants. Furthermore, because the baskets will be burst into their component securities for processing and because MCC currently processes trades in the underlying component securities, MCC's existing risk management systems will apply to the alternative processing of basket trades.

III. Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–MCC–94–01) be, and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–8441 Filed 4–7–94; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] *Id.*

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[Release No. 34–33854; File No. SR–PSE–94–09]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange Relating to Extension of the Exchange's Lead Market Maker System Pilot Program

April 1, 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 March 31, 1994, the Pacific Stock Exchange Inc. ("PSE") or ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 PSE requests an extension to its Lead Market Maker System ("LMM") Pilot program until September 30, 1994. The text of the proposed rule change is available at the Office of the Secretary, PSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. 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

Introduction

On January 17, 1990, the Commission approved, on a pilot basis, a PSE proposal to establish a Lead Market Maker system in order to enhance the ability of the Exchange to compete in a multiple trading environment.

The Commission initially approved the LMM pilot program to continue for eighteen months to July 31, 1991.[1] The Commission has granted two extensions to the pilot program in order for both the Commission and PSE to more closely examine the functioning of the pilot program.[2] The PSE has submitted pilot program reports to the Commission on September 18, 1992 and July 26, 1993. On July 26, 1993, the Exchange requested permanent approval of the pilot program.[3] The PSE is requesting this time extension in order to provide additional time for evaluation of the program.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it will promote just and equitable principles of trade and will contribute to the protection of investors and the public interest.

(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 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

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PSE has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule change to extend the pilot program until September 30, 1994 is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 and the rules and requirements thereunder.[4] The Commission concludes, as it did when approving the commencement of the pilot program, that the PSE proposal may enhance the market-making mechanism on the PSE, thereby improving the markets for listed options

[1] See Securities Exchange Act Release No. 27631 (January 17, 1990), 55 FR 2462 (January 24, 1990) (approving SR–PSE–89–27 and Amendment No. 1 thereto) ("Pilot Approval Order").

[2] See Securities Exchange Act Release No. 31063 (August 21, 1992), 57 FR 39255 (August 28, 1992); and Securities Exchange Act Release No. 31635 (December 22, 1992), 57 FR 31635 (December 30, 1992).

[3] See File No. SR–PSE–93–16.

[4] 15 U.S.C. 78f(b) (1982).

on the Exchange. Specifically, the Commission believes the LMM pilot may improve the PSE's market making capabilities by creating long-term commitments to options classes. Moreover, the pilot program will continue with adequate due process safeguards in the LMM selection and termination procedures and retain procedures that prevent the misuse of material non-public LMM information by either an LMM or a broker-dealer affiliated with an LMM.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** because the PSE has not indicated that there have been any problems associated with the operation of the LMM system. In addition, because the Commission has not received any adverse comments concerning the Exchange's pilot program, the Commission believes good cause exists to approve the extension of the pilot program on an accelerated basis to allow it to continue uninterrupted.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and argument 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 Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–94–09 and should be submitted by April 29, 1994.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (File No. SR–PSE–94–09) is approved through September 30, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30–3(a)(12) (1993).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–8401 Filed 4–7–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33850; File No. SR–Phlx–93–53]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change To Adopt Rule 708, Acts Detrimental to the Interest or Welfare of the Exchange

April 1, 1994.

On November 4, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] a proposed rule change to adopt new Phlx Rule 708, Acts Detrimental to the Interest or Welfare of the Exchange.

The proposed rule change was published for comment in Securities Exchange Act Release No. 33302 (December 8, 1993), 58 FR 65610 (December 15, 1993). No comments were received on the proposal.

The Phlx proposes to adopt rule 708, Acts Detrimental to the Interest or Welfare of the Exchange.[3] The proposed rule concerns unethical behavior not necessarily related to trading principles or the handling of accounts covered by Phlx Rule 707, Just and Equitable Principles of Trade.[4] The Exchange states that the new rule will serve as a more appropriate jurisdictional basis for acts such as those listed in Commentary .01 to the rule. The following is the text of the rule:

Acts Detrimental to the Interest or Welfare of the Exchange

Rule 708. A member, member organization, or person associated with or employed by a member or member organization shall not engage in acts detrimental to the interest or welfare of the Exchange.

Commentary .01

Acts which could be deemed detrimental to the interest or welfare of the Exchange include, but are not limited to, the following:

(a) Conviction or guilty plea to any felony charge or any securities or fraud-related criminal misconduct;

(b) Use or attempted use of unauthorized assistance while taking any securities industry or Exchange-related qualification examination;

(c) Failure to make a good faith effort to pay any fees, dues, fines or other monies due and owing to the Exchange;

(d) Destruction or misappropriation of Exchange or member property;

(e) Misconduct on the trading floor, in violation of the Exchange's Order and Decorum Regulations, that is repetitive, egregious or of a publicly embarrassing nature to the Exchange.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b) (5) and (6) of the Act.[5] Section 6(b)(5) requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public. Section 6(b)(6) requires that the rules of an exchange provide that its members, and persons associated with its members, be appropriately disciplined for violation of the rules of the exchange.

The Commission believes that adoption of Phlx Rule 708, Acts Detrimental to the Interest or Welfare of the Exchange, should enable the Exchange to enforce its rules by providing a more direct jurisdictional basis upon which to initiate disciplinary action under Phlx Rule 960, which contains the Exchange's disciplinary process and procedures.[6] Specifically, Phlx Rule 708 will provide disciplinary jurisdiction for things such as failure to make a good faith effort to pay fees, dues, fines or other monies due to the Exchange, and unethical or inappropriate actions that do not readily fit under Phlx Rule 707.[7] The

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] Other national securities exchanges have similar rules prohibiting acts detrimental to the interest or welfare of the exchange. See New York Stock Exchange Rule 476(a)(7); American Stock Exchange Constitution, section 4(j).

[4] Phlx Rule 707 provides: "A member, member organization, or person associated with or employed by a member or member organization shall not engage in conduct inconsistent with just and equitable principles of trade."

[5] 15 U.S.C. 78f(b) (5) and (6) (1988).

[6] Under Phlx Rule 960 the Exchange prepares a statement of charges, the respondent is given 15 business days to file a written answer, and a hearing before a Hearing Panel is held upon the request of the respondent or upon a motion of the Business Conduct Committee. The Business Conduct Committee reviews the entire record of the disciplinary proceedings, and, by a majority of the members voting, makes a written decision whether the respondent has committed violations and the appropriate sanctions therefor. Sanctions may include expulsion, suspension, fines, censure, limitations or termination as to activities, functions, operations, or association with a member or member organization, or any other fitting sanction. The respondent has 15 business days to petition the Disciplinary Review Committee for review of the decision.

[7] The Commission notes that some of the enumerated actions (*e.g.*, conviction of a felony

Commission believes that allowing the Phlx to initiate disciplinary proceedings for failure to make a good faith effort to pay a fee, due, fine or other monies due to the Exchange, will aid in deterring behavior violative of the Phlx Rules.

In addition, new rule 708 will provide the Exchange with clear authority to bring actions against Exchange members according to the procedures contained in Phlx Rule 960 for repetitive or egregious violations of the Phlx Rule 60 Order and Decorum Regulations. Under Phlx Rule 60, a Floor Official or Exchange Official may impose on members and member organizations assessments not to exceed $1,000.00 per occurrence for breaches of regulations which relate to administration of, and order, decorum, health, safety and welfare, on, the exchange.[8] The Business Conduct Committee may then determine that there is probable cause to conclude that the actions violate new Rule 708 and recommend that disciplinary actions be taken by the Exchange under rule 960.[9]

Although the Commission believes the Phlx already has the ability to bring repetitive and egregious violations of any of its rules to the Business Conduct Committee for consideration for full disciplinary proceedings, and expects it to do so in appropriate situations, the Commission does not believe it is unreasonable to state this specifically in a separate rule to make it clear to members that egregious violations will be prosecuted appropriately.

The Commission believes that the new rule is consistent with section 6(b)(5) of the Act in that it will enable the Exchange to ensure proper conduct by its members, which leads to more efficient and reliable markets, and is consistent with section 6(b)(6) of the Act in that the rule provides that its members, and persons associated with its members, may be appropriately disciplined for violation of the rules of the Exchange.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Phlx–93–53) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–8404 Filed 4–7–94; 8:45 am]

BILLING CODE 8010–01–M

charge) subjects a person to a statutory disqualification, as defined in section 3(a)(39) of the Act, and emphasizes that the Exchange currently has other bases on which to discipline a member subject to a statutory disqualification.

[8] There currently are seven rule 60 Regulations which address smoking, food, liquids and beverages, identification badges/access cards, order, visitors and applicants, dress, and proper utilization of the security system. Each regulation contains its own schedule of fines per occurrence.

In addition, the Phlx currently has pending with the Commission a proposed rule change to add language to Regulation 4 (Order) under rule 60 which provides that in instances where an act violating the regulation is deemed particularly egregious, or when an individual has established a pattern of order violations, two Floor Officials may refer to the matter to the Business Conduct Committee. See Commission File No. SR–Phlx–94–14.

[9] Phlx Rule 960.2(e) states that whenever it appears to the Business Conduct Committee that there is probable cause for finding a violation within the disciplinary jurisdiction of the Exchange it shall direct the staff of the Exchange to prepare a statement of charges. The Rule also provides that whenever the Business Conduct Committee determines that violations have not occurred or that disciplinary action is not warranted, it shall so instruct the Exchange's staff.

[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30–3(a)(12) (1993).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

April 4, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Cold Metal Products, Inc.
Common Stock, $.01 Par Value (File No. 7–12200)
EMPHESYS Financial Group, Inc.
Common Stock, $.01 Par Value (File No. 7–12201)
Puget Sound Power & Light Company
Adj. Cum. Preferred Stock Series B 5½ Conv. (File No. 7–12203)
Titan Holding, Inc.
Common Stock, $.01 Par Value (File No. 7–12204)
International Colin Energy Corporation
Common Stock, No Par Value (File No. 7–12205)
Frontier Adjusters of America, Inc.
Common Stock, $.01 Par Value (File No. 7–122006)
Rhodes, Inc.
Common Stock, No Par Value (File No. 7–12207)
Executive Risk, Inc.
Common Stock, $.01 Par Value (File No. 7–12208)
Bankers Trust New York Corporation
Depositary Shares, Preferred Stock (File No. 7–12209)
Storage USA, Inc.
Common Stock, $.01 Par Value (File No. 7–12210)
Ralcorp Holdings, Inc.
When Issued Common Stock, $.01 Par Value (File No. 7–12211)
Digital Equipment Corporation
Dep. Shares 8⅞ Pc Cum. Preferred Stock, $1.99 Par Value (File No. 7–12212)
Ameriquest Technologies, Inc.
Common Stock, $.01 Par Value (File No. 7–12213)
Exploration Company of Louisiana, Inc.
Common Stock, $.01 Par Value (File No. 7–12214)

These securities are listed and registered on one or more other national securities exchanges and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 25, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–8443 Filed 04–07–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20185; 811–3628]

Home Investors Government Guaranteed Income Fund, Inc.; Notice of Application for Deregistration

April 1, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Home Investors Government Guaranteed Income Fund, Inc. (doing business as SunAmerica Federal Securities Fund).

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on March 16, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing.

Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 26, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 733 Third Avenue, 3rd Floor, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272–2511, or C. David Messman, Branch Chief, (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management investment company organized as a Maryland corporation. On December 23, 1982, applicant registered under section 8(a) of the Act and filed a registration statement pursuant to section 8(b) of the Act and the Securities Act of 1933. The registration statement was declared effective on April 8, 1983, and applicant commenced its initial public offering on that date.

2. On March 31, 1993, applicant's Board of Directors approved a plan of reorganization whereby applicant agreed to transfer substantially all of its assets and liabilities to the SunAmerica Federal Securities Fund (the "Acquiring Fund"), a newly created series of SunAmerica Income Portfolios (renamed SunAmerica Income Funds) in exchange for shares of the Acquiring Fund. In accordance with rule 17a–8 of the Act, applicant's directors determined that the sale of applicant's assets to the Acquiring Fund was in the best interest of applicant's shareholders, and that the interests of the existing shareholders would not be diluted as a result.[1]

3. The directors of applicant concluded that the reorganization would benefit applicant's shareholders by resulting in economies of scale from combining a separate investment company into one series of a series investment company.

4. Preliminary proxy materials soliciting shareholder approval of the reorganization were filed with the SEC on June 17, 1993. Definitive proxy materials were filed with the SEC on July 30, 1993. On or about July 30, 1993, proxy materials were distributed to applicant's shareholders. At a special meeting held on September 23, 1993, holders of a majority of the outstanding voting shares of applicant approved the reorganization.

5. Immediately prior to the reorganization, applicant had 9,874,500 shares of common stock outstanding, having an aggregate net asset value of $104,472,219 and a net asset value per share of $10.58. On October 1, 1993, applicant transferred substantially all of its assets and liabilities to the Acquiring Fund in exchange for shares of the Acquiring Fund. The number of shares of the Acquiring Fund issued to applicant was determined by dividing the value of applicant's assets by the net asset value of an Acquiring Fund share immediately prior to the reorganization. The shares received in exchange for applicant's assets were distributed to applicant's shareholders *pro rata* in complete liquidation of applicant.

6. The expenses in connection with the reorganization consisted of legal, accounting, printing, and proxy materials expenses. Such expenses, which are not expected to exceed $50,000, were borne by the applicant and SunAmerica Income Portfolios.

7. At the time of filing of the application, applicant had no shareholders, assets, or liabilities. All of applicant's liabilities and obligations not discharged by October 1, 1993 were assumed by the Acquiring Fund. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged in, and does not propose to engage in, any business activities other than those necessary for the winding up of its affairs.

8. On January 24, 1994, applicant filed Articles of Dissolution with the Department of Assessments and Taxation of the State of Maryland.

[1] Applicant and the Acquiring Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common directors, and/or common officers.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–8435 Filed 4–7–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20186; 812–8802]

The Laurel Funds, Inc. et al.; Notice of Application

April 1, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The Laurel Funds, Inc. ("Laurel Funds"), The Boston Company Investment Series ("TBC Investment Series"), The Boston Company Fund ("TBC Fund"), The Boston Company Tax-Free Municipal Funds ("TBC Tax-Free Municipal Funds"), Funds Distributor, Inc., Mellon Bank, N.A. ("Mellon"), and The Boston Company, Inc. ("TBC").

RELEVANT ACT SECTIONS: Order requested (a) under section 17(b) granting an exemption from section 17 (a) and (b) permitting certain joint transactions under section 17(d) and rule 17d–1.

SUMMARY OF APPLICATION: Applicants seek an order under section 17(b) for an exemption from section 17(a) and an order under section 17(d) and rule 17d–1 to permit certain series of Laurel Funds to acquire all or substantially all of the assets of corresponding series of TBC Investment Series, TBC Fund, and TBC Tax-Free Municipal Funds in exchange for shares of the series of Laurel Funds.

FILING DATE: The application was filed on January 31, 1994, and amended on March 21, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 26, 1994, and should be accompanied by proof of service on the applicants, in the form in an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants: Laurel Funds, 909 A Street, Tacoma, Washington 98402. TBC Investment Series, TBC Fund, and TBC Tax-Free Municipal Funds, One Exchange Place, Boston, Massachusetts 02109. Funds Distributor, Inc., Exchange Place, 10th Floor, Boston, Massachusetts, 02109. Mellon, One Mellon Bank Center, Pittsburgh, Pennsylvania, 15258. TBC, One Boston Place. Boston, Massachusetts, 02108.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Senior Attorney, at (202) 272–3922 or C. David Messman, Branch Chief, at (202) 272–3018 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Laurel Funds is an open-end management investment company organized as a Maryland corporation and registered under the Act. Laurel Short-Term Government Securities Fund ("Laurel Bond"), Laurel Prime Money Market I Fund ("Laurel Prime I"), Laurel U.S. Treasury Money Market I Fund ("Laurel Treasury I"), and Laurel Tax-Exempt Money Market Fund ("Laurel Tax-Exempt") (collectively, the "Acquiring Funds") are series of Laurel Funds. Mellon serves as investment adviser to each of the Acquiring Funds.

2. TBC Investment Series, TBC Fund, and TBC Tax-Free Municipal Funds are open-end management investment companies organized as Massachusetts business trusts and registered under the Act. Short-Term Bond Fund ("TBC Bond") is a series of TBC Investment Series. Cash Management Fund ("TBC Cash") and Government Money Fund ("TBC Government") are series of TBC Fund. Tax-Free Money Fund ("TBC Tax-Free") is a series of TBC Tax-Free Municipal Funds. TBC Bond, TBC Cash, TBC Government, and TBC Tax-Free collectively are referred to herein as the "Acquired Funds." Mellon currently serves as the investment adviser for each of the Acquired Funds. The Boston Company Advisors, Inc. ("Boston Advisors") formerly served as the investment adviser for each of the Acquired Funds.

3. Mellon is a wholly-owned subsidiary of Mellon Bank Corporation. Boston Advisors is a wholly-owned subsidiary of TBC, which is an indirect wholly owned subsidiary of Mellon Bank Corporation.

4. As of September 30, 1993, TBC owned more than 25% of the outstanding shares of TBC Bond. TBC subsequently transferred a number of these shares to Funds Distributor, Inc., and TBC currently owns 18.69% of the outstanding shares of TBC Bond. Funds Distributor, Inc. currently owns 5.62% of the outstanding shares of TBC Bond. Mellon currently holds with the power to vote 9% of the outstanding shares of Laurel Prime I. Mellon also currently holds with the power to vote 5% of the outstanding shares of Laurel Treasury I and Laurel Tax-Exempt. The initial offering of shares of Laurel Bond is expected to commence in April 1994, and initially Mellon may own more than 5% of Laurel Bond's outstanding shares.

5. Each Acquiring Fund proposes to acquire all or substantially all of the assets of its corresponding Acquired Fund in exchange for its shares: (a) Laurel Bond would acquire all or substantially all of the assets of TBC Bond in exchange for shares of Laurel Bond; (b) Laurel Prime I would acquire all or substantially all of the assets of TBC Cash in exchange for shares of Laurel Prime I; (c) Laurel Treasury I would acquire all or substantially all of the assets of TBC Government in exchange for shares of Laurel Treasury I; and (d) Laurel Tax-Exempt would acquire all or substantially all of the assets of TBC Tax-Free in exchange for shares of Laurel Tax-Exempt.

6. The Acquired Funds will endeavor to discharge all their known liabilities and obligations prior to the closing date. Each of the Acquiring Funds will assume all liabilities, expenses, costs, charges, and reserves or obligations of its corresponding Acquired Fund reflected on an unaudited statement of assets and liabilities of such Acquired Fund on the valuation date. The Acquiring Funds will not assume any other liabilities.[1]

7. In connection with the proposed reorganizations, Laurel Funds will enter into separate Agreements and Plans of Reorganization ("Plans") with each of TBC Investment Series, TBC Fund, and TBC Tax-Free Municipal Funds. Forms of the Plans, including the consideration to be paid or received by the funds involved, have been reviewed by the directors of Laurel Funds and the trustees of TBC Investment Series, TBC Fund, and TBC Tax-Free Municipal Funds, including the directors and trustees who are not "interested persons" of each company, and they have approved the reorganizations. Each board based its decision to approve the reorganizations on a number of factors, including: (a) The capabilities and resources of the Acquiring Funds' investment adviser; (b) expense ratios and published information regarding the fees and expenses of the funds; (c) the terms and conditions of the reorganizations, and whether the reorganizations would result in the dilution of shareholder interests; (d) the compatibility of the funds' investment objectives, policies, and restrictions. as well as service features available to shareholders; (e) the absence of any costs of the reorganizations to the funds; and (f) the favorable tax consequences of the reorganizations.

8. The proposed reorganizations will be submitted for approval by the shareholders of TBC Cash, TBC Government, and TBC Tax-Free at meetings tentatively scheduled to be held on May 20, 1994. The approval of shareholders of TBC Bond will be sought in the second half of 1994. Approval will be solicited pursuant to a prospectus/proxy statement comparing the Acquiring Funds and the Acquired Funds, and describing the proposed reorganizations and the reasons therefore. Assuming that the required shareholder votes are obtained at the shareholder meetings, the valuation date of the reorganizations involving TBC Cash, TBC Government, and TBC Tax-Free is expected to be May 20, 1994, and the closing date is expected to be May 23, 1994.

9. The number of shares of each Acquiring Fund to be issued to the corresponding Acquired Fund will be determined on the basis of relative net asset values on the valuation date, by dividing the net value of the assets of each Acquired Fund by the net asset value of a share of the corresponding Acquiring Fund.

As soon as practicable after the closing date, each of the Acquired Funds will liquidate and distribute *pro rata* to its shareholders of record the shares of the corresponding Acquiring Fund received by it pursuant to the reorganization. After such distribution and the winding up of its affairs, each of the Acquired Funds will be terminated.

10. The expenses of the reorganizations will be borne by Mellon.

[1] It is anticipated that the liabilities of each Acquired Fund to be reflected in the closing statement of assets and liabilities will consist of all the known, non-contingent liabilities of such Acquired Fund that are liquidated in amount. If on the valuation date there exists any known contingent liability or any known absolute but unquantified liability, the parties to the reorganization will agree to an appropriate procedure for the satisfaction of such liability, such as insurance, indemnity or establishment of reserve.

Applicants' Legal Analysis

1. Section 2(a)(3) of the Act provides, in pertinent part, that any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of any other person is an affiliated person of that person.

2. Section 17(a), in pertinent part, prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from selling to or purchasing from such registered company, or any company controlled by such registered company, any security or other property.

3. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

4. As noted above, the Acquiring Funds and the Acquired Funds have a common investment adviser. Thus, the proposed reorganizations would be exempt from the provisions of section 17(a) by virtue of rule 17a–8, but for the fact that the Acquiring Funds and the Acquired Funds may be affiliated for reasons other than those set forth in the rule. Because TBC, at the commencement of discussions regarding the reorganizations, owned more than 25% of TBC Bond's outstanding shares, TBC Bond and Laurel Bond may be deemed to be part of a common control group. Additionally, to the extent that Mellon holds more than 5% of the outstanding shares of each of Laurel Prime I, Laurel Treasury I, and Laurel Tax-Exempt, it may be deemed to be an affiliated person of each such fund. Also, because Funds Distributor, Inc. owns more than 5% of the outstanding shares of TBC Bond, it may be deemed to be an affiliated person of that fund. Although the nature of these affiliations precludes applicants from relying on rule 17a–8, applicants represent that the respective boards have made the findings required by rule 17a–8, and these findings and the bases therefore will be recorded fully in the minutes of the board of each company.

5. Section 17(b) provides that the Commission may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act.

6. Applicants assert that the term of the proposed reorganizations satisfy the standards of section 17(b). Applicants note that the board of directors or board of trustees of each company involved in the reorganizations, including the independent directors or trustees, has concluded that the reorganizations are in the best interests of the funds and that the interests of the existing shareholders of the funds would not be diluted as a result of the reorganizations. Applicants submit that the terms of the proposed reorganizations are consistent with the provisions, policies, and purposes of the Act in that they are reasonable and fair, do not involve overreaching, and are consistent with the investment policies of each of the Acquired Funds and Acquiring Funds.

7. Section 17(d) of the Act prohibits any affiliated person of, or principal underwriter for, a registered investment company, or any affiliated person of such a person, acting as principal from effecting any transaction in which such registered company is a joint, or joint and several, participant with such person in contravention of such rules and regulations as the Commission may prescribe for the purpose of limiting or preventing participation by such registered company on a basis different from, or less advantageous than, that of such other participant. Rule 17d–1 under the Act provides that no joint transaction covered by the rule may be consummated unless the Commission grants exemptive relief after considering whether the participation of the investment company is consistent with the provisions, policies and purposes of the Act and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

8. Because Mellon holds more than 5% of the outstanding shares of Laurel Prime I, Laurel Treasury I, and Laurel Tax-Exempt, and serves as the investment adviser for these funds, and Funds Distributor, Inc. owns more than 5% of the outstanding shares of TBC Bond, and serves as distributor for that Fund, the Acquired Funds and the Acquiring Funds may be considered affiliated persons or affiliated persons of affiliated persons of each other. In addition, the proposed sale of assets of each Acquired Fund to the corresponding Acquiring Fund and the related transactions involved in each reorganization might be deemed to be a joint enterprise or arrangement prohibited by section 17(d) and rule 17d–1.

9. Applicants assert that the participation in each reorganization by each fund is consistent with the provisions, policies, and purposes of the Act and is not on a basis different from or less advantageous than that of other participants.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–8437 Filed 4–7–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20187; 812–8806]

PFL Life Insurance Company, et al.

April 1, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: PFL Life Insurance Company ("PFL Life"), PFL Endeavor Variable Annuity Account ("Variable Account"), and AEGON USA Securities, Inc. ("AEGON Securities").

RELEVANT 1940 ACT SECTIONS: An Amended Order is requested under Section 6(c) of the 1940 Act for exemptions from Sections 26(a) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an amended order to permit the deduction from the assets of the Variable Account of a mortality and expense risk charge and a distribution charge under certain individual flexible premium variable annuity contracts (the "contracts"). The amended order would supersede a prior order that permitted the deduction of the mortality and expense risk charge by permitting the additional deduction for the distribution charge.

FILING DATE: The application was filed on January 31, 1994.

HEARING OR NOTIFICATION OF HEARING: An amended order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on April 26, 1994, and should be accompanied by proof of service on

Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o Craig D. Vermie, Esq., PFL Life Insurance Company, 4333 Edgewood Road NE., Cedar Rapids, Iowa 52499.

FOR FURTHER INFORMATION CONTACT: Wendy Finck Friedlander, Senior Attorney, or Wendell M. Faria, Deputy Chief, at (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations and Statements

1. Applicants filed an application on January 12, 1993 (the "Original Application"), for an order pursuant to section 6(c) of the 1940 Act to the extent necessary to permit the deduction of a mortality and expense risk charge under the Contracts. A notice was issued on February 22, 1993 (investment Company Act Release No. 19278). An order was issued on March 23, 1993 (Investment Company Act Release No. 19345) granting the requested exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act. This application for an amended order seeks relief to permit the deduction of a distribution financing charge as well as the mortality and expense risk charge.

2. PFL Life (formerly known as NN Investors Life Insurance Company) is a stock life insurance company incorporated under the laws of Iowa on April 19, 1961. PFL Life is an indirect wholly-owned subsidiary of AEGON USA, Inc. which, in turn, is indirectly owned by AEGON n.v.

3. The Variable Account is registered with the Commission under the 1940 Act as a unit investment trust. The Variable Account is divided into a number of subaccounts, each of which invests solely in a specific corresponding portfolio of the Endeavor Series Trust (the "Series Fund") or in the shares of the Janus Growth Portfolio of the WRL Series Fund, Inc. (the "Janus Growth Portfolio").

4. The Contracts may be purchased on a non-tax qualified basis or may be purchased and used in connection with retirement plans or individual retirement accounts that qualify for favorable federal income tax treatment. The Contracts may be purchased with an initial premium payment of at least $25,000. Contract owners may allocate premium payments to one or more subaccounts of the Variable Account, each of which will invest in a corresponding portfolio of the Series Fund or the Janus Growth Portfolio. The minimum amount allocable to any subaccount is $500.

5. AEGON Securities (formerly known as MidAmerica Management Corporation) will serve as the distributor and principal underwriter of the Contracts.

6. If an annuitant who is not the Contract owner dies before the annuity commencement date, then the owner will become the annuitant. In the event that the annuitant (who also is the Policy owner) dies before the annuity commencement date, a death benefit is payable to the beneficiary upon receipt of due proof of death, and will be the greater of (i) the Contract value on the date proof of death and election of the method of settlement are received, or (ii) the total premiums paid less any partial surrenders plus interest at an annual rate of 5 percent.

7. Prior to the annuity commencement date, a Contract owner may surrender all or a portion of the Contract value, or transfer Contract value between subaccounts of the Variable Account. The minimum amount that can be withdrawn from a subaccount is $500. The minimum amount that can be transferred from one subaccount to another is the lesser of $500 or the entire subaccount value. PFL Life currently imposes no charge for any transfers, but reserves the right to impose a $25 charger the thirteenth and each subsequent transfer request made by the Contract owner during a single Contract year.

8. PFL Life will deduct an annual contract maintenance charge of the lesser of 2% of Contract value or $35 per Contract year. This charge will be deducted pro rata from each subaccount in which the Contract owner is invested at the end of each Contract year prior to the annuity commencement date to compensate PFL Life for the administrative services provided to Contract owners. PFL Life also deducts a daily administrative expense charge from the assets of each subaccount of the Variable Account. This charge is equal to an effective annual rate of .15% of the net assets of the subaccount. PFL Life does not anticipate any profit from any of these administrative charges, and will monitor its administrative expenses and the proceeds of these charges on at least an annual basis, to ensure compliance with Rule 26a–1 under the 1940 Act.

9. PFL Life will deduct the aggregate premium taxes paid on behalf of a particular Contract from the Contract value on the annuity commencement date (or upon full surrender or payment of the death benefit). No charges currently are made for federal, state, or local taxes other than premium taxes. PFL Life reserves the right to deduct such taxes from the Variable Account in the future.

10. PFL Life will impose a daily charge to compensate it for bearing certain mortality and expense risks under the Contracts. The charge is equal to an effective annual rate of 1.25% of the value of the net assets in the Variable Account. Of that amount, approximately .45% is attributable to mortality risks, and approximately .80% is attributable to expense risks. The mortality risk borne by PFL Life arises from its obligation to make monthly annuity payments regardless of how long all annuitants or any individual annuitant may live. The expense risk borne by PFL Life is that the deductions for administrative costs under the Contracts may be insufficient to cover the actual costs incurred by PFL Life.

11. PFL also incurs a risk in connection with the death benefit guarantee. On the Contract owner's death, PFL will pay the greater of (a) the Contract value, or (b) premium payments (net of withdrawals) plus 5% annual interest.

12. PFL Life imposes a daily charge designed to compensate it for the cost of distributing the Contracts. [1] This charge is equal to an effective annual rate of 0.25% of the value of the net assets in the Variable Account. This charge will cease after the tenth contract anniversary or at such time as the cumulative amount of the charge equals 8.5% of the cumulative premium payments for a Contract, whichever occurs first. To the extent that this charge does not completely cover the cost of distributing the Contracts, the excess costs will be met from PFL Life's general account funds, which may include amounts derived from the charge for mortality and expense risks. No front-end load is deducted under the Contracts, and no deferred sales load is deducted from the proceeds of partial withdrawals or surrenders.

[1] Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.

13. PFL Life will bear all distribution and sales expenses of the Contracts, including the payment of sales commissions to registered broker-dealers. PFL Life will keep all revenues from the distribution financing charge to partially offset its distribution and sales expenses with respect to the Contracts. If the distribution financing charge is insufficient to cover the actual distribution expenses, then PFL Life will bear the loss. Conversely, if the charge proves more than sufficient, then the excess will be profit to PFL Life and will be available for any proper corporate purpose. The charge is not designed or expected to generate a profit.

14. PFL Life will monitor the Variable Account to ensure that aggregate deductions for the distribution financing charge do not exceed 8.5% of aggregate payments for any Contract owner.

Applicants' Legal Analysis and Conditions

1. Sections 26(a)(2) and 27(c)(2), as herein pertinent, prohibit a registered unit investment trust and any depositor thereof or underwriter therefore from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services. Applicants request exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act to the extent relief is necessary to permit the deduction from the Variable Account of the mortality and expense risk charges and distribution financing charge under the contracts.

2. Applicants submit that PFL Life is entitled to reasonable compensation for its assumption of mortality and expense risks and for bearing distribution costs, and that the charge of 1.25% for mortality and expense risks is consistent with the protection of investors because it is a reasonable and proper insurance charge. The Applicants also submit that the charge of 1.25% for mortality and expense risks is within the range of industry practice with respect to comparable annuity products. This representation is based upon PFL Life's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and benefits guaranteed by the Contracts. PFL Life will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

3. If the mortality and expense risk charge is insufficient to cover actual costs and assumed risks, the loss will fall on PFL Life. Conversely, if the charge is more than sufficient to cover costs, any excess will be profit to PFL Life. If a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed by the Commission as being offset by distribution expenses not reimbursed by a sales charge. PFL Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Variable Account and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by PFL Life at its administrative offices and will be available to the Commission.

4. PFL Life represents that the distribution financing charge of 0.25% is a reasonable and proper charge. No front-end or deferred sales charges are imposed under the Contracts.

Because PFL Life will ensure that the aggregate deductions for the distribution financing charge under any Contract will never exceed 8.5% of the aggregate payments under that Contract, the difference between the proposed distribution arrangement and an 8.5% front-end sales load is that the distribution financing charge deductions will either be smaller, later, or both smaller and later than such a front-end load. Accordingly, the proposed distribution financing charge would be more favorable to Contract owners than a front-end sales load of 8.5%. PFL Life has concluded that the proposed distribution financing arrangements will benefit the Variable Account and the Contract owners. The basis for such conclusion is set forth in a memorandum that will be maintained by PFL Life at its administrative offices and will be available to the Commission.

5. Applicants undertake to include, in the prospectus forming part of the registration statement for the Contracts under the Securities Act of 1933, as it may from time to time be amended, statements (a) describing the purpose of the distribution financing charge, and (b) stating that the staff of the Securities and Exchange Commission deems such charge to constitute a deferred sales charge.[2]

6. PFL Life also represents that the Variable Account will only invest in management investment companies which undertake, in the event such companies adopt plans under Rule 12b–1 to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of the company, formulate and approve any such plans under Rule 12b–1.

Conclusion

Applicants assert that, for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act to permit the deduction of the mortality and expense risk charges and the distribution financing charge under the Contracts meet the standards in section 6(c) of the 1940 Act. In this regard, the Applicants assert that the exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and purposes of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–8438 Filed 4–7–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26018]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

April 1, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 25, 1994, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or

[2] Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.

declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so request will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Central and South West Corporation (70–8339)

Central and South West Corporation ("CSW"), a registered holding company, has filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 13(f) of the Act and Rules 50 and 80–91 thereunder. CSW requests approval of its proposed acquisition ("Transaction") of El Paso Electric Company ("EPE" and after completion of its reorganization in bankruptcy, "REPE"), the issuance of securities in connection with the acquisition, the addition of EPE to the existing CSW system service agreement ("Service Agreement"), and certain related transactions, as described herein.

EPE is a Texas electric utility company and a debtor-in-possession in bankruptcy reorganization proceedings pending in the Bankruptcy Court for the Western District of Texas ("Bankruptcy Court"). EPE is engaged in the generation and distribution of electricity through an interconnected system to approximately 261,000 retail customers in El Paso, Texas and an area of the Rio Grande Valley in west Texas and southern New Mexico, and to wholesale customers located in southern California, Texas, New Mexico and Mexico. EPE has one subsidiary which it expects to dispose of in the first quarter of 1994. EPE's generating facilities have a net capacity of 1,497 megawatts ("MWs"), consisting of an entitlement of 600 MWs from Palo Verde Nuclear Generating Station Units 1, 2 and 3 and 104 MWs from the Four Corners Generating Project, and generating capacity of 246 MWs from the Rio Grande Power Station, 478 MWs from the Newman Power Station and 69 MWs from the Copper Station. EPE also owns various transmission lines and associated substations and other equipment.

CSW is a registered electric utility holding company.[1] The Operating Companies are public utility companies engaged in generating, purchasing, transmitting, distributing and selling electricity. They supply electric service to approximately 1.6 million retail customers. CP&L and West Texas operate in south and central west Texas, respectively; PSC–OK operates in eastern and southwestern Oklahoma; and SWEPCO operates in northeastern Texas, northwestern Louisiana and western Arkansas.

Summary of the Transaction

To effect the Transaction, EPE will merge with a shell subsidiary to be established by CSW ("CSW Sub"),[2] with EPE as the surviving corporation. As a result of the Transaction, EPE will become a wholly owned subsidiary of CSW. Simultaneously with the merger, EPE's plan of reorganization ("Plan") will become effective. As part of the reorganization and merger, in exchange for existing EPE securities and claims against EPE, EPE's current stockholders and creditors will receive shares of CSW common stock, $3.50 par value ("CSW Common Stock"), securities of REPE ("New EPE Securities") and/or cash. The total Transaction consideration will be approximately $2.1 billion, exclusive of cash retained by EPE and paid out to EPE creditors and preferred shareholders prior to the date on which the Plan becomes effective ("Effective Date") and exclusive of bonds to be issued in pledge as security for other obligations. Because the Plan and merger agreement allow CSW to substitute CSW Common Stock for certain of New EPE Securities and to substitute cash for CSW Common Stock, the exact amount and mixture of CSW Common Stock, New EPE Securities and cash has not yet been determined. In addition, because the amount of consideration to be paid to holders of EPE common stock is subject to certain contingencies, the total Transaction consideration may be somewhat higher than $2.1 billion. It is currently anticipated that the consideration will consist of approximately $773 million in CSW Common Stock, approximately $1.19 billion in New EPE Securities, and approximately $149 million in cash.

Under the Plan and merger agreement, CSW may issue a maximum of approximately $925 million in CSW Common Stock to EPE creditors and shareholders. In addition, certain options to purchase EPE common stock, if not exercised prior to the Effective Date, will be converted into options to purchase shares of CSW Common Stock.

Interconnection

CSW states that EPE is physically interconnected with the CSW electric utility system through the transmission system of Southwestern Public Service Company ("SPS").[3] SPS and EPE are interconnected at EPE's transmission substation near Artesia, New Mexico. SPS has three points of interconnection with the Operating Companies: A 115 KV interconnection with West Texas near its Shamrock substation; a 230 KV interconnection with PSC–OK at the Oklahoma-Texas state line by a transmission line, jointly owned by PSC–OK and SPS, connecting PSC–OK's Elk City substation and SPS's Harrington/Nichols substation; and a 345 KV interconnection with PSC–OK at its Oklaunion substation

In order to gain access to the SPS transmission system, EPE and CSW (through Services, as agent for the Operating Companies) filed an application with the Federal Energy Regulatory Commission ("FERC") on November 4, 1993 seeking an order pursuant to section 211 of the Federal Power Act ("FPA") to require SPS to provide firm and non-firm transmission services in connection with the transfer of power and energy between the EPE and CSW control areas at rates and on terms and conditions that the FERC determines to be just and reasonable. Through its section 211 application with the FERC, CSW intends to enter into an agreement with SPS giving EPE and PSC–OK the right to use the SPS

[1] CSW owns all of the outstanding shares of common stock of Central Power and Light Company ("CP&L"), Public Service Company of Oklahoma ("PCS–OK"), Southwestern Electric Power Company ("SWEPCO"), West Texas Utilities Company ("West Texas") (collectively, "Operating Companies"), Transok, Inc. ("Transok"), CSW Credit, Inc. ("Credit"), CSW Energy, Inc. ("Energy"), and Central and South West Services, Inc. ("Services"). CSW owns 80% of the outstanding shares of common stock of CSW Leasing, Inc. ("Leasing"). In addition, Energy holds interests in several power projects.

Transok is a natural gas gathering, transmission and processing company which transports for and sells natural gas to PSC–OK and for the other Operating Companies, as well as processes, transports and sells natural gas to and for non-affiliates. Services performs various accounting, engineering, tax, legal, financial, electronic data processing, centralized power dispatching and other services for the CSW system. Credit purchases accounts receivable of the Operating Companies, Transok, and unaffiliated electric and gas utilities. Energy pursues cogeneration projects and other energy ventures. Leasing invests in leveraged leases.

[2] CSW Sub will be formed solely for the purpose of effecting the Transaction, and all authorized shares of CSW Sub common stock of 1,000 shares, $0.01 par value per share, will be issued to CSW at the price of $1 per share and held by it until consummation of the Transaction, at which time such shares will be converted into shares of REPE common stock.

[3] It is noted here that SPS was also interested in acquiring EPE and held intensive negotiations with EPE. However, on September 17, 1993, the Bankruptcy Court entered an order denying SPS's motion for permission to file a competing plan of reorganization.

transmission system connecting the utility assets of EPE with those of PSC–OK. If wheeling through the SPS system cannot be obtained on a timely basis or ultimately is determined not to be available under the FPA, CSW states that it would implement an alternative plan of integration, including construction of transmission facilities by one or more of the Operating Companies.

EPE New Securities

Under the Plan, the New EPE Securities that will be issued are as follows: Reorganized EPE First Mortgage Bonds (Series A, B, C and X) ("FMBs"), Reorganized EPE Second Mortgage Bonds (Series A, B, X, Y, and Z) ("SMBs"), Reorganized EPE Secured Floating Rate Notes (Classes 3A, 5A and 6A) ("Secured Notes"), Reorganized FPE Senior Floating Rate Notes (Classes 11 and 13) ("Senior Floating Rate Notes") and Reorganized EPE Senior Fixed Rate Notes (Series A and Class 13) ("Senior Fixed Rate Notes") in the maximum aggregate principal amounts of $400 million, $500 million, $250 million, $125 million and $525 million, respectively, and Reorganized EPE Preferred Stock ("Preferred") with a maximum aggregate value (calculated as set forth in the Plan) of $68 million.[4] These maximum levels reflect the options of CSW and creditors for distributions of securities and bonds to be issued in pledge as security for other obligations, and therefore exceed the total amount of the New EPE Securities projected to be issued. In addition, holders of the Series A and Series B FMBs and Series A SMBs have the right (to be exercised not later than five days before the Effective Date) to have REPE, at its expense, cause to be underwritten and sold in a registered secondary offering such bonds within 60 days after the Effective Date.[5]

FMBs

The FMBs will consist of Series A, B, C and X and will be issued under an indenture, pursuant to which State Street Bank and Trust Company will act as trustee. The Series A and Series B FMBs will mature on the fifth and fifteenth anniversaries of the Effective Date, respectively; provided that, by timely notice to the recipients thereof, CSW may elect another maturity for such series of not less than five nor more than thirty years which will be in increments of five years if a maturity of greater than fifteen years is chosen. The Series C FMBs will mature on the eighth anniversary of the Effective Date or such shorter maturity as CSW may elect. The Series A, B and C FMBs will bear interest semi-annually in arrears at a per annum rate equal to a "Market Basket Rate" (as defined in the Plan) to be determined based on the actual maturity and rating of each series of such bonds.

Neither the Series A nor the Series B FMBs will be redeemable prior to the fifth anniversary of their issuance. On and after such date, the Series A and Series B FMBs will be redeemable at redemption prices calculated in accordance with the Plan. The Series C FMBs will be redeemable at any time in whole or in part at redemption prices calculated in accordance with the Plan.

The Series X FMBs will be issued to partially secure the payment of the principal and interest due on the Class 3A Secured Notes. The Series X FMBs will mature on the same dates and bear interest at the same rates as the Class 3A Secured Notes. The Series X FMBs will be redeemable only upon an acceleration of the maturity of the Class 3A Secured Notes.

Additional FMBs may be issued by REPE only upon the basis of: (i) 66⅔% of bondable property (including bondable property existing on the Effective Date less an amount that would be utilized if the 66⅔% test were applied to the issuance of the bonds on such date), (ii) retired bonds and (iii) the deposit of cash. A net earnings test of two times interest requirements may be applicable in certain situations.

SMBs

SMBs will consist of Series A, B, X, Y and Z, and under certain circumstances specified below, Series D, E and F, and will be issued under an indenture, pursuant to which IBJ Schroder Bank & Trust Company will act as trustee. The Series A SMBs will mature on the tenth anniversary of the Effective Date; provided that, by timely notice to the recipients thereof, CSW may elect another maturity for such series of not less than five nor more than thirty years which will be in increments of five years if a maturity of greater than fifteen years is chosen. The Series B SMBs will mature on the eighth anniversary of the Effective Date or such shorter maturity as CSW may elect. The Series A and B SMBs will bear interest semi-annually in arrears at a per annum rate equal to a "Market Basket Rate" to be determined based on the actual maturity and rating of each series of such bonds.

The Series A SMBs will not be redeemable prior to the fifth anniversary of their issuance. On and after such date, the Series A SMBs will be redeemable at redemption prices calculated in accordance with the Plan. The Series B SMBs will be redeemable at any time in whole or in part at redemption prices calculated in accordance with the Plan.

The Series X, Y (sub-series Y–1 through Y–8) and Z SMBs will be issued to secure the payment of the principal and interest due on certain secured notes or the payment of certain reimbursement and other obligations described in such bonds. These pledged SMBs will mature on the same dates and bear interest at the same rates as the obligations which such bonds secure. The pledged SMBs will be redeemable only upon an acceleration of the maturity of the obligations which such bonds secure.

In the event the Maricopa pollution control revenue bonds ("PCBs") are not refunded on the Effective Date as contemplated by the Plan, REPE will issue Series D, E or F pledged SMBs, as the case may be, to replace the existing EPE Series D, E or F Second Mortgage Bonds, as applicable, currently securing the Maricopa PCBs. Upon refunding, the Maricopa PCBs will no longer be secured.

Additional SMBs may be issued only upon the basis of: (i) 33⅓% of bondable property additions after the Effective Date, (ii) retired bonds and (iii) the deposit of cash. A net earnings test of two times interest requirements may be applicable in certain situations.

Secured Floating Rate Notes

The Secured Notes will consist of Class 3A, Class 5A and Class 6A. The Class 3A Secured Notes will be issued under a term loan agreement among REPE, the holders of such notes, and an agent acting for such holders. The Class 5A Secured Notes will be issued under four separate term loan agreements (each having substantially similar terms and conditions) between REPE and the holders of the Class 5(a), 5(b) and 5(c) claims. The Class 6A Secured Notes will be issued under a term loan agreement among REPE, the holders of such notes, and Canadian Imperial Bank of Commerce, as agent for such holders.

The Class 3A and Class 5A Secured Notes will mature on the earlier of December 31, 1997 and the last business day of the month in which the third

[4] CSW proposes to deviate from the Commission's Statement of Policy Regarding First Mortgage Bonds (HCAR No. 13105, Feb. 16, 1956, as modified by HCAR No. 16369, May 8, 1969) and the Commission's Statement of Policy Regarding Preferred Stock (HCAR No. 13106, Feb. 16, 1956, as modified by HCAR No. 16758, June 22, 1970) with respect to the issuance of the FMBs and SMBs and the Preferred.

[5] To the extent that such sales does not provide the holder with net proceeds equal to the principal amount of the bonds so sold, then REPE must pay such holder cash in an amount of such deficiency.

anniversary of the Effective Date occurs. The Class 6A Secured Notes will mature on the earlier of December 31, 1998 and the last business day of the month in which the fourth anniversary of the Effective Date occurs.

The Class 3A, Class 5A and Class 6A Secured Notes will each be payable in equal quarterly principal installments commencing on the earlier of December 31, 1994 and the last business day of the month in which the first anniversary of the Effective Date occurs (provided that, if the Effective Date occurs after December 31, 1994, any such installments that would otherwise have been payable prior to the Effective Date will be payable on the last business day of the month in which the Effective Date occurs).

The Class 3A and Class 6A Secured Notes will bear interest at a rate equal to the 3-month London interbank offered rate ("LIBOR") plus 150 basis points (or, at the option of REPE, at the respective agent's adjusted reference rate plus 50 basis points),[6] payable at the end of each interest period. The Class 5A Secured Notes will bear interest at a rate equal to the LIBOR (resetting, at the option of REPE, at 1, 3 or 6 months) plus 150 basis points (or, at the option of REPE, at the respective holder's adjusted reference rate plus 50 basis points), payable at the end of each interest period (but in any event not less often than quarterly).

The Second Notes will be prepayable by REPE at any time in whole or in part without premium, subject only to LIBOR breakage costs, if any. In addition, the Class 5A Secured Notes will provide that the net proceeds of any remarketing or refunding after the Effective Date of any Maricopa PCBs purchased prior to the Effective Date through draws on letters of credit ("LCs") issued by the holders of such notes will be applied to repay the principal of such notes. The Class 3A Secured Notes will be secured by bonds, one-third of which will be Series X FMBs and two-thirds of which will be Series X SMBs; the Class 5A Secured Notes will be secured by Series Y SMBs; and the Class 6A Secured Notes will be secured by Series Z SMBs. Such Series X FMBs and Series X, Series Y and Series Z SMBs will be issued and deposited as security for the payment of, and will have interest and payment terms identical to those in, the Class 3A, Class 5A and Class 6A Secured Notes, as the case may be. However, no principal or interest will be payable on such bonds except if, and to the extent that, the corresponding payment on the related Class 3A, Class 5A or Class 6A Secured Notes remains unpaid after the due date thereof.

[6] The term "adjusted reference rate" means, with respect to any bank, a rate determined with reference to such bank's "base" or "prime" rate, such determination to be made according to the formula customarily applied by such bank to its domestic loans priced with reference to such rate, which formula may require that such rate be the higher of such "base" or "prime" rate and the sum of a specified margin plus a rate determined with reference to certificates of deposit and/or federal funds.

Senior Fixed Rate Notes

The Senior Fixed Rate Notes will consist of Series A and Class 13 and will be issued under an indenture, pursuant to which United States Trust Company of New York will act as trustee. The Series A Senior Fixed Rate Notes will mature at the end of the quarter immediately following the tenth anniversary of the earlier of the Effective Date and December 31, 1994. The term of the Series A Senior Fixed Rate Notes may be adjusted at the election of CSW provided that such term may not exceed 10 years. The Class 13 Senior Fixed Rate Notes will mature on the ninth anniversary of the earlier of the Effective Date and December 31, 1994.

The Senior Fixed Rate Notes will bear interest semi-annually in arrears at a per annum rate equal to a "Market Basket Rate" to be determined pursuant to the Plan based on the actual maturity and rating of each series of such notes. The Senior Fixed Rate Notes will be redeemable at any time in whole or in part at redemption prices calculated in accordance with the Plan.

Senior Floating Rate Notes

The Senior Floating Rate Notes will consist of Class 11 and Class 13. The Senior Floating Rate Notes will be issued under separate term loan agreements among REPE, the holders of such notes, and an agent acting for such holders.

The Senior Floating Rate Notes will mature on the seventh anniversary of the earlier of the Effective Date and December 31, 1994, and will each be payable in equal quarterly principal installments commencing at the end of the quarter after the earlier of the fifth anniversary of the Effective Date and December 31, 1994 (provided, that the maturity and amortization schedule of such notes will be adjusted prior to the Effective Date, if necessary, such that the maturity thereof is not greater than the maturity of the Series A Senior Fixed Rate Notes, as selected by CSW).

The Senior Floating Rate Notes will bear interest at a rate equal to 3-month LIBOR plus 200 basis points (or, at the option of REPE, at the respective agent's adjusted reference rate plus 100 basis points), payable at the end of each interest period (but in any event not less often than quarterly). The Senior Floating Rate Notes will be prepayable by REPE at any time in whole or in part without premium, subject only to LIBOR breakage costs, if any. REPE will be required to redeem all of the outstanding Class 11 and Class 13 Senior Floating Rate Notes if at any time less than 33⅓% of the Series A Senior Fixed Rate Notes issued on the Effective Date remain outstanding. In addition, the Class 11 Senior Floating Rate Notes will include provisions for the mandatory prepayment thereof from the proceeds of any remarketing or refunding of the Farmington Series A 1983 PCBs paid for or purchased prior to the Effective Date with a draw on the Farmington PCB LC.

Letters of Credit Supporting Maricopa PCBs

The post-Effective Date obligations of REPE with respect to replacement LCs supporting the Maricopa PCBs will be governed by separate letter of credit and reimbursement agreements between REPE and the respective issuers of such replacement LCs. Such replacement LCs will be scheduled to expire (i) in the case of the replacement LC for the Maricopa Series A 1983 PCBs, on the earlier of December 31, 1997 and the third anniversary of the Effective Date, (ii) in the case of the replacement LC for the Maricopa Series E 1984 PCBs, on the last day of the fourth month following the earlier of December 31, 1998 and the fourth anniversary of the Effective Date, and (iii) in the case of the replacement LC for the Maricopa Series A 1985 PCBs, on the earlier of December 31, 1998 and the fourth anniversary of the Effective Date, in each case with a one-year extension at the option of REPE.

Drawings under the replacement LCs may be treated as loans by the respective issuer to REPE. Such loans would mature on the stated termination date of the relevant replacement LC, would be payable in equal quarterly installments (commencing on the last day of the calendar quarter in which the 90th day following the relevant drawing occurs), would bear interest at a rate equal to LIBOR (resetting, at the option of REPE, at 1, 3 or 6 months) plus 150 basis points (or, at the option of REPE, at the respective issuer's adjusted reference rate plus 50 basis points), and would be prepayable by REPE at any time in whole or in part without premium, subject only to LIBOR breakage costs, if any. Reimbursement obligations in respect of the replacement LCs (including those treated as loans,

together with interest thereon) will be secured by pledged Series Y SMBs.

LC commissions will be payable to the respective issuers of the replacement LCs at an initial rate per annum equal to 0.75% of the amount available to be drawn under such LC, such rate increasing by 0.125% per annum on each anniversary of the earlier of December 31, 1994 and the Effective Date.

Letter of Credit Supporting Farmington PCBs

The post-Effective Date obligations of REPE with respect to the replacement LC supporting the Farmington PCBs will be governed by a letter of credit and reimbursement agreement between REPE and the issuer of such replacement LC. Such replacement LC will be scheduled to expire on the last day of the sixth month after the scheduled final maturity date of the Class 13 Senior Floating Rate Notes.

Drawings under such replacement LC may be treated as loans by such issuer to REPE. Such loans would mature on the stated termination date of the replacement LC, would be payable in equal quarterly installments (commencing on the last day of the calendar quarter in which the 90th day following the relevant drawing occurs), would bear interest at a rate equal to LIBOR (resetting, at the option of REPE, at 1, 3 or 6 months) plus 150 basis points (or, at the option of REPE, at the issuer's adjusted reference rate plus 50 basis points), and would be prepayable by REPE at any time in whole or in part without premium, subject only to LIBOR breakage costs, if any. Reimbursement obligations in respect of the replacement LC (including those treated as loans, together with interest thereon) will be secured by pledged Series Y SMBs.

LC commissions will be payable to the issuer of such replacement LC at an initial rate equal to 0.625% per annum of the amount available to be drawn under such LC, such rate increasing on the first seven anniversaries of the earlier of December 31, 1994 and the Effective Date to 0.75% per annum, 0.875% per annum, 1% per annum, 1.125% per annum, 1.25% per annum, 1.625% per annum and 2% per annum, respectively.

Preferred Stock

The Preferred will provide for cumulative cash dividends payable quarterly at a rate equal to a "Market Basket Rate" to be determined based on the actual rating of such stock. The Preferred will be redeemable at any time in whole or in part at redemption prices calculated in accordance with the Plan plus accrued dividends. In addition, on each of the eleventh, twelfth, thirteenth and fourteenth anniversaries of the Effective Date, REPE is required to redeem one-twentieth of the originally issued Preferred, and on the fifteenth anniversary, it is required to redeem all outstanding Preferred, in each case at a redemption price equal to the liquidation value of such stock.

The Preferred will be entitled to vote only in the following limited circumstances: (i) Amendments to terms of the Preferred which are adverse to the holders thereof (including increases in authorized number of shares); (ii) creation of a class of stock having a preference superior to the Preferred or of a security convertible into any kind of stock; (iii) issuance of additional Preferred or parity stock (unless an earnings test is met); and (iv) merger or sale of all or substantially all of REPE's assets. In addition, if dividends are in default in an amount at least equal to four quarterly dividends, the Preferred, voting as a class, will be entitled to elect a majority of the REPE Board of Directors.

Rule 50

CSW requests an exemption from the competitive bidding requirements of Rule 50 pursuant to subsection (a)(5) thereunder for the issuance of CSW Common Stock and the New EPE Securities. In addition, CSW requests authorization to retain one or more experienced investment banking firms to assist in the determination of the "Market Basket Rate" for the New EPE Securities. It may do so.

Addition of EPE to the Service Agreement

CSW seeks authority to add EPE as a party to the Service Agreement effective immediately upon the consummation of the transaction. However, the full assimilation of EPE into the CSW system is expected to occur over a number of years. Under the proposed phase-in arrangements, EPE will bear one-third of its pro-rata allocation of Services' indirect charges during the first twelve months after the Effective Date, two-thirds during the second twelve months after the Effective Date, and the full allocation thereafter. EPE would bear its full share of direct charges by Services for functions such as information processing. This phase-in procedure for indirect charges will require an amendment to section 3 of the Service Agreement, which governs the allocation of costs among the parties for services performed by Services.

Reacquisition by EPE of Ownership of the Palo Verde Assets

On November 15, 1993, EPE entered into, and on December 8, the Bankruptcy Court approved, settlement agreements ("OP Settlements") with the beneficiaries of the trusts ("Palo Verde Owner Participants") holding title to certain interests in the Palo Verde Nuclear Generating Station. The Plan and the OP Settlements provide for EPE to reacquire ownership of the Palo Verde interests previously sold and leased back by EPE.

Under the Plan, holders of the Palo Verde bonds will be treated as creditors of the EPE estate and will receive consideration equal to 95.5% of their claims, to be allowed in the amount of $700 million, together with post-petition interest at LIBOR plus 200 basis points from July 29, 1993. Pursuant to the OP Settlements, the liens of the Palo Verde bondholders and the Palo Verde indenture trustees will be discharged, and the Palo Verde indenture trustees will transfer their rights with respect to the leased Palo Verde assets to REPE and exchange releases with the Palo Verde Owner Participants. Subject to the approval of the Nuclear Regulatory Commission, the Palo Verde Owner Participants will transfer their interests in the leased Palo Verde assets to REPE, release their claims for any additional damage amounts under the Palo Verde leases, retain $288.4 million previously drawn under related LCs, and be released from claims by EPE and other creditors. After the consummation of the Transaction and the OP Settlements, the Palo Verde assets will be used for the benefit of EPE's operations and customers.

There will be no change in the extent of EPE's utilization of the Palo Verde Nuclear Generating Station, the percentage of costs that EPE is to bear, or the percentage of capacity it is entitled to receive. As a consequence of the settlement, $956.9 million will have been paid on account of the Palo Verde claims, including the $288.4 million received by the Palo Verde Owner Participants as a result of their draws on the Palo Verde LCs, for the reacquisition of the leased Palo Verde assets and lease rejection damages. Of this amount, the Bankruptcy Court has determined that $605 million is reflective of the fair market value, based on the regulatory book value as of June 30, 1993, of the assets which are being reacquired, and $351.9 million is attributable to lease rejection damages.

Ocean State Power, et al. (70–8373)

Ocean State Power ("OSP") and Ocean State Power II ("OSP II") (collectively, "Applicants") both located at P.O. Box 561, Harrisville, Rhode Island 02830, each electric public-utility subsidiary companies of both Eastern Utilities Associates ("EUA") and New England Electric System ("NEES"), registered holding companies, have filed an application-declaration under sections 6(a), 7 and 12(c) of the Act and Rule 42 thereunder.

The Applicants, each Rhode Island general partnerships propose to enter into financing arrangements whereby they may borrow up to $25 million aggregate principal amount of secured revolving debt ("Revolver").[7] As evidence of the Revolver, Applicants propose to issue, through June 1, 1995, notes ("Notes") with maturities not in excess of ten years from the date of the initial borrowing under the Revolver ("Final Maturity").

The Notes will bear interest at a floating rate not to exceed the then current market rate for revolving debt of comparable issuers. The Notes may be prepaid in whole or in part by the Applicants at any time prior to the final maturity date without premium or penalty. The principal amount of optional prepayments may be reborrowed by the Applicants any time prior to the Final Maturity date. The Notes may be subject to mandatory prepayment, without penalty or premium, upon the occurrence of certain loss events., which prepayment obligation may be limited in certain situations. The Notes may be renewed, replaced or extended, for additional periods pursuant to the terms of the Revolver Loan Agreement, including any renewal, replacement or extension of the Revolver Loan Agreement.

The obligations of the Applicants under the Notes will be secured, jointly and severally, under a security agreement dated as of October 19, 1992, as amended, among the Applicants and State Street Bank and Trust Company, as collateral agent ("Guarantor Security Agreement"). All of the collateral subject to the Guarantor Security Agreement will be shared ratably and pari passu in right of security among one or more lending institutions (collectively, "Lender") and the holders of the notes issued in connection with the refinancing of the construction and term financing of the two units of a 500 MW combined cycle electric generating facility owned by the Applicants. In order to become entitled to the benefits of the Guarantor Security Agreement, the Lender will execute a supplement thereto. The Guarantor Security Agreement creates a first-priority security assignment of the Applicants' interests in their respective unit power agreements subject only to the exclusive security interest of Tennessee Gas Pipeline Company, in certain components of the revenues received under their respective unit power agreements.

The Applicants propose to use the proceeds from the Revolver to fund capital expenditures, to pay transaction costs and other costs in connection with the financing, and to provide liquidity in general.

The Applicants request that the Commission reserve jurisdiction, pending completion of the record, with respect to any renewal or extension of the Notes for additional periods in excess of ten years from the date of initial borrowing under the Revolver.

Consolidated Natural Gas Co., et al. (70–8387)

Consolidated Natural Gas Co. ("CNG"), CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222, a registered holding company, The East Ohio Gas Co. ("Ohio"), 1717 East 9th Street, Cleveland, Ohio 44114, a local distribution company ("LDC") and a subsidiary company of CNG, and The River Gas Company ("River"), 324 4th Street, Marietta, Ohio 45750, also an LDC and a subsidiary company of CNG, have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(c) of the Act and Rule 42 thereunder. The application-declaration proposes to merge Ohio and River.

CNG is a registered holding company with fifteen subsidiaries engaged in natural gas exploration, production, transmission, storage, distribution, and research and other activities related to the natural gas business. Ohio is the largest LDC in the CNG system, serves the northeastern region of Ohio, and has over 2,000 employees. River serves the Marietta area in southeastern Ohio and has 50 employees.

To effect the combination, Ohio and River propose to conclude an Agreement and Plan of Merger ("Agreement"), to which CNG will consent. The Agreement will provide for Ohio to survive the combination, upon which each share of River common stock, $100 par value,[8] will be cancelled, and each share of Ohio common stock, $50 par value, will continue to be one share of Ohio common stock, $50 par value.[9]

Upon the combination, Ohio shall acquire all rights, privileges, powers and franchises of both Ohio and River. It also shall acquire all restrictions, disabilities, liabilities and duties of both Ohio and River. All indebtedness of River shall become indebtedness of Ohio, and all capital and retained earnings of River shall become capital and retained earnings of Ohio. The River properties that Ohio will acquire will be recorded on its books on the basis of the value with which River recorded them on its books.

It is proposed that River will become a division of Ohio. It is stated that no changes in general functional activities are needed for River to make the transition from a stand-alone corporation to a division of Ohio and that no organizational changes are expected to Ohio. Finally, it states that for most Ohio employees the proposed combination will result in no change.

By order dated June 30, 1993 (HCAR No. 25841) ("Order"), CNG was authorized to finance its system from July 1, 1993 through June 30, 1994. The Order authorized Consolidated to provide up to $10 million to River through: (i) Open account advances, (ii) long-term loans, and (iii) the purchase of River common stock, $100 par value. Since July 1, 1993, CNG, under the Order, has refinanced long-term loans to River in the amount of $1.125 million. On December 31, 1993, there was, under the Order, $4.65 million in open account advances to River. The application-declaration requests Commission approval for Ohio to assume the amount of unused advances, loans, and stock purchases authorized under the Order.

Public Service Co. of Oklahoma (70–8389)

Public Service Company of Oklahoma ("PSCO"), P.O. Box 201, Tulsa, Oklahoma 74102, an electric utility subsidiary company of Central and South West Corporation, a registered holding company, has filed a declaration, pursuant to section 12(d) of the Act and Rule 44 promulgated thereunder, for the sale of certain electrical distribution facilities to St. Francis Hospital, Inc. ("St. Francis"), a

[7] The investors in both partnerships, and their respective ownership and voting interests, are identical. The partners in OSP and OSP II are JCM Ocean State Corporation, a subsidiary of J. Makowski Company, Inc., TCPL Power Ltd., a subsidiary of TransCanada PipeLines Limited, Narragansett Energy Resources Company, a subsidiary company of NEES, and EUA Ocean State Corporation, a subsidiary company of EUA.

[8] On December 31, 1993, River had authorized common stock of 70,000 shares, $100 par value, and outstanding common stock of 35,500 shares.

[9] On December 31, 1993, Ohio had authorized common stock of 4,500,000 shares, $50 par value, and outstanding common stock of 3,159,353 shares.

non-profit Oklahoma corporation and a commercial customer of PSCO.

PSCO owns and maintains, relative to its transmission and distribution system, certain electrical distribution facilities located on PSCO property and on the premises of St. Francis in Tulsa, Oklahoma. The distribution facilities consist of four 15KV 1200 amp vacuum circuit breakers, two 15KV vacuum tie breakers, four 15 KV aluminum conductor circuits, and associated equipment.

The declaration proposes that St. Francis purchase the distribution facilities for $166,871, which price was reached through arms-length negotiation and is based on the depreciated replacement value of the distribution facilities found in the Handy-Whitman Index. PSCO records reflect an original cost of $159,431 and a book value—net of depreciation—of $129,357 for the distribution facilities on December 31, 1993.

Since 1989, St. Francis has received electric service from the distribution facilities and is the sole customer provided electric service from such facilities. The distribution facilities are not adaptable for electric service for other customers. After the purchase, in accordance with standard PSCO electric service price schedules, St. Francis is expected to save about $150,000 annually. Oklahoma expects to use the proceeds of the proposed sale for its general operational funds.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–8434 Filed 4–7–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended April 1, 1994

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: 45599

Date filed: March 30, 1994

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 27, 1994

Description: Application of Corse-Air International, S.A. pursuant to section 402 of the Act and subpart Q of the Regulations, requests renewal of its foreign air carrier permit, authorizing it to engage in charter foreign air transportation, carrying persons, property and mail between a point or points in France (including French possessions) and any point or points in the United States.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–8420 Filed 4–7–94; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Noise Exposure Map Notice

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Fairbanks International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as "the Act") and 14 CFR part 150 by the State of Alaska. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for Fairbanks International Airport were in compliance with applicable requirements effective September 22, 1988. The proposed noise compatibility program will be approved or disapproved on or before September 21, 1994.

EFFECTIVE DATE: The effective date of the start of FAA's review of the noise compatibility program is March 25, 1994. The public comment period ends May 9, 1994.

FOR FURTHER INFORMATION CONTACT: Laurie Hyman, 907–271–5446; Federal Aviation Administration; Alaskan Region; Airports Division, AAL–612B; 222 West 7th Avenue, Box 14, Anchorage, Alaska, 99513. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for Fairbanks International Airport which will be approved or disapproved on or before September 21, 1994. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Fairbanks International Airport, effective on March 25, 1994. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before September 21, 1994.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate of foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, D.C. 20591,
Federal Aviation Administration, Alaskan Region; Airports Division, 222 West 7th Avenue, Box 14, Anchorage, Alaska 99513,
Mr. Doyle C. Ruff, Manager, Fairbanks International Airport, P.O. Box 60369, Fairbanks, Alaska 99706.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Anchorage, Alaska March 25, 1994.

Russel S. Hathaway,

Manager, Airports Division, Alaskan Region.

[FR Doc. 94–8485 Filed 4–7–94; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–94–14]

Petitions for Exemption, Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 28, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on April 4, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 27631.
Petitioner: LesAir, Inc.
Sections of the FAR Affected: 14 CFR 91.319(a)(1) and (2).
Description of Relief Sought/Disposition: To permit the petitioner to provide flight instruction in experimental gyroplanes for compensation or hire.

Dispositions of Petitions

Docket No.: 26056.
Petitioner: AVIA Training.
Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(c)(2) and (d)(2) and (3); 61.65(c), (e)(2), (e)(3) and (g); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); 61.191(c); and Appendix A of part 61.
Description of Relief Sought/Disposition: To permit Accelerated Ground Training, Inc. to use FAA-approved simulators to meet certain flight experience requirements.

Grant, March 28, 1994, Exemption No. 5169B

Docket No.: 26797.
Petitioner: Aviation Management Associates, Inc.
Sections of the FAR Affected: 14 CFR 93.123, 93.125 and 93.129.
Description of Relief Sought/Disposition: To continue to permit Trans World Express Inc. to conduct separate access landing system (SALS) commuter operations at John F. Kennedy International Airport using short takeoff and landing (STOL) aircraft and special procedures.

Grant, March 24, 1994, Exemption No. 5433A

Docket No.: 26898.
Petitioner: Viscount Air Service, Inc.
Sections of the FAR Affected: 14 CFR 121.343(c).
Description of Relief Sought: To allow Viscount Air Services to exercise the privileges of exemption No. 5593, as amended, which permits members of Air Transport Association of America to operate, after May 16, 1994, under a FAA-approved Airplane Retirement Schedule until December 31, 1998, certain airplanes that do not have one or more digital flight data recorders.

Grant, March 25, 1994, Exemption No. 5593G

Docket No.: 27460.
Petitioner: Gavin Flying Service, Inc.
Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(c)(2) and (d)(2) and (3); 61.65(c), (e)(2), (e)(3) and (g); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); 61.191(c); and Appendix A of part 61.
Description of Relief Sought: To allow the petitioner to use FAA-approved simulators to meet certain flight experience requirements.

Grant, March 28, 1993, Exemption No. 5861

Docket No.: 27522.
Petitioner: Northeast Air Group.
Sections of the FAR Affected: 14 CFR 135.153.
Description of Relief Sought/Disposition: To permit these carriers to continue to operate selected fleet aircraft after April 20, 1994, without an approved ground proximity warning system.

Denial, March 28, 1994, Exemption No. 5863

Docket No.: 27562.
Petitioner: Business Express, Inc.
Sections of the FAR Affected: 14 CFR 135.153.
Description of Relief Sought: To operate certain Beechcraft 1900C airliners without an approved ground proximity warning system installed for a period of 180 days beyond April 20, 1994.

Denial, March 28, 1994, Exemption No. 5862

Docket No.: 27630.
Petitioner: CirrusAir.
Sections of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought: To allow the petitioner to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135.

Grant, March 25, 1994, Exemption No. 5858

Docket No.: 27639.
Petitioner: Hickman-Wheeler Aero Club.
Sections of the FAR Affected: 14 CFR 141.27(c)(2).

Description of Relief Sought: To allow the petitioner to reapply for a provisional pilot school certificate less than 180 days after the date of the expiration of its previous certificate.

Grant, March 25, 1994, Exemption No. 5859

[FR Doc. 94–8484 Filed 4–7–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

National Motor Carrier Advisory Committee; Charter Renewal

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of charter renewal.

SUMMARY: The charter for the National Motor Carrier Advisory Committee (the Committee) has been renewed for a two-year period of time from 1994 through 1996, effective on January 29, 1994. The Committee acts in an advisory capacity to the Federal Highway Administrator. It makes recommendations intended to improve the safety and productivity of the motor carrier industry and the effectiveness of the FHWA's programs and policies. The Committee reviews research projects, regulations, and programs including those involving commercial motor vehicle licensing and taxation, uniformity, and safety. Meetings of the Committee are open to the public and must be announced in the **Federal Register**. Copies of the Committee's charter are available upon request.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas J. McKelvey, HIA–20, Room 3104, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–1861. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except for legal Federal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: April 1, 1994.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 94–8391 Filed 4–7–94; 8:45 am]

BILLING CODE 4910–22–P

Intent To Prepare an Environmental Impact Statement for the Relocation of a Portion of the Miller Highway Between West 59th Street and West 72nd Street in New York City

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA, as lead federal agency, in cooperation with the New York State Department of Transportation (NYSDOT) and the New York State Urban Development Corporation (UDC), as co-lead agencies, intends to prepare and circulate an Environmental Impact Statement (EIS) for a project that would provide for the relocation of a portion of the Miller Highway between West 59th Street and West 72nd Street on the west side of Manhattan, New York City. For preparation and development of the tasks associated with the environmental studies, the "Project Area," is defined as the sites and the immediate adjacent area where actual construction of the project components would occur. The "Study Area," including both a primary study area in which detailed investigations will be completed and a secondary study area in which more generalized assessments will be completed, encompasses the geographic area from the Hudson River on the west, to Central Park West on the east, and from West 42nd Street on the south to West 96th Street on the north.

The EIS scoping process will consist of a public scoping meeting to provide the general public an opportunity to comment and an interagency scoping meeting to obtain comments from federal, state, and local agencies. The public and interagency scoping meetings will be held in the vicinity of the project area at dates, times and places to be announced. In addition, involved and interested agencies and persons will be provided an opportunity to submit written comments representing concerns and issues they believe should be addressed in the EIS.

SUPPLEMENTARY INFORMATION: Information, data, opinions and comments obtained through the scoping process will be considered in preparing the EIS. The purpose of this Notice of Intent is to inform the public and local, state and federal government agencies that an EIS will be prepared and to provide those interested with the opportunity to present their opinions, comments, information or other relevant observations concerning the environmental impacts related to the implementation of this proposal.

A copy of a draft "EIS Scoping Document," describing the purpose and need for the proposed action, the alternatives under consideration, and the methods and criteria to be applied in completing the EIS will be made available prior to the public and interagency scoping meetings. This document will be finalized based on the information, opinions, comments and other data received during the scoping process, and will form the basis for further studies.

Goals for the Relocated Miller Highway Project were developed as part of a comprehensive planning study conducted by UDC, in consultation with, among others, NYSDOT, the New York Metropolitan Transportation Council, the New York City Department of Transportation, and New York City Department of City Planning. The goals of the projects identified in that study are to:

- Maintain and improve the park environment on the West Side of Manhattan;
- Maintain or enhance safe and efficient transportation along the West Side Highway corridor in the study area;
- Achieve physical compatibility between the highway and surrounding existing and proposed development;
- Minimize adverse social, economic and/or environmental consequences to the surrounding community.

The project is a transportation improvement project of substantial cost which will create significant urban design, recreational and economic development opportunities. However, it is not expected to have a substantial effect on capacity, traffic flow, level of service, or mode share at the corridor or subarea scale, since it will merely replace the existing section of the Miller Highway. It will include no additional capacity or new egress/access points to the arterial roadway system within Manhattan.

Major actions to be addressed in the EIS will include, but may not be limited to, a No Build alternative, two highway build alternatives with alignments parallel to the existing roadway, a transit alternative and a transportation systems management (TSM) alternative.

FOR FURTHER INFORMATION, QUESTIONS AND/OR COMMENTS CONTACT: Mr. Harold J. Brown, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, room 911, Clinton Avenue & North Pearl Street, Albany, New York 12207; Mr. Ben Zodikoff, New York State Urban Development Corporation, 1515 Broadway, New York, New York 10036; or Mr. Philip J. Clark, New York State Department of Transportation, State Campus Building 5–405, Albany, New York 12232.

Charles E. Bosner,

District Engineer, Federal Highway Administration, Albany, New York.

[FR Doc. 94–8330 Filed 4–7–94; 8:45 am]

BILLING CODE 4910–22–M

Innovative Financing; Test and Evaluation Project TE–045; Information

AGENCY: Federal Highway Administration (FHWA), (DOT).

ACTION: Notice.

SUMMARY: The purpose of this notice is to assure wide dissemination of information about the FHWA Innovative Financing-Test and Evaluation Project TE–045. The FHWA, which established this project by a March 14, 1994, memorandum to its regional and division offices, is publishing the memorandum. The FHWA's authority to advance this project is contained in 23 U.S.C. 307(a) and is part of the FHWA implementation of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, 105 Stat. 1914).

FOR FURTHER INFORMATION CONTACT: Specific questions on FHWA innovative financing; Test and Evaluation Project TE–045 should be directed to the contact persons named in the memorandum or to FHWA Regional Office or FHWA Division Office in your State.

Issued on: April 4, 1994.

Rodney E. Slater,

Federal Highway Administrator.

Memorandum

U.S. Department of Transportation, Federal Highway Administration, Date: March 14, 1994. Innovative Financing—Test and Evaluation Project, TE–045, From: Administrator.

Foreword

The President's vision for long-term prosperity for the Nation means investing in America. That investment includes transportation. Our network of highways sustains our economy and ties our country together by ensuring the safe and rapid transport of people and products. Executive Order 12893, "Principles for Federal Infrastructure Investments," signed by the President on January 26, 1994, signals the Administration's belief that investment in transportation will lay the foundation for economic growth in the next century.

The challenge is to encourage prudent investment, to tap into the potential of global competitiveness, and to boldly create a dynamic period of construction within the budgetary constraints facing all levels of government. Secretary Peña, responding to that challenge, has asked us to explore innovative ways to meet the transportation needs of the Nation. In support of the Secretary's initiative, FHWA has formed an Innovative Financing Task Force.

The Task Force recognizes that the Intermodal Surface Transportation Efficiency Act (ISTEA) provides the States with new flexibility for funding their surface transportation capital programs. While the States have been strong supporters of the flexibility provided by ISTEA and have demonstrated an increasing use of this flexibility, the complexity and newness of some financing issues have challenged their ability to use the innovative financing provisions. The goal for FHWA is to identify additional actions, including establishing incentives and the removal of existing barriers, to encourage States, private investors, and the financial community to increase investment in transportation.

The FHWA can provide national leadership on innovative financing with the States by creating a record of achievement. We believe the best approach to this challenge is to identify specific projects, develop a plan of finance, and offer those projects as examples of creative financing solutions. Developing good examples is a key element of this proactive effort. To stimulate and advance such projects, I have, by this memorandum, established FHWA Test and Evaluation Project TE–045 "Innovative Financing."

Test and Evaluation Projects

These Test and Evaluation Projects should develop innovative financing concepts which hold the most potential to increase investment or reduce public agency costs. For example, areas suggested for consideration include:

1. Broader interpretation of ISTEA section 1012 (ISTEA Toll Provisions) to permit more flexible definition of certain section 1012 terms, loan provisions, and increased local discretion, and investment opportunities;

2. More flexible interpretation of current title 23 State matching share requirements to allow "adjustable" matching, section 1044 "soft-match" credits, other changes in State matching funds, or other cash flow management modifications;

3. Increased ability to generate and use for highway purposes highway-related income from leases, lease options, air rights, license fees, easements, rights-of-way and concessions, or a combination thereof to increase the marketability of transportation investment opportunities;

4. Expanded interpretation of highway bond regulations to allow for innovative debt or credit enhancement instruments or other investment banking arrangements;

5. Use of Federal aid to promote public-private partnerships in investment, and permit more innovative contracting; and

6. Increased incentives to encourage that revenues from taxes, tolls, fees, or other sources be pledged to capital highway bonds, and/or create transportation revolving funds.

These concepts are offered as illustrations only. Other ideas with the potential to leverage investment or reduce public agency costs are encouraged and will be considered.

The FHWA has general discretion to conduct financing, research and development under 23 U.S.C. 307(a). Under Test and Evaluation Projects, FHWA will make full use of ISTEA and other FHWA regulatory and statutory flexibility. TE–045 projects must comply with non-title 23 statutory and regulatory requirements such as the National Environmental Policy Act, Civil Rights, relocation assistance, and the Clean Air Act as well as with title 23 statutory and regulatory environmental requirements (e.g., section 4(f)(23 U.S.C. 138)).

Proposals

The proposals for candidate projects should describe:

1. The project specifics;

2. Project funding—regular Federal aid as well as other funding sources;

3. Status of major Federal clearances and design;

4. Financing innovation, and how its use on a test and evaluation basis could benefit other projects;

5. Incentives required (i.e., financial, administrative, design, project fast-tracking);

6. How the proposed project will leverage public investment in highways; and

7. The timeline for advancing the project including key milestones.

Proposals must be for ISTEA-eligible projects; new construction and reconstruction projects are appropriate. Those proposals which meet major Federal clearance requirements will receive preference in the review process. Upon acceptance of a State's proposal, the project will be advanced by the FHWA offices in a normal but expedited manner.

States' proposals should be submitted to the Office of the FHWA Deputy Administrator (HOA–2) through the regional and division offices with an initial submission by April 29. Questions may be directed to either Mr. Jerry Poston—HNG–12 (202) 366–0450

or Mr. Bruce Cannon—HPP–20 (202) 366–9208.

[FR Doc. 94–8501 Filed 4–7–94; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Abraham Lincoln Federal Savings Assoc., Dresher, PA; Notice of Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (C) of section 5 (d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for Abraham Lincoln Federal Savings Association, Dresher, Pennsylvania ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 25, 1994.

Dated: April 5, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–8451 Filed 4–7–94; 8:45 am]

BILLING CODE 6720–01–M

Delta Federal Savings Bank, Westminster, CA; Notice of Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (C) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for Delta Federal Savings Bank, Westminster, California ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 25, 1994.

Dated: April 5, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–8452 Filed 4–7–94; 8:45 am]

BILLING CODE 6720–01–M

Federal Savings Association of Virginia, Falls Church, VA; Notice of Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (C) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for Federal Savings Association of Virginia, Falls Church, Virginia ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 11, 1994.

Dated: April 5, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

Irving Federal Bank for Savings, Chicago, IL; Notice of Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (C) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for Irving Federal Bank for Savings, Chicago, Illinois ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 18, 1994.

Dated: April 5, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–8453 Filed 4–7–94; 8:45 am]

BILLING CODE 6720–01–M

Lemont Federal Savings Assoc., Lemont, Ill; Notice of Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (C) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for Lemont Federal Savings Association, Lemont, Illinois ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on February 25, 1994.

Dated: April 5, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–8458 Filed 4–7–94; 8:45 am]

BILLING CODE 6720–01–M

Liberty Federal Savings Bank, Warrenton, VA; Notice of Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (C) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for Liberty Federal Savings Bank, Warrenton, Virginia ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 25, 1994.

Dated: April, 5, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–8459 Filed 4–7–94; 8:45 am]

BILLING CODE 6720–01–M

Life Federal Savings Bank, Clearwater, FL; Notice of Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (C) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for Life Federal Savings Bank, Clearwater, Florida ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 11, 1994.

Dated: April 5, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–8455 Filed 4–7–94; 8:45 am]

BILLING CODE 6720–01–M

The Pioneer Federal Savings and Loan Assoc., Prairie Village, KS; Notice of Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (C) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for The Pioneer Federal Savings and Loan Association, Prairie Village, Kansas ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 11, 1994.

Dated: April 5, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–8456 Filed 4–7–94; 8:45 am]

BILLING CODE 6720–01–M

Potomac Federal Savings Bank, Silver Spring, MD; Notice of Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (C) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for Potomac Federal Savings Bank, Silver Spring, Maryland ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on February 25, 1994.

Dated: April 5, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–8457 Filed 4–7–94; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Former Prisoners of War; Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Former Prisoners of War will be held in room 530 at VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420, from May 4, 1994 through May 6, 1994. The meeting will convene at 9:00 a.m. each day and will be open to the public. Seating is limited and will be available on a first-come, first-served basis.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of benefits under Title 38, United States Code, for Veterans who are former prisoners of war, and to make recommendations on the need of such veterans for compensation, health care and rehabilitation.

The Committee will receive briefings and hold discussions on various issues affecting health care and benefits delivery, including, but not limited to, the following: education and training of VA personnel involved with former prisoners of war; the status of privately and publicly funded research affecting former prisoners of war; past and current legislative issues affecting former prisoners of war; the various disabilities and sequelae of long-term captivity; and the procedures involved in processing claims for service-connected disabilities submitted by former prisoners of war.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. J. Gary Hickman, Director, Compensation and Pension Service (21), room 276, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Submitted material must be received at least five business days prior to the meeting. Members of the public may be asked to clarify submitted material prior to consideration by the Committee.

A report of the meeting and a roster of Committee members may be obtained from Mr. Hickman.

Dated: March 29, 1994.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 94–8393 Filed 4–7–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 68
Friday, April 8, 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 DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, April 12, 1994, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

Summary Agency

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Reports of the Office of Inspector General.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured depository institutions or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda

Matters relating to the Corporation's corporate, supervisory, and resolution activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Acting Executive Secretary of the Corporation, at (202) 898–6757.

Dated: April 5, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–8562 Filed 4–6–94; 11:21 am]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, April 12, 1994, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Amendment to an Existing System of Records—Insured Bank Liquidation Record System.

Memorandum re: Contract to Support the Development and Implementation of the Corporate Information Architecture Program.

Discussion Agenda

Memorandum and resolution re: Proposed amendments to Part 303 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices Required to be Filed by Statute or Regulation," which would revise application and publication requirements for the establishment and relocation of remote service facilities.

Memorandum and resolution re: (1) Proposed amendments to Appendix A to Part 325 of the Corporation's rules and regulations, entitled "Capital Maintenance," which would address the regulatory capital treatment of recourse arrangements and direct credit substitutes that expose banks, bank holding companies, and thrifts to credit risk, and (2) advance notice of proposed rulemaking seeking comment on a preliminary proposal to adopt a multi-level approach for assessing risk-based capital against bank and thrift participants in certain asset securitization transactions.

Memorandum and resolution re: Proposed amendments to Part 335 of the Corporation's rules and regulations, entitled "Securities of Nonmember Insured Banks," which relate to registration and reporting requirements for nonmember insured banks with securities registered under section 12 of the Securities Exchange Act of 1934.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 942–3132 (Voice); (202) 942–3111 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Acting Executive Secretary of the Corporation, at (202) 898–6757.

Dated: April 5, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–8561 Filed 4–6–94; 11:21 am]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:00 a.m. on Tuesday, April 5, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Recommendation regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum re: First Gibraltar Bank, FSB, Dallas, Texas, Case No. 412–00345–94–BOD

Matters relating to the Corporation's corporate and supervisory activities.

Recommendations regarding administrative enforcement proceedings.

In calling the meeting, the Board determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Director Eugene A. Ludwig

(Comptroller of the Currency), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: April 5, 1994.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 94–8560 Filed 4–6–94; 11:21 am]

BILLING CODE 6714–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, April 13, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Open

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed amendments to Regulation J (Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers through Fedwire) to conform the warranties and other provisions to Regulation CC (Availability of Funds and Collection of Checks) and the Uniform Commercial Code. (Proposed earlier for public comment; Docket No. R–0821)

Discussion Agenda

2. Proposed interpretation of the System's Policy Statement on Payments System Risk regarding the treatment of Government-sponsored enterprises.

3. Proposals regarding amendments to Regulation DD (Truth in Savings) concerning calculation of the annual percentage yield for certain time accounts. (Proposed earlier for public comment; Docket No. R–0812)

4. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: April 6, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–8558 Filed 4–6–94; 11:20 am]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:30 a.m., Wednesday, April 13, 1994, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 6, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–8559 Filed 4–6–94; 11:20 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 9:00 a.m., April 18, 1994.

PLACE: National Finance Center, First Floor, Director's Conference Room, USDA/NFC Building No. 350, NASA Space Facility, 13800 Old Gentilly Road, New Orleans, Louisiana.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the March 21, 1994, Board meeting
2. Thrift Savings Plan activity report by the Executive Director
3. Briefings by National Finance Center and Board staff on:
   a. Recordkeeper organization and activity
   b. Recordkeeper budget
   c. Thrift Savings Plan system review
   d. Implementation of audit recommendations

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: April 5, 1994.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 94–8531 Filed 4–6–94; 9:03 am]

BILLING CODE 6760–01–M

NATIONAL WOMEN'S BUSINESS COUNCIL

Notice of Meeting

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.

DATES: May 2, 1994, 8:30 a.m. to 9:15 a.m.

ADDRESSES: J.W. Marriott Hotel, 1331 Pennsylvania Avenue, NW., Washington, DC.

STATUS: Open to the public.

CONTACT: For further information contact Amy Millman, Executive Director or Juliette Tracey, Deputy Director, National Women's Business Council, 409 Third Street, SW., Suite 5850, Washington, DC 20024, (202) 205–3850.

Gilda Washington,

Administrative Officer, National Women's Business Council.

[FR Doc. 94–8532 Filed 4–6–94; 9:04 am]

BILLING CODE 6820–AB–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

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 April 11, 1994.

An open meeting will be held on Tuesday, April 12, 1994, at 11:00 a.m. a closed meeting will be held on Thursday, April 14, 1994, at 2:30 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 Schapiro, 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 Tuesday, April 12, 1994, at 11:00 a.m., will be:

As part of its ongoing effort to address the special needs of foreign companies entering the U.S. public markets, the Commission will consider whether to adopt proposals to: (1) Streamline reporting and registration requirements for foreign private issuers; (2) address certain issues raised by communications in connection with offerings by foreign companies and exempt and offshore offerings by U.S. companies; and (3) expand safe harbor protection for certain analyst reports.

For further information, please contact Sandra F. Kinsey or Annemarie Tierney at (202) 272–3246.

The Commission will also consider proposals to streamline financial statement requirements for U.S. issuers relating to significant foreign equity investees and business acquisitions proposals to streamline financial schedule requirements for all issuers and proposals with respect to foreign issuers reporting currency and operations in hyperinflationary economies.

For further information, please contact Wayne Carnall at (202) 272–2553.

The subject matter of the closed meeting scheduled for Thursday, April 14, 1994, at 2:30 p.m., will be:

Institution of injunctive actions.

Settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

Opinions.

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: Michael Schlein (202) 272–2000.

Dated: April 5, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–8586 Filed 4–6–94; 1:11 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 59, No. 68
Friday, April 8, 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 AGRICULTURE

Rural Electrification Administration

Municipal Interest Rates for Second Quarter of 1994

Correction

In notice document 94-7846 appearing on page 15371 in the issue of Friday, April 1, 1994, in the third column, in the file line at the end of the document, "FR Doc. 94-7840" should read "FR Doc. 94-7846".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

Intent To Revoke Antidumping Duty Orders and Findings

Correction

In notice document 94-7390, beginning on page 14608, in the issue of Tuesday, March 29, 1994, make the following correction:

On page 14608, in the first column, under **SUMMARY:**, in the seventh line, after the word "than" insert "30 days from".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1904

[Docket No. R-01]

Reporting of Fatality or Multiple Hospitalization Incidents

Correction

In rule document 94-7778 beginning on page 15594 in the issue of Friday, April 1, 1994 make the following correction:

On page 15594, in the first column, under **DATES:**, in the second line, "or before" should be removed.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-33779; File No. SR-NYSE-93-38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Additions to the "List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A"

Correction

In notice document 94-7052 beginning on page 14231, in the issue of Friday, March 25, 1994, make the following corrections:

On page 14232, in the first column, in third bullet paragraph, in the first line, "*Rule 346(b) and (3)*---" should read "*Rule 346(b) and (e)*---".

On the same page, in the first column, in the fourth bullet paragraph, in the first line, "*Rule 346(g)*---" should read "*Rule 346(f)*---".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 175

[T.D. 94-22]

Decision on Domestic Interested Party Petition Concerning Classification of Load Roller Products for Fork Lift Trucks

Correction

In rule document 94-6496 appearing on page 13450 in the issue of March 22, 1994, make the following correction:

On page 13450, in the first column, under **DATES:** in the fourth line, "April 21, 1994" should read "April 29, 1994".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 94-26]

Testing of Pressed and Toughened (Specially Tempered) Glassware

Correction

In notice document 94-6638, appearing on page 13531, in the issue of Tuesday, March 22, 1994, make the following correction:

On page 13531, in the first column, the docket number should read as set forth above.

BILLING CODE 1505-01-D

federal register

Friday
April 8, 1994

Part II

Small Business Administration

13 CFR Parts 107 and 121
Small Business Investment Companies and Small Business Size Standards; Rules

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies; Leverage; Participating Securities; Conditions Affecting Good Standing of Licensees

AGENCY: Small Business Administration

ACTION: Final rule.

SUMMARY: This final rule implements certain of the changes to the Small Business Investment Act of 1958, as amended, made by the "Small Business Equity Enhancement Act of 1992 (September 4, 1992)." The changes implemented by this rule relate to Leverage provided to SBICs by SBA, and include increasing from $35 million to $90 million the amount of Leverage that may be outstanding to any one Licensee or group of Licensees under common control, incrementally reducing the maximum ratio of Leverage to capital as capital is increased, establishing a new form of Leverage (Participating Securities) which will be available to Licensees that make Equity Capital Investments in small concerns, permitting Specialized SBICs that are organized as limited partnerships to obtain Leverage from SBA in the form of a preferred limited partnership interest, and making other technical changes necessary to implement the legislation.

DATES: This final rule is effective April 25, 1994.

FOR FURTHER INFORMATION CONTACT: Marvin D. Klapp, Acting Director, Office of Program Development; telephone (202) 205–6515.

SUPPLEMENTARY INFORMATION: On August 5, 1993, SBA published two proposed rules to implement certain changes to the Small Business Investment Act of 1958, as amended (Act), made by title IV of Public Law 102–366 (September 4, 1992). See 58 FR 41852 and 58 FR 41882. The first of the two rules proposed changes in the way financial assistance (Leverage) is provided to small business investment companies (SBICs or Licensees), including the creation of a new form of Leverage called Participating Securities, which would be available to Licensees making equity-type investments in small concerns. The second of the two rules proposed changes affecting the licensing and operations of SBICs.

The public was afforded a sixty-day period in which to submit comments on the two proposed rules to the Agency. In recognition of the complexity of the subject matter involved, SBA reopened and extended the comment period on both proposed rules until November 18, 1993. See 58 FR 57568 (October 26, 1993).

After receiving and giving careful consideration to approximately 109 comment letters, SBA is today finalizing both proposed rules. This final rule finalizes the proposed rule concerning Leverage, Participating Securities and other miscellaneous matters. The final rule immediately following this rule in the **Federal Register** (Operations Rule) finalizes the proposed rule concerning licensing and operations of SBICs.

In addition, SBA is simultaneously finalizing in this separate part of the **Federal Register** the proposed rule published on July 29, 1993 (58 FR 40603), which revises one of the size standards for the SBIC Program (Size Rule).

1. General Leverage Provisions

a. Introduction

SBA is finalizing the renumbering and reorganization of the "Leverage" sections of the SBIC Program regulations (§ 107.210 through § 107.263) as proposed. SBA intends, at a later date, to conform the remainder of the SBIC Program regulations (part 107 of title 13 of the Code of Federal Regulations) to the new numbering system used in the Leverage sections.

As in the proposed rule, the term "Licensee" used in this final rule always includes SBICs licensed under the authority of section 301(c) of the Act (section 301(c) Licensees) and SBICs licensed under the authority of section 301(d) of the Act (section 301(d) Licensees). A section 301(c) Licensee is sometimes referred to as a Regular SBIC because there is no restriction on the type of Small Concern that it may assist. A section 301(d) Licensee is sometimes referred to as a Specialized SBIC or SSBIC because it is only authorized to assist Small Concerns owned by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

b. Application Procedures

In proposed § 107.210, SBA set forth the application procedures and basic eligibility requirements for obtaining Leverage from SBA. SBA received fifty-eight (58) comment letters on this section, many of which addressed the requirement in § 107.210(c)(2) that applicants for Leverage demonstrate a need for the Leverage funds.

The requirement for a demonstration of need is not a new concept for the SBIC Program. Historically, a Licensee was considered to "need" Leverage if sixty-five percent (65%) of its private capital had been invested or committed to investments in Small Concerns. However, if a Licensee had significant available resources of its own (e.g., unfunded commitments from investors), it was generally considered not to be in need of Leverage.

SBA proposed an exception to this general rule for applicants for Participating Securities Leverage: SBA would disregard the applicant's temporary excess liquidity resulting from unfunded commitments or drawdowns of commitments if the Licensee had invested at least fifty percent (50%) of its Leverageable Capital [1] and Leverage in Equity Capital Investments (the required investment category for issuers of Participating Securities). Under this exception, though, Licensees with unfunded commitments would probably find themselves ineligible for their first issuance of Participating Securities Leverage unless fifty percent (50%) of their Leverageable Capital had already been invested in Equity Capital Investments.

The comments received by SBA questioned the appropriateness of requiring Licensees to make Equity Capital Investments in order to be eligible for Participating Securities Leverage. They argued that such a requirement was inconsistent with the intent of the legislation, which required that Equity Capital Investments be made with the proceeds of Participating Securities.

The comments also argued in favor of extending to Debenture and Preferred Securities issuers the same ability to demonstrate a need for Leverage while commitments from investors remain unfunded.

SBA agrees with the comments. If any Licensee has invested fifty percent (50%) of its Leverageable Capital plus outstanding Leverage and is in compliance with SBA regulations, it should be eligible for SBA Leverage. This should be true for all Licensees, not just those that issue Participating Securities, and should be true regardless of the type of investments that have been made by the Licensee (assuming, of course, that the Licensee's past investments have been in eligible Small Concerns). The proposed rule has been revised and finalized accordingly.

It should be noted here that eligibility for Leverage does not mean that Leverage necessarily will be available and forthcoming. In the event that the demand for Leverage exceeds the available supply, SBA will allocate

[1] This term and the related term "Regulatory Capital" are defined in the Operations Rule.

Leverage among the eligible applicants unless and until additional funds or guarantee authority is made available to meet such demand.

c. Fees

As proposed, § 107.210(d) increased the user fee charged in connection with obtaining Leverage to two percent (2%) of the face amount of Debentures, and instituted the same two percent (2%) fee for Participating Securities. SBA received twenty-two (22) comments on this subject, some objecting to an increased fee for Debenture Leverage unless there were a corresponding increase in the cost of administering such Leverage, and others objecting to increased fees in general unless the fees could be used to offset the costs of managing the SBIC Program.

SBA believes the increased fees are necessary to maintain the current Debenture program and implement the new Participating Securities program. SBA currently is able to use such fees to pay the costs associated with the Leverage fundings, including the fees of parties with which it contracts to perform services attendant to these fundings. Any excess fees are deposited in the U.S. Treasury and are counted when determining the "subsidy rate" of the particular SBIC program that generated the fees. The subsidy rate for a program is a measurement that determines the multiple of SBA guarantee authority that can be made available for each dollar appropriated to that program by Congress. Fees in excess of actual costs associated with the Leverage fundings have the effect of reducing the particular SBIC program's subsidy rate, thereby resulting in more "guarantee dollars" being available for the program participants. This is a benefit to all Licensees seeking Leverage, especially when appropriated funds are being curtailed due to budgetary constraints. SBA is therefore finalizing the provision as proposed: the new user fee will be two percent (2%) for all Debenture and Participating Securities issuers.

d. Subordination of Debentures

Proposed § 107.210(f)(5) clarified that when SBA agrees to subordination with respect to Debentures guaranteed after July 1, 1991, the amount of indebtedness to which such subordination applies is fixed at the time SBA subordinates, and is limited then and later to the lesser of two hundred percent (200%) of the Licensee's Leverageable Capital, or $10 million. Any indebtedness of the Licensee in excess of that amount, whether in existence at the time SBA subordinates or acquired subsequently, will not benefit from SBA's subordination.

The comments received on this provision were supportive of the change. The provision is adopted as proposed.

e. Restrictions on Third Party Debt

As explained under the proposed rule, Licensees have been permitted to apply for and obtain financing from third parties without obtaining SBA's prior approval or even notifying the Agency, except upon the filing of annual financial statements. Third party lenders have viewed SBA Leverage, which is unsecured and generally subordinate, as part of the capital base of the Licensee. In some cases, third party financing, when aggregated with Leverage, has exceeded a prudent level of indebtedness, and SBA has been forced to suffer large losses upon the distribution of a Licensee's assets in liquidation, receivership or bankruptcy proceedings.

Concern over SBA's creditor position prompted the Agency to tighten its terms of subordination in July 1991. See 56 FR 31777. The subordination limits then adopted, however, have not discouraged some Licensees from incurring large amounts of secured third party debt. Recognizing its obligation to further protect its exposure as the largest creditor of most debtor Licensees, SBA proposed that it have the right to approve all new third party debt of a Licensee.

As proposed, § 107.210(f)(6) required that, after September 30, 1993, Licensees would need to obtain the written approval of SBA before incurring or refinancing any third party debt or obtaining any line of credit. In addition to conventional third party debt, this restriction covered guarantees by Licensees and other voluntarily assumed contingent liabilities. Licensees with existing lines of credit were required to have such lines approved by SBA before increasing the amounts outstanding above the balance owed on September 30, 1993.

SBA received 45 comments on this provision; all were opposed to the proposal as written. The comments expressed concern that the need for prior approval from SBA could be very damaging to SBIC business operations. They suggested elimination of the requirement of prior approval for a Licensee's normal business credit arrangements, for its short-term bridge debt and, up to a certain safe-harbor level, for any third-party debt.

After considering these comments, SBA has concluded that it can eliminate entirely the requirement for prior approval of a Licensee's unsecured third-party debt and still protect the Agency's interest in the Licensee. This change, reflected in the final rule, should allow Licensees to engage in their ordinary business credit arrangements without interference from SBA.

SBA is not convinced, however, that secured third-party debt, of any amount, should be incurred by a Licensee without SBA's prior approval. SBA understands the SBIC industry's concern regarding the prior approval process; in the past, SBA may not have been able to respond to SBIC requests for approval in other matters as expeditiously as both the SBICs and SBA might have liked. While SBA expects to deal with all requests for prior approval on a timely basis, SBA is prepared to commit itself to a thirty-day turn-around on certain requests. Thus, the final rule provides that if a Licensee is in regulatory compliance and has SBA Leverage not in excess of 1.5 times its Leverageable Capital, and if the Licensee's request is for approval of a secured line of credit which would not cause its aggregate third-party debt to exceed fifty percent (50%) of Leverageable Capital, then the Licensee's request for prior approval will be considered approved unless SBA notifies it otherwise within thirty (30) days of receiving the request. It should be noted that all debt, whether secured or unsecured, will be aggregated to determine whether the Licensee may avail itself of the thirty-day turn-around.

When making its determination as to whether a Licensee's request for secured third-party debt should be approved, SBA will take into consideration various factors including, but not limited to, the amount of secured indebtedness relative to other debt of the Licensee and the amount of secured indebtedness relative to the value of the Licensee's collateral proposed to be granted as security.

Licensees are reminded that once a line of credit is approved by SBA, subsequent draw-downs under the line of credit do not require SBA approval.

The final rule extends the date after which SBA approval will be required from September 30, 1993, to the date of publication of this final rule. Licensees with existing secured lines of credit are reminded to obtain SBA approval of such lines before increasing the amounts outstanding above the balance owed on the date of publication.

The final rule also clarifies that if a Licensee has no Leverage, it is not required to have its third-party debt approved by SBA.

f. Maintenance of Unimpaired Capital

(i) General

Former § 107.203(d) required Leveraged Licensees to maintain Private Capital in an amount sufficient to avoid a condition of Capital Impairment. Under that regulation, a section 301(c) Licensee was Capitally Impaired and was in violation of § 107.203(d) if its Undistributed Net Realized Earnings deficit, together with any Unrealized Depreciation in excess of Unrealized Appreciation, exceeded fifty percent (50%) of Private Capital. For a section 301(d) Licensee, the applicable percentage was seventy-five percent (75%).

The proposed regulation on Capital Impairment (§ 107.210(h)) allowed, for the first time, varying degrees of impairment depending upon differences in the composition of the portfolios of Licensees. The proposal took the form of two grid structures, each consisting of nine (9) categories for section 301(c) and section 301(d) Licensees, respectively. The proposed rule continued to permit a higher percentage of impairment for a section 301(d) Licensee than for a section 301(c) Licensee whose situation was otherwise identical. However, the differential was reduced to five (5) percentage points from the former twenty-five (25) percentage points. In addition, the proposed rule recognized the delay in profitability that is expected to occur in venture investing.

The rationale for moving to a grid structure that would allow an equity investor SBIC a higher permissible level of capital impairment than a lender SBIC was set forth in the proposed rule. Essentially, the proposed structure recognized that in a venture portfolio, especially during the early years, there are likely to be considerable losses before profits are realized, and a Capital Impairment Percentage of fifty percent (50%) or more may exist even when the portfolio has genuine long-term value. However, for a Licensee which only provides loan financing, a Capital Impairment Percentage of fifty percent (50%) generally indicates a significant operating deficit that cannot be offset by appreciation in the portfolio.

Also new in the proposed regulation on Capital Impairment was the treatment of net Unrealized Appreciation. Under the old Capital Impairment concept, Licensees have been required to treat net Unrealized Depreciation as if it represented realized losses, but they received no corresponding credit for net Unrealized Appreciation. The proposed regulation acknowledged the existence of net Unrealized Appreciation in a Licensee's portfolio, yet attempted to avoid providing incentives for Licensees to inflate their portfolio values artificially. Thus, SBA proposed to allow partial recognition of net Unrealized Appreciation in the computation of Capital Impairment, to an extent which would vary depending on whether or not the portfolio securities were Publicly Traded and Marketable.

The proposed rule also provided that a violation of the Capital Impairment regulation would constitute an event of default with respect to Debentures and Preferred Securities (§ 107.261(d)), and that such a violation also would affect the good standing of a Licensee issuing Participating Securities (§ 107.262(d)). In all cases, Licensees were afforded an opportunity to cure a violation before SBA could impose any of the remedies available to it under the proposed regulations.

The thirty-nine (39) comments received on the Capital Impairment proposal generally were unfavorable. While there was little objection to the grid structure per se, there was strong objection to the permissible Capital Impairment percentages located within the grid. The respondents happily accepted the relatively high percentages available to the equity-investor SBICs, but felt that the proposed percentages for lender SBICs were excessively low. Specialized SBICs also argued that the percentages for section 301(d) Licensees were unfair, and that SBA should return to a single percentage (75%) for all Specialized SBICS, regardless of portfolio composition or amount of Leverage.

SBA has decided to retain the grid structure for the section 301(c) Licensees, and to increase their permissible levels of Capital Impairment by five (5) percentage points across the board. Thus, a section 301(c) Licensee would be permitted to have impaired Regulatory Capital of anywhere from thirty-five percent (35%) to seventy percent (70%), depending on the Licensee's portfolio mix and its Leverage ratio. SBA believes this is an appropriate resolution as it balances its own concerns with those of SBICs, as expressed in the comments.

For section 301(d) Licensees, SBA intends to return to the current permissible level of Capital Impairment. All Specialized SBICs will be permitted a Capital Impairment level of seventy-five percent (75%), regardless of portfolio mix or Leverage ratio. The differential between the Regular and Specialized SBICs will be from five (5) percentage points for an equity investor Licensee to forty (40) points for a lender Licensee. This differential is a recognition of the more limited, and often riskier, pool of small business concerns in which a Specialized SBIC may make investments.

There were also a number of comments on the subject of net Unrealized Appreciation, arguing, for the most part, in favor of full recognition of all net Unrealized Appreciation as an offset to realized losses, or for looser standards for recognizing net Unrealized Appreciation on private securities.

SBA continues to believe that full recognition of all net Unrealized Appreciation is inappropriate and that the proposed standards for recognizing net Unrealized Appreciation on private securities are sufficiently liberal. Licensees will now, for the first time, be permitted some credit for net Unrealized Appreciation. Accordingly, SBA is not prepared to loosen these criteria further.

The final Capital Impairment issue addressed in the comment letters was the length of the forbearance periods for issuers of Participating Securities. SBA understands the industry's desire for a longer period of forbearance, but believes that the four and five year allowances that were proposed, together with the increased permissible percentages agreed to in this final rule, should be adequate for a Licensee with a minimally successful portfolio.

SBA also reminds the SBIC industry that Capital Impairment is a curable violation. See §§ 107.261(d)(5) and 107.262(d)(3). In fact, special cure methods are available to Participating Securities issuers. See § 107.210(h)(7).

One final change has been made to the proposed Capital Impairment provision; it concerns the inclusion of non-cash gains in the computation of Capital Impairment. Under the former definition of Capital Impairment, all amounts required by SBA accounting rules to be classified as Non-cash Gains/Income (as reported on SBA Form 468) were excluded from the Capital Impairment formula. SBA believes this provision was too stringent, and that Licensees should be able to receive credit in the impairment computation for non-cash gains under certain circumstances. However, when the Agency rewrote the Capital Impairment test in the proposed rule, full credit was mistakenly permitted for all Non-cash Gains/Income of a Licensee, regardless of the source. This error was the consequence of using the term "Undistributed Realized Earnings," which includes all Non-cash Gains/Income, in the computation. The unintended result of this change was that delinquent accrued interest

converted into a note, interest income accrued on deferred-interest notes and other components of Non-cash Gains/Income which may be uncertain as to collectibility would be counted as realized earnings in determining Capital Impairment.

It was SBA's intent when drafting the proposed Capital Impairment provision to give capital gains credit only for certain Non-cash Gains/Income: Specifically, those that the Agency felt had the greatest certainty of measurement and collectibility. In this final rule, SBA has clarified that the only Non-cash Gains/Income that may be counted when computing Capital Impairment are those Non-cash Gains/Income that are realized in the form of Publicly Traded and Marketable securities or investment grade debt instruments.

A debt instrument would not be considered investment grade for purposes of this rule unless it had actually been rated "BBB" or "Baa", or better, by Standard & Poor's Corporation or Moody's Investment Service, respectively. A non-rated debt instrument issued by a company with outstanding investment grade debt also could be considered investment grade if the Licensee were to obtain a written opinion from an investment banking firm acceptable to SBA stating that the non-rated debt instrument is equivalent in risk to the issuer's investment grade debt.

The following is an example of how this rule operates: If a Licensee sells a portfolio investment with a basis of $200,000 and receives, exchange, General Electric stock worth $300,000 plus a below investment grade promissory note for $150,000, the Licensee should include in the Capital Impairment computation $100,000 of the $250,000 of Non-cash Gains/Income it received.

In order to implement this change, the final rule adds a new defined term, "Includible Non-cash Gains/Income", to § 107.3 to represent those non-cash gains for which SBA will give credit for purposes of Capital Impairment. In the final version of § 107.210(h), the Licensee computes Capital Impairment by starting with Undistributed Net Realized Earnings, which is net of all Non-cash Gains/Income, and adds back Includible Non-cash Gains/Income. Undistributed Net Realized Earnings has been added to the definitions section of the regulation. This should be a familiar term to all Licensees because of its appearance on SBA Form 468. See § 107.3.

The final rule also clarifies that a Licensee's Unrealized Gain (Loss) on Securities Held must reflect the estimated tax effects associated with the future realization of gains or losses. See the definition of Unrealized Gain (Loss) on Securities Held (§ 107.3).

In summary, the Capital Impairment proposal is finalized as proposed except for a five (5) percentage point increase for Regular SBICs, a return to the seventy-five percent (75%) test for Specialized SBICS, and the inclusion of only a limited class of non-cash gains.

This final rule repeats the summary of the computation of Capital Impairment as it appeared in the summary of the proposed rule. The only change is the use of "Undistributed Net Realized Earnings plus Includible Non-cash Gains/Income" instead of "Undistributed Realized Earnings", as discussed above.

(ii) Computation of Capital Impairment Percentage

If Unrealized Gain (Loss) on Securities Held is zero or positive, and the sum of Undistributed Net Realized Earnings plus Includible Non-cash Gains/Income is also zero or positive, no Capital Impairment exists and no further calculations are necessary. If either or both amounts are less than zero, the Licensee must make the calculations described in §§ 107.210(h)(3) and (4). Depending upon the results of interim calculations in these paragraphs, the Licensee may be required to compute a Capital Impairment Percentage.

(iii) Determination of Capital Impairment Violation

As with the proposed rule, a Licensee will not be in violation of § 107.210(h) simply by having a Capital Impairment Percentage greater than zero. Violations of § 107.210(h) arise out of an excessive Capital Impairment Percentage. For section 301(d) Licensees, Capital Impairment of more than seventy-five percent (75%) is considered excessive; for section 301(c) Licensees, maximum permissible Capital Impairment percentages are set forth in a table in the regulation.

(iv) Special Rules for Licensees With Outstanding Participating Securities

(A) *General.* All Leveraged Licensees, including Licensees with outstanding Participating Securities, are required to compute their Capital Impairment Percentages in the same manner. A Licensee with outstanding Participating Securities may, for as long as five years following its initial issuance of Participating Securities, have a Capital Impairment Percentage higher than the applicable table permits (but not as high as eighty-five percent (85%)) without thereby being in violation of § 107.210(h) if it meets the other requirements set forth in § 107.210(h)(7). In addition, a Licensee that meets the requirements set forth in § 107.210(h)(7) (i) or (ii) will be afforded an opportunity to cure on terms that may be more favorable than those available to other Licensees.

(B) *Curable Capital Impairment Percentage during first 48 months following initial issuance of Participating Securities.* During the first forty-eight (48) months after initially issuing Participating Securities, a Licensee with outstanding Participating Securities will not be impaired if: (1) Its Capital Impairment Percentage is less than eighty-five percent (85%); (2) at least two-thirds of its outstanding Leverage consists of Participating Securities; and (3) at least two-thirds of its Loans and Investments, valued at cost, are Equity Capital Investments.

(C) *Curable Capital Impairment Percentage during first 60 months following initial issuance of Participating Securities.* During the first sixty (60) months after initially issuing Participating Securities, a Licensee with outstanding Participating Securities will not be impaired if: (1) Its Capital Impairment Percentage is less than eighty-five percent (85%); (2) at least two-thirds of its outstanding Leverage consists of Participating Securities; and (3) at least two-thirds of its Loans and Investments, valued at cost, are Start-up Financings. For the purposes of this regulation, a Start-up Financing is an Equity Capital Investment in a growth-oriented Small Concern that, at the time of the investment, (1) has not been in existence, in any form, for more than three fiscal years, (2) has not had positive cash flow or sales exceeding $5 million in any fiscal year, and (3) is not formed for the purpose of acquiring any existing business.

(D) *Cure of Capital Impairment.* During the fifth year following its initial issuance of Participating Securities, a Licensee that meets the requirements described in paragraph (B) above may cure its Capital Impairment by taking one or more of the following actions within thirty (30) days after it determines that it has a condition of Capital Impairment. The Licensee may increase its Regulatory Capital [2] by depositing in an escrow account satisfactory to SBA a cash contribution equal to fifteen percent (15%) of

[2] This increase in Regulatory Capital operates only to cure what would otherwise be a Capital Impairment. It does not increase the Licensee's eligibility for Leverage.

outstanding Leverage; or it may provide SBA with a guarantee satisfactory to SBA, for the benefit of SBA, equal to fifteen percent (15%) of its outstanding Leverage. In addition to the normal credit considerations that would determine whether a guarantee is satisfactory to SBA, the terms of the guarantee must provide that any guarantee fee that otherwise would be due the guarantor from the Licensee, and any other sums that would be due the guarantor by virtue of the guarantor's right of subrogation, must be deferred and subordinated to the full repayment of all outstanding Leverage plus any unpaid Earned Prioritized Payments (as defined in § 107.3) and earned Adjustments (discussed below under § 107.243(d)).

During the sixth year following its initial issuance of Participating Securities, a Licensee that meets the above requirements may cure its Capital Impairment by taking one of the actions described in the preceding paragraph, except that the amount of the cash deposit or guarantee shall be equal to thirty percent (30%) of outstanding Leverage. Any amount deposited previously may be used as a credit against the thirty percent (30%) requirement.

2. Leverage for Section 301(c) Licensees

No comments were received on proposed § 107.220; accordingly, it is finalized as proposed. This section provides Leverage requirements for section 301(c) Licensees, and reflects amendments to the Act contained in Section 402 of Public Law 102–366. Section 107.220 permits SBA to provide Leverage to section 301(c) Licensees through the purchase or guarantee of Debentures and/or Participating Securities. After March 31, 1993, a section 301(c) Licensee's amount of Leverage outstanding at any time shall not exceed three hundred percent (300%) of its Leverageable Capital up to $15 million; two hundred percent (200%) of its Leverageable Capital of more than $15 million, but not more than $30 million; and an amount, not exceeding $15 million, which is equal to one-hundred percent (100%) of its Leverageable Capital over $30 million. The aggregate amount of outstanding Leverage by any Licensee or group of two or more Licensees under Common Control [3] shall not exceed $90 million. On a case-by-case basis, SBA may grant an exception to this ceiling to a group of Licensees under Common Control and permit a higher amount, subject to such terms and conditions as SBA considers appropriate to minimize risk of loss in the event of default. In no event, however, shall the aggregate amount of a Licensee's Participating Securities exceed two hundred percent (200%) of Leverageable Capital.

A "grandfather clause" is provided for Licensees that, on March 31, 1993, have outstanding Debentures in excess of three hundred percent (300%) of Leverageable Capital, so that such Licensees are not required to prepay such excess. Such Licensees also may apply to issue additional Debentures or Participating Securities solely to pay the amount due on such maturing Debentures. The maturity date of any new Debenture or Participating Securities issued for this purpose may not be later than September 30, 2002.

3. Leverage for Section 301(d) Licensees

In proposed § 107.230, SBA described some of the terms and conditions of Leverage for section 301(d) Licensees. SBA may provide Leverage to section 301(d) Licensees through the purchase or guarantee of Debentures and/or Participating Securities, and/or through the purchase of Preferred Securities. As further described below, the proposed rule provided that section 301(d) Licensees would be eligible for subsidized Debenture Leverage and for Preferred Securities Leverage up to a maximum of four hundred percent (400%) of Leverageable Capital or $35 million, whichever is less. Leverage in excess of that amount would be nonsubsidized.

Six (6) comments were received on proposed § 107.230. The comments were supportive of the proposal, except for the ceiling of $35 million for subsidized Leverage. As the comments recognized, however, the $35 million ceiling on subsidized Leverage is statutory in origin. Section 402 of Public Law 102–366, which increased the general Leverage ceiling for the SBIC program above its prior level of $35 million, established the subsidized Leverage ceiling for section 301(d) Licensees. The regulation cannot permit a higher amount of subsidized Leverage than is permitted by the Act.

SBA therefore is finalizing § 107.230 as proposed, with the exception of one minor change, designed to correct an error: The four percent (4%) dividend on preferred stock and the four percent (4%) return on the preferred limited partnership interest accrue on an annual basis (rather than on a daily basis, as stated in the proposed rule).

The Articles of section 301(d) Licensees are required to be conformed to the requirements discussed in paragraphs a. or b. below, as appropriate, in order to issue Preferred Securities after the date hereof.

a. Preferred Stock

In the case of corporate Licensees, the preferred stock purchased by SBA prior to November 21, 1989, shall be non-voting stock with a three percent (3%) cumulative preferred dividend paid out of Retained Earnings Available for Distribution. Preferred stock issued after November 21, 1989, shall provide for four percent (4%) preferred cumulative dividends payable out of Retained Earnings Available for Distribution. Four percent (4%) preferred stock shall be redeemed not later than fifteen (15) years after issuance at a price not less than par value plus unpaid dividends accrued to the redemption date. SBA may guarantee non-subsidized Debentures offered for sale by a Licensee immediately prior to the redemption of its four percent (4%) preferred stock in such amounts as will permit simultaneous redemption of such stock.

b. Preferred Limited Partnership Interest

Section 412 of Public Law 102–366 authorizes unincorporated section 301(d) Licensees to issue preferred limited partnership interests to SBA which would have the same terms and conditions as the four percent (4%) preferred stock described immediately above (that is, a preferred and cumulative return at an annual rate of four percent (4%), payable from Retained Earnings Available for Distribution). Such preferred limited partnership interests shall be redeemed not later than fifteen (15) years from the date of issuance at a price not less than SBA's contributed capital plus accumulated and unpaid distributions through the redemption date. SBA may guarantee non-subsidized Debentures issued by a section 301(d) Licensee immediately preceding such redemption in such amounts as will permit simultaneous redemption of such preferred limited partnership interests.

C. Leverage Ceiling

As in the proposed rule, § 107.230(c) establishes maximum Leverage eligibility for section 301(d) Licensees. All types of Leverage issued by such Licensees shall be aggregated for purposes of determining Leverage eligibility, including aggregation of Leverage issued by Licensees under Common Control. As stated earlier, section 301(d) Licensees are eligible for maximum subsidized Leverage (consisting of Preferred Securities and Debentures issued with a rate reduction) of four hundred percent (400%) of

[3] This term is defined in the Operations Rule.

Leverageable Capital or $35 million, whichever is less. Section 301(d) Licensees also are eligible for nonsubsidized Leverage in excess of $35 million, subject to the amounts and conditions specified for section 301(c) Licensees.

In order to qualify for Leverage exceeding three hundred percent (300%) of Leverageable Capital, at least thirty percent (30%) of the Licensee's Total Funds Available for Investment must be invested in or committed to Venture Capital Financing of Disadvantaged Concerns, and a Licensee must maintain thirty percent (30%) of its Total Funds Available for Investment in such investments while Leverage in excess of three hundred percent (300%) of Leverageable Capital is outstanding. For the purpose of meeting the thirty percent (30%) test, the Venture Capital Financings shall be valued at cost. The present definition of Venture Capital Financing remains unchanged and is set forth in § 107.230(c)(3)(iii).

d. Second Tier of Preferred Securities

As in the proposed rule, SBA is authorized to purchase Preferred Securities in amounts in excess of one hundred percent (100%) of Leverageable Capital, but not in excess of two hundred percent (200%) of Leverageable Capital, from certain Licensees. These are section 301(d) Licensees with Leverageable Capital of $500,000 or more, or section 301(d) Licensee licensed on or before October 13, 1971, regardless of the amount of Leverageable Capital. In either case, a Licensee must have Qualified Investments (as defined in § 107.230(c)(4)(iv)) equal, at cost, to the amount of Preferred Securities in excess of one hundred percent (100%) of Leverageable Capital. Commitments to make Qualified Investments may be counted to satisfy this requirement.

It should be noted that the definition of Qualified Investments is similar, but not identical to, the definition of Venture Capital Financing as set forth in § 107.230(c)(3)(iii). The most important difference is that a secured debt instrument may qualify as a Venture Capital Financing but would not qualify as a Qualified Investment.

e. Participating Securities

Section 107.230(c)(6) authorizes section 301(d) Licensees to issue Participating Securities in an amount not exceeding two hundred percent (200%) of Leverageable Capital, less an amount equal to Licensee's outstanding Preferred Securities. Prioritized Payments and Profit Participation on Participating Securities issued by section 301(d) Licensees shall not be subsidized.

f. Other Provisions

Section 107.230(d) describes the types of Debentures which section 301(d) Licensees may issue, and § 107.230(e) permits section 301(d) Licensees, in SBA's discretion, to retire Debentures through the issuance of Preferred or Participating Securities.

Section 107.230(f) is a recodification of former § 107.201(a)(2)(iii).

4. Participating Securities

As proposed, §§ 107.240 through 107.247 described special rules which would apply to Licensees issuing Participating Securities.

SBA received many comments on these proposed rules. Most were very supportive, although many suggestions for improving the proposal were received. Comments related to specific provisions of the Participating Securities are addressed in the discussion of those respective sections of the rule.

The Small Business Equity Enhancement Act of 1992 (title IV of Pub. L. 102–366) was a mandate for a new relationship between SBA and the venture capital community. The salient feature of this new relationship is the creation of Participating Securities. These are equity-type securities with the characteristics of preferred stock or a preferred limited partnership interest.

SBA recognizes that venture capital companies usually make initial equity capital investments, manage their portfolios (making follow-on investments as necessary), and finally sell their investments as they mature, with the objective of realizing capital gains. As investments are sold, funds customarily are distributed to investors rather than reinvested.

Under this rule, as a means of financing Licensees that issue Participating Securities, SBA will guarantee the payment of Prioritized Payments on, and the Redemption Price of, the Participating Securities to an authorized Trust or pool which purchases the Participating Securities. Prioritized Payments are the equivalent of dividend payments of the Participating Securities. As an inducement for its guarantee, SBA will be entitled to a share in the profits that are generated from investments made while the Participating Securities are outstanding (Profit Participation).

Pass-through Trust Certificates evidencing rights in the Trust or pools of guaranteed Participating Securities will be sold to investors. The rights and obligations evidenced in the Trust Certificates also will be guaranteed by SBA. The proceeds of the sale of the Trust Certificates will be used to fund the Participating Securities.

SBA anticipates that the Prioritized Payments made by Licensees that issue Participating Securities normally will not be adequate to fund debt service obligations of the guaranteed Trust Certificates in the early years of the Participating Securities' existence. Accordingly, SBA will be called upon to make such payments. Over the duration of a Participating Security's life, SBA expects to be repaid most of such guarantee payments through a combination of Earned Prioritized Payments and Profit Participation. Since Prioritized Payments on Participating Securities are payable only to the extent of earnings, SBA realizes that the repayment of its guarantee payments will depend upon the ability of its Licensees to operate profitably as equity investors.

SBA understands that venture capital equity investments in Small Concerns are risky on an individual basis, and that losses on such investments frequently occur earlier than profits. It anticipates that Licensees issuing Participating Securities will incur losses in the early years of their investment cycle as investments in a limited number of portfolio concerns prove unprofitable and are written off. SBA recognizes that it must be patient in expecting profitable operations from Licensees with Participating Securities. At the same time, SBA has the responsibility to assure that publicly-guaranteed funds are administered prudently by capable managers. Accordingly, SBA has sought to formulate an economic and regulatory structure which will enhance the likelihood that Licensees participating in the program will be successful.

In issuing this final rule, SBA believes that it can fulfill the objectives of the Small Business Equity Enhancement Act of 1992 to foster a venture capital industry that is able to serve the needs of eligible Small Concerns, create or retain jobs, expand the tax base, and achieve other objectives such as commercialization of technology, supporting manufacturing firms, fostering urban and rural business development, and stimulating exports.

SBA recognizes that its guarantee of Participating Securities will be an essential factor in the decision of investors to fund Licensees, and that such investors will need to have confidence in SBA's long-term investment philosophy. While SBA intends that Participating Securities serve as patient capital, investors must

recognize SBA's special responsibilities to protect public funds and assure compliance with program objectives and regulations.

It should be noted that section 410 of Public Law 102–366 authorized inclusion in a Licensee's private capital of investments by public and private pension funds as well as limited investments by state and local governments. The form of Participating Securities has been structured with the intention of avoiding the imposition of Unrelated Business Taxable Income (UBTI) on certain tax-exempt investors. SBA believes that pension funds and other tax-exempt investors will find it advantageous to invest in SBICs using Participating Securities. Since such institutional investors historically have provided investment capital to the private venture capital industry and have acquired expertise in selecting managers and monitoring investments, SBA anticipates that SBICs will benefit from this investor expertise. SBA also hopes to benefit from the expertise of institutional investors to help assure the profitability of the Licensees that issue Participating Securities.

a. General Provisions

Proposed § 107.241 set forth general provisions for Licensees issuing Participating Securities. This section reflects SBA's effort to use marketplace dynamics to assure a successful program.

(i) Minimum Regulatory Capital

Proposed § 107.241(a) set forth minimum capital requirements for eligibility to issue Participating Securities. In general, a Licensee would be required to have Regulatory Capital of at least $10 million in order to be considered eligible to issue Participating Securities. A Licensee with less than $10 million, but not less than $5 million, in Regulatory Capital also could be eligible if it were able to demonstrate to SBA's satisfaction that if could be financially viable over the long term.

SBA received nineteen (19) comments on this provision, with some comments favoring the minimum capital requirements and others opposing them. Many of those opposed to the requirements argued in favor of a $5 million threshold, and voiced the concern that larger SBICs may not serve the needs of smaller businesses and early-stage companies.

SBA shares the concern that SBICs capitalized at over $10 million may not be oriented toward investing in smaller concerns. SBA is addressing that concern by requiring all Licensees to make a certain percentage of their investments in companies that are smaller than the maximum size permitted under the Size Rule. This requirement appears in § 107.101(i) and is more fully discussed in the Operations Rule.

In view of this requirement, SBA is comfortable with the $10 million minimum capital requirement, and feels it is warranted for the following reasons:

(1) A Licensee making venture capital type investments with Regulatory Capital of less than $10 million normally will be incurring excessively high fixed and marginal costs relative to the amount of its capital; and

(2) Successfully raising $10 million for venture capital investments constitutes a significant affirmation by the investment community of the management capabilities of a Licensee. A more detailed discussion of SBA's rationale for adopting the $10 million threshold may be found in the proposed rule at 58 FR 41856.

As stated above, SBA will consider authorizing the issuance of Participating Securities by a Licensee with Regulatory Capital of less than $10 million, but not less than $5 million, if the Licensee can show that it has a reasonable prospect of being profitable over the long term. Thus, a Licensee with Regulatory Capital of less than $10 million might qualify to issue Participating Securities if it is a subsidiary of a bank, bank holding company, or other large organization which undertakes to subsidize management expenses of the Licensee and to provide management personnel and operation support.

A Licensee with Regulatory Capital of less than $10 million also may be acceptable to SBA if it operates in a rural area or within a specific geographic area, such as a reasonably compact and focused urban area. Any such Licensee must have management with proven expertise in the types of investments proposed and must show, through its plan of operations, how it can be operated soundly and profitably over the long term without depleting its capital base through excessive overhead.

It should be noted that some readers may have misunderstood the significance of the $10 million threshold. Raising $10 million will not automatically qualify an applicant for licensing as an SBIC that will issue Participating Securities. As has always been the case, applicants for licensing must demonstrate financial viability and qualified management, regardless of the amount of their Regulatory Capital. It is possible that a license applicant with $10 million in Regulatory Capital will have such high overhead expenses or such inexperienced management that its likelihood of profitability is put into question. SBA would not issue a license under such circumstances. Under ordinary circumstances, however, it can be expected that $10 million should serve as adequate capital for licensing as an SBIC in the Participating Securities program.

(ii) Equity Capital Investments

Since no comments were received on proposed § 107.241(b), SBA is finalizing it as proposed. This section requires Licensees issuing Participating Securities to invest an amount equal to the Original Issue Price of such securities solely in Equity Capital Investments. Equity Capital Investments must be maintained at such level and may be reduced only by the amount of repayments of such Participating Securities. "Equity Capital Investments" means common or preferred stock, limited partnership interests, options, and warrants or similar equity instruments, including subordinated debt with equity features if such debt provides only for interest payments contingent upon and limited to the extent of earnings. Equity Capital Investments in the form of debt may not be amortized.

(iii) Management and Ownership Diversity

Proposed § 107.241(c) required that there be some diversity between the ownership and the management of a Licensee that issues Participating Securities. The eight comments on this provision were mixed, with some supporting the proposal as an appropriate means of preventing self-dealing, and others opposing the proposal as unduly restrictive.

SBA believes that the benefits of this proposal far outweigh any inconvenience to Licensees. It is important that Licensees issuing Participating Securities have investors who are independent of management and who have a substantial stake in the Licensee's financial performance. SBA believes that the presence of such investors will help to assure that Licensees are operated with the objective of optimizing returns and protecting the interests of all investors, including SBA. The proposal is therefore finalized without change.

Under paragraph (1) of § 107.241(c), SBA will consider the diversity requirement satisfied if at least three (3) unaffiliated shareholders or limited partners (only one is required in the case of Institutional Investors) own, in the aggregate, at least thirty percent (30%) of a Licensee or Licensee's ultimate parent entity. Such diversity

also will be deemed to be achieved if a Licensee or its ultimate parent entity is publicly traded under U.S. securities laws. The independence and ability of investors to exercise oversight is maintained by the prohibition against the delegation of voting rights contained in paragraph (2) of § 107.241(c). An exception is made for certain proxies and the use of unaffiliated advisors so as not to interfere with the routine operations of a Licensee.

(iv) Management Fees

Under proposed § 107.241(d), a Licensee issuing Participating Securities would be subject to a ceiling on its Management Expenses of 2.5% of Combined Capital (Regulatory Capital plus outstanding Leverage), plus $125,000 in the case of Licensees with Combined Capital of less than $20 million. SBA could permit a higher amount or, in the case of larger funds, require a lower amount.

SBA received sixteen (16) comments on this proposal. A frequently-appearing objection was that the regulatory provision was more restrictive than the underlying statutory provision. Another objection concerned SBA's ability to unilaterally reduce allowable Management Expenses for larger funds.

It is true that the proposal was more restrictive than the underlying statutory provision. Section 403 of Public Law 102–366 provided a ceiling on Management Expenses only for purposes of computing SBA's Profit Participation. In the proposed rule, SBA extended the ceiling to a Participating Securities issuer's actual expenditures for Management Expenses, but allowed for an amount in excess of the ceiling if there were a clearly demonstrable need. SBA felt that the Management Expenses allowed under the proposal were adequate for most Licensees and were consistent with current venture capital industry practices.

Based on the comments, SBA has reconsidered its position. Under this final rule, a Licensee issuing Participating Securities will be subject to the limits discussed above only for purposes of computing Earmarked Profits, which (as further discussed below) determine the amounts that may be allocated to Earned Prioritized Payments and to Profit Participation. See § 107.242(d). Accordingly, § 107.241(d), as finalized, no longer provides that a Licensee's actual Management Expenses are subject to percentage limits; however, the section still provides that actual Management Expenses must be approved by SBA.

It should be understood by readers new to the SBIC Program that SBA presently approves, and will continue to approve, the management compensation for all Licensees, not just issuers of Participating Securities.[4] Management compensation is but one component of Management Expenses, which includes such additional items as office expenses and office and equipment rentals. See the definition of Management Expenses in § 107.3. Depending on the particular circumstances of the Licensee, approved management compensation and Management Expenses for a larger fund may be lower, on a percentage basis, than approved amounts for a smaller fund.

This final rule also now provides that Licensees placed under "restricted operations" under § 107.262(d) are required to re-obtain SBA's approval of their Management Expenses (or, for issuers of Preferred Securities, their management compensation) at the time restricted operations are imposed.

(v) Third-Party Debt (Temporary Debt)

Proposed § 107.241(e) limited the type and amount of third-party debt that a Licensee issuing Participating Securities could incur, and required that the Licensee obtain the written approval of SBA before incurring any such debt. Under the proposal, the only third-party debt that Licensees issuing Participating Securities would be permitted to have would be "Temporary Debt" in an amount not to exceed fifty percent (50%) of Leverageable Capital. Licensees would have to pay off and remain free of all Temporary Debt for at least thirty (30) consecutive days during each fiscal year.

The fifteen (15) comments received on this provision objected to the requirement that a Licensee obtain prior SBA approval in order to incur Temporary Debt. The requirement was characterized as unduly restrictive and unnecessary. As with the comments discussed above under "Third-party Debt" (subsection 1.(e) above), concern was expressed over possible delays in SBA's response time.

SBA continues to believe that prior SBA approval of third-party debt is an important component of its administration of the SBIC Program. This is true for all Licensees, including those that issue Participating Securities. In order to unify its approach to third-party debt, SBA is finalizing § 107.241(e) so that it conforms to the general Third-party Debt provision discussed above. In other words, if an issuers of Participating Securities is in regulatory compliance and has Leverage not in excess of 1.5 times its Leverageable Capital, and if the Licensee's request is for approval of a secured line of credit which would not cause its aggregate third-party debt to exceed the Temporary Debt limitation of fifty percent (50%) of Leverageable Capital, then the Licensee's request shall be considered approved unless SBA notifies it otherwise within thirty (30) days of receiving the request. Unsecured Temporary Debt up to the permissible level of Temporary Debt shall not require prior approval.

(vi) Liquidity Requirement

Proposed § 107.241(f) established a liquidity requirement for Licensees issuing Participating Securities in order to assure that such Licensees have sufficient cash to cover their operating overhead during the ensuing year. A Licensee would have a condition of Liquidity Impairment if the Liquidity Ratio (as defined in § 107.241(f)(2)) obtained by dividing Total Current Funds Available[5] by Total Current Funds Required is less than 1.20. No Distributions could be made if they would cause a condition of Liquidity Impairment.

Few comments were received on this provision. Some opposed the concept as an unnecessary administrative burden; others recommended different weightings to some of the calculation inputs.

SBA considers this provision important and does not agree that it is burdensome to the Licensee. SBA considers it essential that Licensees maintain a level of liquid assets sufficient to meet operating expenses, make necessary follow-on investments, and allow investments to be held until they mature and can be sold in the normal course of business. Accordingly, SBA is finalizing the provision without change.

(vii) Mandatory Redemption

No comments were received on proposed § 107.241(g), which required that Participating Securities be redeemed not later than fifteen (15) years after their issue date. The provision is finalized without change. As stated in the proposed rule, the redemption date generally will be ten (10) years after the date of issue and always will be the same as the maturity date of the Trust Certificates.

[4] Licensees with outstanding Leverage must have increases in their management compensation approved before such increases are adopted. Licensees with no outstanding Leverage may have increases in their management compensation approved after the fact.

[5] Section 107.241(f)(2) includes a self-explanatory chart that shows how the respective values for Total Current Funds Available and Total Current Funds Required are to be determined.

(viii) Priority in Liquidation

No comments were received on proposed § 107.241(h), which provided that upon liquidation of a Licensee, the Redemption Price of any Participating Securities, plus any Prioritized Payments, Profit Participation and other amounts that may be due SBA, shall be senior in priority to all other equity interests of the Licensee. The provision is finalized without change.

As explained in the proposed rule, SBA recognizes that Prioritized Payments and Profit Participation are distributable only to the extent of profits on Earmarked Assets, notwithstanding the cumulative feature of Prioritized Payments. When a Licensee is liquidated, however, there can be no Distributions to investors before amounts due SBA, its agent, or Trustee are paid.

b. Computation of Earmarked Profits (Losses)

SBA received no comments on the computation of Earmarked Profits (Losses), proposed § 107.242. The provision is finalized as it was proposed, except for minor wording changes in the paragraph on Earmarked Investment Expenses. Since it should prove useful to have a complete summary of the Participating Securities regulations in one document, SBA is reprinting here the discussion on the computation of Earmarked Profits (Losses) that appeared in the proposed rule.

There are seven steps in the computation of Earmarked Profits (Losses) as set forth in § 107.242. (Please note that SBA will provide the spreadsheet templates and/or other software necessary for making the ensuing calculations.)

(i) Step 1: Determination of Earmarked Assets

Earmarked Assets are a Licensee's Loans and Investments[6] that are outstanding at the time a Licensee issues Participating Securities[7] or acquired while Participating Securities are outstanding, plus any non-cash assets given in consideration for the disposition or exchange of any such asset. Even after all Participating Securities have been redeemed, Earmarked Assets maintain such status. See § 107.242(b).

(ii) Step 2: Calculating the Earmarked Asset Ratio

This step establishes the percentage of a portfolio that is earmarked. Since a Licensee may have non-Earmarked Assets deriving from assets acquired after all Participating Securities have been redeemed, or determined under the special rules governing SBICs licensed on or before March 31, 1993 (see § 107.247), it is necessary that all Licensees calculate an Earmarked Asset Ratio (EAR) as delineated in § 107.242(c). The ratio is calculated on a weighted average basis (that is, on a month-by-month basis, which is then averaged) for the year or fraction of the year in question. For companies licensed after March 31, 1993 that have not yet redeemed any Participating Securities, EAR will equal one hundred percent (100%). The formula is:

EAR=[(EA+UPPS)/(L&I+UPPS)]×100

where:

EA=Earmarked Assets valued at cost

UPPS=Uninvested proceeds of Participating Securities

L&I=Total Loans and Investments (valued at cost).

The example that follows would apply only to companies licensed on or before March 31, 1993. Assume that such a Licensee had $15 million in Loans and Investments, issued $10 million of Participating Securities two months prior to the close of its fiscal year, and had elected to exclude its pre-existing portfolio from being Earmarked Assets (as permitted in § 107.247). The following calculations would apply:

VALUES AT CLOSE OF MONTH 1

Earmarked assets	Uninvested proceeds	Loans and investments
Zero	$10,000,000	$15,000,000 (acquired on or before 3/31/93).

If the Licensee invested $2 million from the proceeds of Participating Securities during the next month, and sold $1 million of assets for cash, the following would occur:

VALUES AT CLOSE OF MONTH 2

Earmarked assets	Uninvested proceeds	Loans and investments
$2,000,000	$8,000,000	$16,000,000

As of the close of Month 1, the Licensee's (interim) EAR was 40 percent [(0=10,000,000)/(15,000,000=10,000,000)].

As of the close of Month 2, for Month 2, (interim) EAR was 41.666 percent [(2,000,000+8,000,000)/(16,000,000+8,000,000)].

As of the close of the Licensee's fiscal year, the Licensee's EAR was 40.833 percent [(40+41.666)/2] or [(2,000,000+18,000,000)/(31,000,000+18,000,000)]. For the purposes of the calculations hereafter discussed, this Licensee's EAR is 40.833 percent.

(iii) Step 3: Ascertaining Earmarked Investment Income

Earmarked Investment Income (EII) is defined in § 107.242(d)(1) by the formula:

EII=IDA+([IIF+OI]×EAR)

where

IDA=All income directly attributable to Earmarked Assets

IIF=Interest on idle funds

OI=Other income not attributable to specific assets

EAR=Earmarked Asset Ratio

Thus, if IDA were $1,000,000 and other income not attributable to specific assets were $500,000, EII would be: ($1,000,000+($500,000×40.833%)) or $1,204,165.

(iv) Step 4: Calculating Earmarked Investment Expenses

As defined in § 107.242(d)(2), Earmarked Investment Expenses has two components—Management Expenses and non-Management Expenses.

For the purposes of the calculations in § 107.242(d)(2), Management Expenses means the lesser of (1) Licensee's approved Management Expenses multiplied by its EAR; or (2) 2.5 percent of the product of the Licensee's Combined Capital, multiplied by its EAR (plus, in the case of a Licensee whose Combined Capital is less than $20 million, an additional sum equal to the product of $125,000 and the Licensee's EAR). Expressed in formula terms, this would be:

Management Expense (ME)=0.025×(CC×EAR) for a Licensee with Combined Capital (CC) of $20 million or more.

ME = [(0.025×{CC×EAR}) + ($125,000×EAR)] for a Licensee

[6] "Loans and Investments" is a term that is defined in this rule as "Portfolio Securities, Assets Acquired in Liquidation, Operating Concerns Acquired, and Other Securities Received as set forth in the Statement of Financial Position (SBA Form 468)".

[7] A company licensed on or before March 31, 1993 may elect to exclude its entire portfolio as it existed on that date (but not less than its entire portfolio) from the category of "Earmarked Assets." In addition, if a company licensed on or before such date is refinancing outstanding Debentures by the issuance of Participating Securities, the company's entire portfolio must be included in Earmarked Assets. Special rules for such Licensees are located in § 107.247.

with Combined Capital of less than $20 million.

The second component of Earmarked Investment Expense is non-Management Expense. Some non-Management Expenses can be attributed directly to Earmarked Assets and, of course, are to be allocated to Earmarked Investment Expenses. In addition, Licensee must allocate to Earmarked Investment Expense a sum equal to the product of non-Management Expense not attributable to specific assets (specifically including interest on SBA-guaranteed Debentures) times Licensee's Earmarked Asset Ratio. See § 107.242(d)(2)(ii).

The sum of the above-described Management and non-Management Expenses constitutes Earmarked Investment Expenses.

(v) Step 5: Determining Earmarked Net Investment Income (Loss)

Subtract Earmarked Investment Expenses (step 4) from Earmarked Investment Income to determine Earmarked Net Investment Income (Loss) (step 3).

(vi) Step 6: Determining Earmarked Realized Gain (Loss) on Securities

Section 107.242(e) sets forth rules for determining gain or loss on securities that constitute Earmarked Assets (Earmarked Realized Gain (Loss) on Securities). For the purpose of determining whether a gain or a loss has been realized [8] on the sale of an Earmarked Asset, the asset's cost basis and net sales price shall be used. The asset's cost basis shall not be increased, even by capitalization of unpaid interest, except that if the basis of an investment in an unincorporated Small Concern is appropriately determined by using the equity method of accounting, the Licensee's basis may be increased by the Licensee's share of the Small Concern's income. See § 107.242(e)(3).

(vii) Step 7: Computing Earmarked Profits (Losses)

Earmarked Profits (Losses) must be computed no less frequently than annually as of the close of a Licensee's fiscal year, and at such other times as Licensee elects to make a Distribution. See § 107.242(a). The computation is simple enough: Earmarked Profits (Losses) is the sum, positive or negative, of Earmarked Net Investment Income (Loss) and Earmarked Realized Gain (Loss) on Securities. See § 107.242(f).

c. Computation, Allocation, and Distribution of Prioritized Payments

(i) Introduction

Proposed § 107.243 provided for the computation, allocation, and payment of Prioritized Payments. These payments are preferred and cumulative at the Trust Certificate Rate, which is the rate SBA guarantees to pay annually to the Trust Certificate holders. Prioritized Payments resemble dividends on preferred stock or equivalent distribution on preferred or senior limited partnership interests.

The few comments received on this portion of the proposed rule objected only to the Adjustments to the Prioritized Payments. In general, the Adjustments are additional amounts that become payable to SBA in the event the Licensee has sufficient profits. They are the result of the compounding that must be performed by a Licensee if it does not pay, at the end of its fiscal year, an amount equal to its annual Prioritized Payments. During the course of that year, SBA will have been making the interest payments as they come due under Trust Certificates issued against a pool containing the Licensee's Participating Securities. SBA's payment will be an amount equal to the Prioritized Payments on all the Participating Securities in the pool. The Licensees are not expected to be able to reimburse SBA immediately for those payments; SBA may wait years for reimbursement, and may never be reimbursed fully. The Adjustments are intended as partial compensation to SBA for the time-value of the payments the Agency makes in the interim. The Adjustments also help to lower the subsidy rate for the Participating Securities program. For these reasons, SBA feels it is important to retain the proposed concept of compounding of Prioritized Payments in this final rule. It should be emphasized that the Adjustments, like the Prioritized Payments themselves, are not due and payable unless the Licensee has sufficient Earmarked Profits to pay them.

As a reminder to the reader, the calculation of Prioritized Payments is to be performed at least annually within ninety (90) days after the end of the Licensee's fiscal year, and also at the end of any fiscal quarter for which a Distribution is contemplated. If the Licensee has cumulative Earmarked Profits, Prioritized Payments up to the amount of such profits are characterized as Earned Prioritized Payments and are to be distributed automatically within (90) days after the end of the Licensee's fiscal year, except to the extent that such Distribution would create a condition of Liquidity Impairment.

A Licensee with Participating Securities or Earmarked Assets in its portfolio is prohibited from making any Distributions that are considered to be a return on capital until all Prioritized Payments have been distributed. Before returns of capital can be made, all Earned Prioritized Payments must have been distributed. See § 107.245. We repeat in paragraphs (ii) through (vii) below, for the reader's benefit, the detailed discussion of the computation of Earned Prioritized Payments and Earned Adjustments that appeared in the proposed rule. There are no changes to the related regulatory provisions in this final rule.

(ii) Establishment of Prioritized Payment Accounts

To assist in the process of determining whether, or when, a Licensee is responsible for making payments, two Prioritized Payment accounts must be established: A Prioritized Payment Accumulation Account (AA) which is a memorandum account, and a Prioritized Payment Distribution Account (DA) which is a liability account. For the sake of simplicity, the hypothetical examples set forth in paragraphs (iii) and (iv) below illustrate the computations at the fiscal year end following the first issuance of Participating Securities.

(iii) Initial allocations to Prioritized Payment Accumulation Account

The Prioritized Payment Accumulation Account initially reflects the "accrual" (as a memorandum entry only) of Prioritized Payments. Computations involving this account always begin with the entry of a sum equal to all Prioritized Payments for the fiscal period in question. For example, if a Licensee had issued $10 million of eight percent (8%) Participating Securities at the beginning of its fiscal year, the initial amount to be added to the AA at the close of the fiscal year would be $800,000. See § 107.243(b)(1). As subsequently explained, the Adjustments referred to above may also be added to this account.

(iv) Initial Allocations to Prioritized Payment Distribution Account (DA)

The first step in determining what should be added to the DA is to ascertain cumulative Earmarked Profits (Losses). If, at the fiscal year end following the first issuance of Participating Securities, the Licensee

[8] Unrealized Appreciation or Unrealized Depreciation, as the case may be, on Earmarked Assets that are Distributed shall be recognized as if the appreciation or depreciation were realized at the time of the In-Kind Distribution. See § 107.242(3)(4), and see also § 107.245(e)(3), which relates to In-Kind Distributions.

has cumulative Earmarked Profits, that sum constitutes Distributable Earmarked Profits.

The second step is to compare Distributable Earmarked Profits with the balance in the AA. The lesser of the two is subtracted from the AA and is added to the DA. This amount now constitutes Earned Prioritized Payments. See § 107.243(c).

For example, suppose that Earmarked Profits were $20,000. Since $20,000 is less than the $800,000 of Prioritized Payments, $20,000 is subtracted from the AA and is added to the DA. At this point there would be $780,000 in the AA and $20,000 in the DA. The latter sum represents Earned Prioritized Payments and is the amount the Licensee will distribute to SBA or the Trust, unless such Distribution would cause a Liquidity Impairment. See § 107.243(c).

(v) Subsequent Allocations to Prioritized Payment Accumulation Account and to Prioritized Payment Distribution Account

Subsequent allocations to these accounts will be made similarly, except that Distributable Earmarked Profits for subsequent years are calculated by subtracting from cumulative Earmarked Profits all previous Earned Prioritized Payments and all earned Adjustments (as described below) for prior fiscal periods.

In our example, at the end of the second year following issuance of $10 million of eight percent (8%) Participating Securities, an additional $800,000 would be allocable preliminarily to the AA, bringing that account (temporarily) up to $1,580,000. If Earmarked Profits for the second year were $40,000, cumulative Earmarked Profits would be $60,000. Ignoring for the moment "earned Adjustments", Distributable Earmarked Profits for Year 2 would be $40,000. Since $40,000 is less than 41,580,000, the sum of $40,000 would be added to the DA and subtracted from the AA. Thus, at the close of Year 2, the balance in the AA would be $1,540,000 (exclusive of any Adjustments) and, assuming no Distribution of Earned Prioritized Payments had been made to SBA, the balance in the DA would be $60,000.

In making these calculations, Earmarked Losses are disregarded. Thus, if the Licensee had Earmarked Profits of $20,000 for the first year and Earmarked Losses of $100,000 during the second year, the $20,000 "obligation" already reflected in the DA would have been unaffected. See § 107.243(d).

(vi) Distributions of Prioritized Payments

With one exception, a Licensee is required to remit the balance in its DA to SBA, its agent or Trustee within 90 days after the end of the Licensee's fiscal year, or before any Distribution is made to its own investors, as appropriate. Any amount remitted to SBA is subtracted from the DA. If a Licensee has issued Participating Securities on more than one occasion, Prioritized Payments are made in order of maturity of the underlying Participating Security.

As an exception, a Licensee is excused from remitting the balance in the DA to the extent that such remittance would cause the Licensee to violate the liquidity requirement set forth in § 107.241(f). Thus, if a Licensee has Earned Prioritized Payments of $1,400,000, and a cash balance of $1,800,000, but needs to retain $1,000,000 in cash to attain the required liquidity ratio, the Licensee must remit only $800,000 to SBA. See § 107.243(c)(3)(iii). Failure to make Distributions because of insufficient liquidity does not trigger a regulatory violation.

(vii) Adjustments to Prioritized Payments

A Licensee's failure to make timely distributions of Earned Prioritized Payments in an amount equal to Prioritized Payments results in the accumulation of additional amounts which may become payable to SBA, subject to the existence of sufficient Earmarked Profits. If, at the end of any fiscal year, there is an unpaid balance in the AA, an amount equal to the average monthly balance in that account is multiplied by a rate equal to the average of the rates on new Trust Certificates (TCs) sold to the public [9] during the Licensee's fiscal year, and the product is added to the balance in the AA as a supplement to Prioritized Payments. See § 107.243(d)(1).

Similarly, if there is an unpaid balance in the DA account at the end of the Licensee's fiscal year, an amount equal to the average monthly balance in that account is multiplied by a rate equal to the average of the rates on new TCs sold to the public during the Licensee's fiscal year, and the product is added to the balance in the AA, not to the balance in the DA. See § 107.243(d)(2).

These additional amounts added to the AA are referred to as "Adjustments". Once added to the AA, the Adjustments are indistinguishable from Prioritized Payments; they are characterized as "earned" and transferred to the DA in the same manner as Prioritized Payments are characterized as "earned."

As long as unpaid Earned Prioritized Payments, including earned Adjustments, are outstanding, the Licensee must make the calculations described in this paragraph "c" as of the end of each subsequent fiscal quarter until all such amounts are paid in full. See § 107.243(c)(3).

d. Calculation and Allocation of Profit Participation

(i) Introduction

In proposed § 107.244, SBA described its right to a percentage of the profits of a Licensee issuing Participating Securities. In consideration for its guarantee of a Licensee's Participating Securities, SBA [10] has a contractual right to Profit Participation consisting of a specified percentage of the Licensee's Earmarked Profits. The percentage is determined, in part, by the ratio of outstanding Participating Securities Leverage to Leverageable Capital.

SBA received eighteen (18) comments on the subject of the Profit Participation. Most complained that the regulations should provide a mechanism for offsetting prior distributions of profits to SBA against subsequent losses of the Licensee. This so-called "levelling up" is a component of many venture capital funds, and is designed to ensure that partners ultimately receive only their agreed-upon profit shares.

SBA was aware of this issue when it drafted the proposed rule. Under the Distributions section of the preamble to the proposed rule (section 4.e.(vi)), SBA discussed the reasons for not including a level-up in the proposed rule. See 58 FR 41862. SBA believed then, and continues to believe, that Section 403 of Public Law 102–366 prohibits a recharacterization of amounts already distributed to SBA. There is no discretion on SBA's part to include a "levelling-up" provision in this final rule.

Even if a recharacterization of distributed amounts were legally permissible, SBA believes that it would be extremely difficult to calculate because of the complexity produced by changes in SBA's profit share (the Profit Participation) and its share of Distributions under §§ 107.245 (c) and (d). SBA's profit share in a Licensee is increased when new Participating

[9] SBA will publish a notice of the TC rate from time to time in the **Federal Register.**

[10] Neither the holders of TCs, nor the Trust itself has any interest in the Profit Participation to which SBA may be entitled.

Securities are issued by the Licensee and/or the Licensee's Leverageable Capital is decreased. SBA's profit share is decreased when approved increases in Leverageable Capital occur. At the same time, SBA's share of Distributions (in the form of returns on capital or returns of capital) is changed as increases or decreases occur in either the Licensee's Leverageable Capital or its Leverage outstanding. See discussion of §§ 107.245 (c) and (d) below. SBA currently does not have a mechanism that can account accurately for all these changes in order to identify what SBA's share of Distributions would have been if "losses after profits" were taken into account.

SBA also believes that there should be less need for a recharacterization of distributed amounts if the Licensee has been valuing its portfolio investments fairly, especially the determination of Unrealized Depreciation on Loans and Investments. SBA regulations require Licensees to reduce their Undistributed Net Realized Earnings by their Unrealized Depreciation on Loans and Investments in order to determine Retained Earnings Available for Distribution (READ). See § 107.3. Distributions of SBA's Profit Participation, which the commenters would like to be able to recharacterize as a return of capital, can only be made out of the Licensee's READ. Therefore, if the Licensee has not grossly underestimated its Unrealized Depreciation, the Licensee's READ and consequently its Distributions of Profit Participation to SBA should already reflect, to some degree, future realized losses. There should be reduced need for a major recharacterization of earlier distributed amounts when the later losses are actually realized.

In conclusion, in the absence of a statutory amendment allowing for a recharacterization, a satisfactory mechanism to implement the change, and a compelling justification of the need for it, SBA is finalizing the proposed rule without incorporating a level-up or recharacterization of prior distributions. SBA expects that discussions on the subject will continue between it and interested industry members and that it might at some time in the future propose a different resolution.

The method for computing, allocating and distributing the Profit Participation is described below. Although the method has been simplified from that set forth in the proposed rule, the result is identical.

In summary, § 107.244 mandates the establishment of a Profit Participation Account to reflect the allocation and distribution of the Profit Participation due SBA. The sum to be allocated is determined by multiplying the Base for Profit Participation, if positive, by the applicable Profit Participation Rate.

(ii) Computing the Profit Participation Base

The computation of the Profit Participation Base is to be made at the end of the Licensee's fiscal year and at the end of any fiscal quarter for which a Distribution is contemplated. Briefly, the Base for Profit Participation (Base) is a number equal to year-to-date Earmarked Profits (Losses) minus year-to-date Prioritized Payments and Adjustments, minus any unused loss carryforward, as determined in the manner hereafter discussed.

(iii) Determination of Unused Loss Carryforward

To determine its unused loss carryforward, a Licensee must look back to the Base computed at the end of its previous fiscal year (the "Previous Base"). If the Previous Base was zero or greater, then the Licensee's unused loss carryforward is zero. However, if the Previous Base was less than zero, then the unused loss carryfoward is equal to the Previous Base. During or at the end of its first year of operation, a Licensee has no Previous Base and, therefore, no loss carryforward.

In effect, a Previous Base which is negative reflects all prior losses and Accumulated Prioritized Payments of the Licensee, which are carried forward to offset future earnings. Conversely, a Previous Base which is positive is not carried forward because once Earmarked Profits are used as the basis for an allocation to the Profit Participation Account, they are disregarded in any subsequent allocation or computation. See § 107.244(b)(2).

Some illustrations may help clarify this concept. Assume that a Licensee had issued $10 million of 8 percent Participating Securities on July 1, 1994, the first day of its fiscal year, and had Earmarked Profits of $20,000 as of the close of the fiscal year, June 30, 1995. The Licensee's Base would be ($780,000), computed by subtracting Prioritized Payments of $800,000 for Earmarked Profits of $20,000 (the unused loss carryfoward would be zero because the Licensee had not previously computed a Base). Now assume that fiscal year 1995–96 was extremely successful and that the Licensee's Earmarked Profits for that year were $2 million. Since the Previous Base was negative, it would be the Licensee's unused loss carryforward. The new Base, therefore, would be $420,000: ([$2,000,000 current period Earmarked Profits—$800,000 current period Prioritized Payments] – $780,000 unused loss carryforward).

As a second example, assume that the Licensee had instead posted an Earmarked Loss of $20,000 during the first year that Participating Securities were outstanding. The unused loss carryforward would be $820,000. At the end of the second year, the Base for Profit Participation would be only $380,000 ([$2,000,000 – $800,000] – $820,000).

(iv) Computing Profit Participation Rates

(A) *When computation is required; general rules.* Computation of a Profit Participation Rate for the relevant fiscal period must be made at least annually or prior to any Distribution. A Licensee should use one of the two formulas, as appropriate, which are set forth in paragraphs (B) and (C), below. Except as described in paragraph (E) below, the Profit Participation Rate that any particular Licensee must use depends on the highest ratio of Leverageable Capital to Participating Securities outstanding which has ever been computed for such Licensee. This is the Participating Securities to Leverageable Capital (PLC) ratio.

(B) *Participating Securities not at any time in excess of Leverageable Capital.* Subject to the indexing described in paragraph (D) below, for a Licensee whose outstanding Participating Securities have never exceeded its Leverageable Capital, the Profit Participation Rate is equal to the PLC ratio multiplied by nine percent (9%). Thus, the Profit Participation Rate=PLC ratio×0.09. For a Licensee that has a PLC ratio equal to exactly one hundred percent (100%) of Leverageable Capital, the Profit Participation Rate is nine percent (9%); for every other Licensee described in this paragraph (B), the Profit Participation Rate is less than nine percent (9%).

(C) *Participating Securities in excess of Leverageable Capital at any time.* Subject to the indexing described in paragraph (D), for a Licensee whose outstanding Participating Securities have exceeded its Leverageable Capital, the Profit Participation Rate is equal to nine percent (9%) plus an additional percentage equal to the product of .03 multiplied by an amount obtained by subtracting one (1) from the PLC ratio. In other words, Profit Participation Rate=.09+(.03×[PLC ratio – 1]). If a Licensee has $10 million in Leverageable Capital and $15 million in Participating Securities, the PLC ratio

=1.5 and Profit Participation Rate equals 10.5 percent, .09+(.03×[1.5−1]).

(D) *Indexing.* No indexing of the Profit Participation Rate is required if, on the date the Participating Securities were issued, the yield-to-maturity rate on Treasury bonds with a remaining term of ten years (the "Treasury Rate") is exactly eight percent (8%). Otherwise, the Profit Participation Rate calculated in accordance with § 107.244(c) (2) or (3) shall be adjusted upward or downward proportionately to such Treasury Rate (that is, by the percentage, rather than the same number of percentage points or basis points, by which the Treasury Rate may be above or below eight percent (8%)).

For example, if the Treasury Rate were ten percent (10%) and the unindexed Profit Participation Rate were nine percent (9%), the appropriate indexed Rate would be 11.25 percent. Ten (10) is twenty-five percent (25%) more than eight (8); 125 percent of nine percent (9%) is 11.25 percent.

If a Licensee has issued Participating Securities on two or more occasions, any indexing of the Profit Participation Rate will be based on the average Treasury Rate for all such issuances, weighted to reflect the dollar amount of each issue and the portion of the fiscal period during which each issue was outstanding. See § 107.244(c)(4)(ii).

(E) *Approved increases in Leverageable Capital.* Computation of the Profit Participation Rate is not to be affected by any subsequent increase in Leverageable Capital, except to the extent that (1) the increase in Leverageable Capital is the result of the funding of unfunded commitments or the conversion to cash of assets previously recognized by SBA as a part of Private Capital, but not of Leverageable Capital, or (2) such increase is expressly provided for in a plan of operations previously approved by SBA. See § 107.244(c)(5).

(v) Computing Profit Participation

The amount of SBA's Profit Participation for a fiscal year or fiscal year-to-date is computed by multiplying the Base as of the end of such period by the Profit Participation Rate for such period, and subtracting from the result any amounts of Profit Participation that were paid or reserved for payment to SBA for any prior interim period during the same fiscal year.

Any computation of Profit Participation made as of the close of an interim fiscal quarter is subject to adjustment whenever any subsequent interim distributions are contemplated, and at the end of the fiscal year, in order to account for any increase in the Profit Participation Rate. If the Profit Participation Rate decreases as a result of an approved increase in Leverageable Capital, Profit Participations already computed for any interim periods shall not be adjusted. See § 107.244(d)(3).

(vi) Allocation of Profit Participation

Prior to any Distributions, and in any event within 90 days following the end of the Licensee's fiscal year, the amount of any Profit Participation calculated in accordance with § 107.244(d) shall be allocated to a Profit Participation Account. Funds equal to the amount allocated to this account shall be reserved for SBA and shall not be available for reinvestment in Small Concerns or for any other use by the Licensee; these funds shall be distributed only to SBA.

(vii) Distribution of Profit Participation

Distribution of allocated Profit Participation shall be made at the same time that profits are distributed to the Licensee's investors, either as a tax Distribution or as a return on capital.

e. Distributions

(i) General

Proposed § 107.245 set forth restrictions and other conditions on a Licensee's Distributions other than Prioritized Payments. All Prioritized Payments must be paid before any Distributions are made that are classified as a tax Distribution or a return on capital. Earned Prioritized Payments and earned Adjustments, as recorded in the DA, must be paid before any Distributions are made that are classified as returns of capital. Distributions pursuant to § 107.245 may be made only to the extent that they do not cause a condition of Liquidity Impairment. See § 107.241(f).

Comments received on proposed § 107.245 are addressed in the particular subsection (Tax Distributions, Returns on Capital, or Returns of Capital) to which such comments relate.

(ii) Tax Distributions

(A) *General.* Pursuant to proposed § 107.245(b), a Licensee that is organized as a limited partnership, S Corporation, or similar pass-through entity, could elect to make an annual Distribution from Retained Earnings Available for Distribution (READ) to each of its investors (specifically including SBA) in amounts not greater than the "Maximum Tax Liability" (as computed in paragraph (B) below) for Federal and State income taxes on the Federal taxable income imputed to each investor for that fiscal year. Since SBA is not a tax-paying entity, the amount of SBA's share of any such Distribution would be determined by multiplying the tax Distribution to all partners by SBA's "Profit Participation Rate", determined in accordance with § 107.244. Anything that SBA received as its share of a tax Distribution would be credited first against Profit Participation as described below.

Some comments warned that the Agency's interest would not be protected adequately if Licensees were permitted to make tax Distributions based on annual profits, without regard to the tax benefit that had been conferred on investors by prior years' losses. A cumulative measure of income comparable to that used for Prioritized Payments or returns on capital was recommended.

While not disagreeing with the need for protection, SBA believes that the final rule offers adequate safeguards against an unfair result. A Licensee's ability to make a tax Distribution is always dependent upon the existence of sufficient Retained Earnings Available for Distribution. Tax Distributions can only be made from a Licensee's READ, which is a cumulative measure of income. Although a Licensee may compute a Maximum Tax Liability (which is based on annual income) in excess of its Retained Earnings Available for Distribution, its tax Distribution can never exceed its READ. Thus, prior years' losses do affect a Licensee's ability to make a tax Distribution.

Furthermore, SBA has revised the proposed tax Distribution provision to clarify that to the extent a Licensee is unable or elects not to make a tax Distribution for any fiscal year within ninety (90) days following the end of such fiscal year, it shall have no right to make such Distribution at any later date. With this clarification, SBA has decided to finalize the proposal on tax Distributions.

There are two other important limitations on the right of a Licensee to make tax Distributions. There can be no unpaid Prioritized Payments and the Distribution can not cause the Licensee to have a "Liquidity Impairment".

Although § 107.245(b) refers to "tax Distributions", the amounts distributed may exceed any true tax liability (particularly for those investors that are exempt from Federal or State taxation). Other than SBA, every investor in a Licensee that is a pass-through entity is presumed conclusively (1) to be a resident, for tax purposes, of the State in which the Licensee's principal office is located; and (2) to be liable to pay Federal and State income taxes at the highest marginal tax rates applicable to

each category of income (such as ordinary income as opposed to capital gains). If individuals are taxed at a higher rate than corporations, every investor will be presumed conclusively to be an individual even if actually a corporation or a pension fund. See § 107.245(b).

(B) *Computation of tax Distribution to Investors.* The maximum amount potentially distributable to all investors (including SBA) is determined by multiplying the aggregate amounts of ordinary income and capital gains imputed to investors by the highest combined marginal Federal and State tax rates applicable to each category, taking into account the deductibility of State taxes when computing Federal taxes. Local taxes (for example, county and city taxes) are disregarded for this purpose.

By way of illustration, assume that at the end of the Licensee's first fiscal year, $1,000 in ordinary income had been imputed to all investors (including tax-exempt organizations). If the highest rate of Federal tax on ordinary income is thirty-five percent (35%) and the highest rate of State tax on ordinary income is five percent (5%), it is conclusively presumed that investors will have to pay $50 in State income taxes on the $1,000 in the Licensee's hands. But since the $50 payable to the State is deductible from the investors' Federal taxable income, their Federal income tax liability is based on only $950, and is therefore equal to $332.50. The maximum amount that may be distributed to investors (including SBA) pursuant to § 107.245(b) would be $332.50 plus $50.00 or $382.50 (not $400, which would be forty percent (40%) of $1,000).

The proposed rule incorrectly suggested that SBA's share of the tax Distribution was in addition to the tax Distribution to investors as computed above. SBA is here clarifying that, in accordance with section 403 of Public Law 102–366, the tax Distribution to investors as computed above includes SBA's tax Distribution. In other words, the amount calculated as the tax Distribution for all investors is not available for distribution to all non-SBA investors; SBA's portion must be deducted for distribution to SBA.

(C) *Computation of tax Distributions to SBA.* The amount to be remitted to SBA is computed by multiplying the total tax Distribution as computed above by the Profit Participation Rate computed in accordance with § 107.244(c). The amount of such tax Distribution to SBA shall be subtracted from the Profit Participation Account referred to above.

(iii) Returns on Capital

(A) *General.* Proposed § 107.245(c) established requirements for all Distributions in the form of returns on capital and some Distributions in the form of returns of capital. The proposal provided that after making all Prioritized Payments and any tax Distributions, a Licensee with READ would be required, within 90 days following the close of its fiscal year (or in its discretion, a fiscal quarter), to make Distributions under this section to its investors and SBA to the extent that they would not cause a Liquidity Impairment. In appropriate circumstances, SBA could waive this requirement. All such Distributions to investors must be made from READ (and would be returns on capital); Distributions to SBA may or may not be from READ (and may be returns on capital or returns of capital).

A number of comments indicated dissatisfaction with the requirement that Distributions be made within 90 days of the Licensee's fiscal year end. They argued that it can often be imprudent for a Licensee to distribute all of its profits, and expressed concern over potential delays in obtaining waivers from SBA.

SBA is particularly sympathetic to issues affecting the prudent management of Licensees. The Liquidity Impairment test itself is imposed on all Distributions to ensure that Licensees are prudent managers of their cash flows. Still, SBA recognizes that prudent management of cash flow and investments means more than merely satisfying the Liquidity Impairment test, and that there will be times when a Licensee should refrain from distributing all profits. While SBA believes that the waiver provision will help to prevent the imprudent distribution of a Licensee's profits, it agrees with the need for prompt consideration of waiver requests.

In order to assure Licensees that requests for prior approval will be processed on a timely basis, the final rule provides that the Licensee's request for prior approval will be considered approved unless SBA notifies it otherwise within thirty (30) days of receiving the request. All requests for prior approval should be accompanied by sufficient information for SBA to make an informed decision.

SBA has concluded that Licensees may need more than ninety (90) days after their respective fiscal year-ends to calculate and make Distributions under § 107.245(c). Accordingly, this final rule provides that a Licensee is required to make such Distributions within 120 days of the end of its fiscal year.

Each Licensee that expects to need prior approval under § 107.245(c) should make sure its request is received by SBA before the ninetieth day after its fiscal year end so that SBA is able to respond before the arrival of the 120th day, when Distributions must be made. SBA believes that with the addition of a definitive thirty-day response time, Licensees should be able to plan for their needs and yet meet the requirements of the regulation.

The balance of § 107.245(c) is finalized as it was proposed. It provides that while the dollar amount of Profit Participation is determined by formula according to the ratio of Participating Securities to Leverageable Capital, the actual amount to be distributed to SBA when there is a return on capital to private investors is a function of the ratio of total Leverage (Debentures, and Preferred Securities, and Participating Securities) to Leverageable Capital. See § 107.245(c).

As with the proposed rule, if SBA determines that the value of the Licensee's assets are materially overstated and if SBA provides the Licensee with timely notice of such determination in advance of a proposed Distribution, SBA reserves the right to restrict Distributions.

Distributions paid to SBA under § 107.245(c) are applied in the following sequence:

(i) Profit Participation;

(ii) Dividends or equivalent distributions on Preferred Securities;

(iii) Redemption or prepayment of outstanding Participating Securities;

(iv) Redemption or prepayment of outstanding Preferred Securities; and

(v) Repayment of principal of outstanding Debentures. If there are restrictions on prepayment of outstanding Debentures, that part of SBA's share of a Distribution that is to be applied toward such prepayment shall be deposited in an escrow account on such terms and conditions as SBA may prescribe.

It is noted that Distributions to SBA will be made from READ only to the extent of Profit Participation and dividends or equivalent distributions, if any, on Preferred Securities. To the extent that a Distribution is applied as a repayment or redemption of Leverage, it shall not reduce READ.

(B) *Computation of SBA's share.* As in the proposed rule, if outstanding Leverage is more than two hundred percent (200%) of Leverageable Capital, SBA's share of any Distribution under § 107.245(c) shall be in the ratio of Leverage to Leverageable Capital. In other words, if a Licensee has outstanding Leverage equal to three

hundred percent (300%) of Leverageable Capital, SBA's share shall be ¾ or seventy-five percent (75%) of any such Distribution and SBA would be entitled to $3 for every $1 distributed to other investors. If outstanding Leverage were two hundred fifty percent (250%) of Leverageable Capital, SBA would be entitled to $2.50 for every $1 distributed to other investors.

If outstanding Leverage is more than one hundred percent (100%) of Leverageable Capital, but not more than two hundred percent (200%), SBA's share of any such Distribution shall be equal to the aggregate shares of all other investors. For every $1 distributed to other investors, SBA shall receive $1.

If outstanding Leverage is not more than one hundred percent (100%) of Leverageable Capital, SBA's share of any such Distribution shall be a percentage equal to the Profit Participation Rate.

(iv) Returns of Capital

Under this heading, it is appropriate to discuss comments received regarding the definition of "Retained Earnings Available for Distribution" (READ). Any changes in that definition would affect the allocation of Distributions between returns on capital and returns of capital for companies with Participating Securities. It should be noted, however, that READ is a defined term which applies to all Licensees. Any change in the definition would actually have a more significant effect on Licensees without Participating Securities because they are subject to much stricter limitations on their ability to return capital to investors.

In general, the comments expressed the opinion that READ should include Unrealized Appreciation as an offset to Unrealized Depreciation. In other words, READ would be defined to mean Undistributed Net Realized Earnings less net Unrealized Depreciation.

SBA understands the arguments of the industry, including issues of fairness and good faith, but remains unconvinced. As a general rule, the portfolio valuation process is not sufficiently reliable to allow Unrealized Appreciation to be a component of READ without introducing an undue risk of premature distributions. While the calculation of Capital Impairment allows for an offset of Unrealized Appreciation against Unrealized Depreciation, and even gives credit against realized losses for some net Unrealized Appreciation, Capital Impairment and READ serve different purposes in the SBIC Program. The former is a regulatory measure of financial health; the latter is the basis for distributing cash out of the company. Accordingly, SBA intends to retain the conservative measure of READ in its final rule, defining READ to mean Undistributed Net Realized Earnings less Unrealized Depreciation.

SBA recognizes that there may be occasions when otherwise unauthorized distributions should be approved. A Licensee may request SBA's prior approval to make a distribution in excess of READ in accordance with the provisions of § 107.1201. In considering such requests, SBA will consider all relevant factors, including the existence of Unrealized Appreciation.

Since there were no other comments on § 107.245(d), SBA is finalizing it without any other change. It provides that after paying all Earned Prioritized Payments including earned Adjustments in the DA, and all allocated Profit Participation, and provided the Licensee does not have a condition of Capital Impairment, a Licensee that has either outstanding Participating Securities or Earmarked Assets in its portfolio may return capital to its investors and SBA, pursuant to the terms set forth in § 107.245(d). This provision allows an exception to § 107.802, which prohibits Licensees from distributing capital in excess of two percent (2%) per year without the prior written approval of SBA, subject to certain restrictions. However, unless SBA decides otherwise on a case-by-case basis, any such Distribution shall be subject to the liquidity requirement in § 107.241(f).

Generally, Distributions in the form of returns of capital shall be made to SBA and private investors in the ratio of Leverage to Leverageable Capital as of the date of the proposed Distribution. For example, if outstanding Leverage is equal to three hundred percent (300%) of Leverageable Capital, SBA's share will be $3 for every $1 distributed to the private investors.

If, however, a Licensee has a Capital Impairment Percentage greater than zero, the relative shares of SBA and the private investors must be computed differently. In such a case, Leverageable Capital for the purposes of § 107.245(d) is deemed to be Leverageable Capital multiplied by a percentage equal to the difference between one hundred percent (100%) and the Licensee's Capital Impairment Percentage. Assuming a Licensee had $10,000,000 of Leverageable Capital and a Capital Impairment Percentage of forty-two percent (42%), the Licensee's Leverageable Capital for purposes of this computation will be deemed to be $5,800,000 ([100% − 42%] × [$10,000,000]).

The proceeds of SBA's share of any capital Distribution shall be credited in the manner prescribed for returns on capital under § 107.245(c), as set forth in § 107.245(c)(5).

(v) In-Kind Distributions

No comments were received on the subject of In-kind Distributions, proposed § 107.245(e). The provision is therefore finalized in the form in which it was proposed. Under § 107.245(e), Distributions of READ or of capital need not be in cash, but may be in the form of portfolio securities, subject to certain restrictions. The securities to be distributed must be Publicly Traded and Marketable, as defined in § 107.3, at the time of Distribution.

At the time a corporate Licensee declares an In-kind Distribution, or an Unincorporated Licensee actually makes one, the Licensee must impute a gain or loss to the securities in question, determined as of the date of the declaration or distribution, as the case may be. Such imputed gain or loss shall be used to calculate Earmarked Profits pursuant to § 107.242(e) as if it were a realized gain or loss.

All Distributions of securities that constitute part of an In-kind Distribution must be made on a pro-rata basis to each investor, including SBA, as if the securities previously had been converted to cash and the proceeds constituted the entire Distribution. A Licensee may not distribute a disproportionate percentage of the stock of company A to investor X and a disproportionate share of the stock of company B to investor Y, even if the values of the shares of A and B are equal.

SBA's share of an In-kind Distribution shall be deposited with the Central Registration Agent (CRA) unless SBA and the Licensee agree that the Licensee will dispose of SBA's share of such securities. If the Licensee disposes of SBA's share of securities, it shall remit the proceeds promptly to SBA or to SBA's designated agent or Trustee.

f. Post-Redemption Obligations

No comments were received on proposed § 107.246, which described the continuing obligations of Participating Securities issuers after their Participating Securities have been redeemed. The section is finalized without change, except to clarify that post-redemption Distributions of Accumulated Prioritized Payments are to be computed and paid on a quarterly basis, but otherwise in the same manner as before redemption.

If, after redeeming all of its outstanding Participating Securities, a Licensee has both Earmarked Assets in its portfolio and an unpaid outstanding

balance in the Prioritized Payment Accumulation Account (AA), the Licensee remains "obligated" to determine, at the end of each fiscal quarter, whether any Prioritized Payments have become Earned Prioritized Payments and to distribute such amounts to SBA in accordance with § 107.243. See § 107.246(a). After the last Earmarked Asset has been disposed of, and any resulting Earned Prioritized Payments paid to SBA, the Licensee is under no further obligation to pay the remaining balance, if any, in the AA. See § 107.246(b).

Section 107.246(c) overrides the language of § 107.245(e) (In-kind Distributions) in cases involving In-kind Distributions to be made after redemption of all Participating Securities if there are also unpaid Prioritized Payments. Under § 107.246(c), no In-kind Distributions of Earmarked Assets may be made unless SBA is paid a sum equal to the full amount of the unpaid Prioritized Payments or the full amount of Unrealized Appreciation on the Earmarked Assets in question, whichever is less. Subject to this rule, a Licensee that has fully redeemed its Participating Securities may distribute Earmarked Assets that are not Publicly Traded and Marketable if it has SBA's prior written consent to such Distribution and to the valuation assigned by the Licensee.

g. Special Rules for Companies Licensed On or Before March 31, 1993

(i) General

SBA did not receive any comments on proposed § 107.247, the special rules for companies licensed on or before March 31, 1993. The section is therefore finalized without change. It provides that a company licensed on or before March 31, 1993 that thereafter applies for SBA's guarantee of its Participating Securities must meet certain procedural requirements not applicable to other Licensees. These companies are also afforded certain exemptions or options not available to companies licensed after March 31, 1993. See § 107.247. The details are set forth below.

(ii) Special Requirements

When applying for SBA's guarantee of a first issuance of Participating Securities, any company licensed on or before March 31, 1993 must submit:

(a) A valuation report for each portfolio asset as of the date of the financial statements that accompany the application, and as of the end of each of the preceding three years, and

(b) A copy of each portfolio concern's last annual report and/or fiscal year-end financial statements, and most recent interim financial statements. See § 107.247(d). This information is required in addition to the financial information that all Licensees, including companies licensed after March 31, 1993, are required to submit in connection with an application for SBA's guarantee of their Participating Securities.

If the Licensee has negative Undistributed Realized Earnings and/or a net Unrealized Loss on Securities Held, SBA may make its approval of the Licensee's request for a guarantee of Participating Securities contingent upon a quasi-reorganization in accordance with generally accepted accounting principles. See § 107.247(d)(2).

If the financial statements of the Licensee submitted with the application are interim financial statements, the Licensee shall have a limited scope audit performed by its SBA-approved independent accountants. These accountants shall use whatever auditing procedures are necessary to enable them to express an opinion on the Licensee's Statement of Financial Position and the accompanying Schedule of Investments.

(iii) Refinancing of Debentures

Subject to the two following conditions, a company licensed on or before March 31, 1993 may use part or all of the proceeds of Participating Securities to repay or prepay Debentures outstanding on that date. The Licensee must demonstrate to SBA that it has outstanding Equity Capital Investments, valued at cost, in an amount equal to the amount of Participating Securities that would be used to refinance the outstanding Debentures that are to be repaid or prepaid. The Licensee also may not elect to exclude any of its pre-existing portfolio from the category of Earmarked Assets.

A Licensee that pays or prepays an outstanding Debenture after it has issued Participating Securities is presumed to have used the proceeds of the Participating Securities for this purpose unless it can demonstrate the availability of other funds to pay the principal amount of the Debenture in question. See § 107.247(a).

(iv) Exclusion of Pre-Existing Portfolio Assets

Unless a Licensee intends to use part or all of the proceeds from the issuance of Participating Securities to repay or prepay a Debenture outstanding on March 31, 1993, it may elect, when its first application for SBA's guarantee is submitted, to exclude all, but not less than all, portfolio assets outstanding on March 31, 1993 from the category of Earmarked Assets. In such event, SBA is not obligated to extend its guarantee if it concludes that exclusion of the Licensee's March 31, 1993 portfolio would significantly decrease SBA's chances of obtaining a satisfactory return on its guarantee.

5. Financing by Use of SBA Guaranteed Trust Certificates

Proposed § 107.250 was a recodification of existing § 107.201(c), revised to include the new Participating Securities. No comments were received on the proposal, which is therefore finalized without substantive change.

6. Conditions Affecting Good Standing of Leveraged Licensees

a. Introduction

SBA received forty-three (43) comment letters concerning SBA's proposed remedies for regulatory violations by Leveraged Licensees (§§ 107.261 and 107.262). SBA had proposed to separate the remedies for violations by issuers of Debentures and Preferred Securities (§ 107.261) from the remedies for violations by issuers of Participating Securities (§ 107.262). The comments supported the distinction made between Debentures and Participating Securities. The suggestion that remedies be different for Preferred Securities and Participating Securities, however, was opposed by Specialized SBICs. These Licensees objected to the characterization of Preferred Securities as more akin to Debentures than Participating Securities. They argued that the Preferred Security, which has attributes of both debt and equity securities, should be treated as an equity security for purposes of the remedies section. They expressed concern that if Preferred Securities continue to carry the same remedies as Debentures, tax-exempt entities such as pension funds will refrain from investing in Specialized SBICs in order to avoid incurring Unrelated Business Taxable Income (UBTI).

SBA expresses no opinion as to whether tax-exempt entities investing in Specialized SBICs that issue Preferred Securities would incur UBTI as a result of SBA's former remedies (former § 107.203) or its proposed remedies (proposed § 107.261). Nevertheless, SBA believes that there is sufficient justification for treating Preferred Securities as if they were an equity-type security and relocating them into the Participating Securities remedies section (§ 107.262). The rule is finalized with this change.

The overall structure of the remedies sections remains otherwise intact. In order to maintain the separation between the two sections on remedies, no cross-default provisions are provided between Debentures, on the one hand, and Preferred Securities and Participating Securities, on the other. If a Licensee has both Debentures and Participating Securities, a default under the former will not automatically trigger a "default" under the latter, and vice versa.

b. General Conditions and Remedies

Many comments on the proposed remedies sections objected to the requirement that all Licensees issuing Leverage after publication of this final rule amend their articles of incorporation or partnership agreements to indicate consent, in advance, to SBA's right to require the removal of officers, directors, or general partners and to the appointment of SBA or its designee as receiver of the Licensee for the purpose of continuing to operate the company. See § § 107.261(f) and 107.262 (b) and (c). Such remedies would only take effect upon the occurrence of certain specified violations involving, for the most part, fraudulent activities or willful actions.

The principal effect of the consent to a receivership would be that SBA would be entitled to the receivership promptly, as a matter of right. Except upon the occurrence of an automatic event of default under a Debenture (see § 107.261(b)), Licensee's consent would not include consent to a receivership for the purpose of liquidating the company.

The comments objected strongly to the consent provision, particularly as it relates to Debenture issuers (§ 107.261(f)). They recommended that SBA rely upon its current statutory authority for removal of management and/or the appointment of a receiver, which allows a Licensee the opportunity to challenge, in advance, SBA's intended action. Unfortunately, SBA has found that SBICs have used that opportunity to delay the availability of SBA's remedy while they file for protection under Federal bankruptcy laws.

SBA looked carefully at the specific violations that could trigger the advance consent remedies. The Agency is convinced that, with one small exception, the advance consent is appropriate for the very serious nature of the defaults in question.

The one exception is the payment default by issuers of Debentures (§ 107.261(c)(7)). SBA intends to continue its customary practice of affording Licensees an opportunity to cure payment defaults. The proposed rule would have permitted SBA to use its remedial powers before allowing the Licensee an opportunity to cure its payment default. Accordingly, SBA is moving the default referred to as "Failure to make payment" from the category of non-curable defaults (§ 107.261(c)) to the category of curable defaults (§ 107.261(d)).

With this change, a Licensee issuing Debentures after the effective date of this rule will be required to consent in advance to the forced removal of management and the appointment of an operating receivership for the following events: fraud, fraudulent transfers, willful conflicts of interest, willful noncompliance, repeated events of default, transfer of control of the Licensee, uncured excessive fees, uncured improper Distributions and uncured payment defaults.

These consent provisions will not apply to any Licensee which only has Leverage issued prior to the effective date of this final rule. Prospectively, however, the consent will be incorporated in all newly-issued Debentures, Preferred Securities, and Participating Securities. As a result, for Licensees with Leverage issued both before and after the effective date of this rule, the Licensee will be deemed to have consented to a receivership upon the occurrence of a default under Leverage issued after such date, but not if the default is only under Leverage issued before such date.

SBA also is making clear in this final rule that while the Agency determines appropriate cure periods for curable violations on a case-by-case basis, the cure period under § 107.261 or § 107.262 will never be less than fifteen (15) days. As with the proposed rule, an opportunity to cure is made available in the final rule under §§ 107.261(d) and 107.262(c). In response to comments from Licensees, this final rule also affords an issuer of Participating Securities or Preferred Securities an opportunity to cure before being placed under "restricted operations." See § 107.262(d).

SBA does not agree with the recommendation in some comment letters that, in the case of bankruptcy, voluntary assignment for the benefit of creditors, and transfers of control, Licensees issuing Participating or Preferred Securities still should have the opportunity to remove the responsible party and/or otherwise effect a cure before SBA can use its remedial powers. SBA believes strongly that if one of these violations occurs, the Agency must be free to exercise its remedies as rapidly as possible, since time may be of the essence in preserving any value left in the company.

SBA is concerned that it may have risked ceding too much of its regulatory responsibility in formulating the proposed remedy for Capital Impairment for Participating Securities issuers (and now Preferred Securities issuers) under § 107.262(d)(3), which remedy may not be adequate in the case of "extreme" Capital Impairment. The remedy proposed for Capital Impairment was to place the Licensee under restricted operations, a status which allows SBA to control the flow of money in and out of the Licensee until the violation is cured. This is appropriate for Capital Impairment levels of under one hundred percent (100%), when a Licensee's Regulatory Capital (but not SBA's investment) has essentially been lost. When Capital Impairment equals or exceeds one hundred percent (100%), SBA believes it must have the ability to take necessary action to protect its investment.

Since SBA considers Capital Impairment of at least one hundred percent (100%) as equivalent in risk to actual insolvency because it means that the Licensee has lost one hundred percent (100%) of its Regulatory Capital, the remedies available for a Licensee's insolvency will now be available for extreme Capital Impairment. These remedies include Licensee's consent to the forced removal of management and/or the appointment of a receiver for the purpose of continuing to operate the company. Accordingly, in this final rule, a provision for extreme Capital Impairment is added to the insolvency default. Since issuers of Participating Securities can be expected to have high Capital Impairment during the earlier years of the security's life, with the impairment level declining as later profits are taken, such Licensees will be exempted from the extreme Capital Impairment provision until the end of the eighth (8th) year following the Licensee's initial issuance of Participating Securities.

A Licensee with extreme Capital Impairment will be afforded an opportunity to cure such impairment only if it has not already been afforded an opportunity to cure a lesser degree of Capital Impairment under § 107.262(d)(3). In other words, SBA does not intend to permit a second cure period if a Licensee has failed to cure during its prior opportunity.

The remaining provisions in the remedies sections are finalized as proposed. A more detailed discussion of the violations and associated remedies for the different types of Leverage

securities is provided in paragraphs c. and d. below.

c. Licensees With Outstanding Debentures; Events of Default

As finalized, § 107.261 will apply to all Licensees issuing Debentures after the effective date of this rule. As with the former regulation (§ 107.203), all such Licensees will be deemed to have consented to the remedies provision in effect on the date of issuance of Debentures as if such remedies were fully set forth in the Debentures. Such remedies include, but are not limited to, a right to acceleration or redemption of the Debentures and the establishment of a receivership with SBA or its designee as receiver.

As with the proposed rule, § 107.261 sets forth three (3) categories of defaults or violations that could result in the acceleration of a Licensee's outstanding Leverage and the appointment of SBA as receiver of the Licensee. The first such category, set forth in § 107.261(b), consists of three (3) events that automatically accelerate all outstanding Leverage without notice or demand to the Licensee, and allow SBA to apply for receivership of the Licensee without Licensee's objection.

The events in question are insolvency, a voluntary assignment for the benefit of creditors, and the filing of a voluntary or involuntary petition for relief under the Bankruptcy Code. A Licensee is insolvent for purposes of this regulation and § 107.262(b) if its liabilities exceed its assets or if it is unable to pay its debts as they come due, even if its assets exceed its liabilities at the time.

Under the second category of defaults, upon written notice, SBA may demand immediate repayment or redemption of all outstanding Debentures, or take any other action permitted under the Act. See § 107.261(c). As finalized, nine (9) defaults are included in this category, all of which include an element of either willfulness or actual fraud. No opportunity to cure the default will be afforded the Licensee. Moreover, for six (6) of the defaults in this category the Licensee already will have consented to SBA's right to require the Licensee to replace officers, directors, or general partners with persons approved by SBA, and to SBA's appointment as receiver for the purpose of continuing Licensee's operations. See § 107.261(f). It should be noted that the written notice contemplated under § 107.261(c) is notification by SBA that the Licensee's Leverage must be immediately repaid or redeemed, not a notice that SBA will make such a demand in the future.

With respect to the third category of nine (9) violations or defaults, SBA will afford the Licensee the opportunity to cure its violations. See § 107.261(d). "Failure to make payment" has been moved to this section of the regulations, and is now a curable default. As discussed above, SBA will never require that a default be cured in less than fifteen (15) days. If the Licensee fails to cure to SBA's satisfaction, SBA may accelerate and/or, in the case of three (3) of the violations, pursue the other remedies discussed in the previous paragraph. See § 107.261(f).

Section 107.261(e) authorizes SBA to impose a limited sanction on Licensees that repeatedly fail to comply with one or more "non-substantive" provisions of the Act or the regulations. Such Licensees will be denied additional Leverage, and also may be required to take actions necessary to come into full compliance. If, under such circumstances, a Licensee were to fail to take the steps necessary to accomplish the remedial actions required by SBA, such Licensee's Debentures could be accelerated, or other remedies, including a receivership, could be instituted. See § 107.261(c)(7).

SBA is repeating here the guidance it provided in the proposed rule regarding the distinction between "substantive" and "non-substantive" provisions of the Act and the regulations promulgated under it. SBA considers each of the provisions of the Act and the regulations to have an important purpose. Even a regulation as seemingly minor as the one that requires all Licensees to maintain a listed telephone number and regular business hours serves a significant purpose: Licensees should be accessible to their communities, not just their friends. An unlisted telephone number or irregular business hours, in the absence of other violations, should not be equated with more serious violations, however. Thus such violations are not as significant or "substantive" as are violations due to unacceptably high levels of capital impairment or financings that are tainted by conflicts of interest. Accordingly, phone listing and business hour requirements will be characterized as "non-substantive", as will other housekeeping-type requirements. All other requirements under the Act and the regulations, specifically including the filing of required financial and disclosure forms with SBA, will be considered "substantive".

d. Licensees With Outstanding Participating Securities and/or Preferred Securities; Conditions Affecting Licensee's Good Standing

As discussed above, SBA is extending the reach of § 107.262 to cover violations under Preferred Securities in addition to those under Participating Securities. As finalized, § 107.262 will apply to any Licensee that issues Participating Securities or, after the date hereof, Preferred Securities. It will continue to apply until the Licensee repays or redeems its Preferred Securities, or repays or redeems its Participating Securities and sells or otherwise liquidates its Earmarked Assets.

Section § 107.262 sets forth four (4) categories of events that would affect prejudicially a Licensee's good standing. The remedies available to SBA under this section, and the Licensee's consent to such remedies, are required to be set forth in the articles of incorporation or partnership agreement of the Licensee prior to its issuance of Participating Securities or, after the effective date of this rule, Preferred Securities.

The first category of events set forth in § 107.262(b) consists of six (6) events, the occurrence of any of which will permit SBA to take certain action. If the offending Licensee is a corporation, SBA can, upon notice to the Licensee, require the Licensee to replace, with individuals approved by SBA, one or more of its officers and/or a sufficient number of its directors to constitute a majority of the board. If the offending Licensee is a partnership, SBA can, upon notice to the Licensee, require the removal of the responsible party and/or require replacement of the general partner by a new general partner selected by the Licensee but approved by SBA. Alternatively, or in addition to the remedies just described, SBA can apply for the institution of an operating receivership, with SBA or its designee as receiver. As in the case of Debenture Leverage, Licensees with Participating Securities or Preferred Securities will be deemed to have consented to such receivership.

Section 107.262(c) lists three (3) events with remedies identical to those provided under § 107.262(b). SBA would have the right to avail itself of such remedies only if the Licensee failed to remove the person(s) identified by SBA as responsible for the violation and/or to cure the violation within a time period of not less than fifteen (15) days, as determined by SBA. One of the three (3) events in this category is the willful or repeated noncompliance by the Licensee with the substantive provisions of the Act or regulations. Repeated noncompliance should be understood to mean an additional violation of a statutory or regulatory provision after the Licensee has been notified of the initial violation. If a Licensee willfully distributes amounts

in excess of Distributions permitted by SBA, such action will constitute willful noncompliance under § 107.262(c), not merely an "improper distribution" under § 107.262(d).

Section 107.262(d) lists eleven (11) events, the occurrence of any of which will allow SBA, on written notice to the Licensee, to take certain action aimed at controlling the flow of money in and out of the Licensee until such time as the Licensee were to cure the event(s) to SBA's satisfaction. SBA may prohibit Distributions to parties other than SBA, its agent or Trustee. SBA also may prohibit the Licensee from investing in any Small Concern which it is not currently financing unless it were legally bound to make such investment. SBA may require that any unfunded commitments to invest in the Licensee be funded as soon as possible. If the Licensee fails to comply with the restrictions imposed by SBA (as described above), SBA can apply for the institution of an operating receivership with SBA or its designee as receiver, again without any objection from the Licensee. As mentioned above under the discussion of Management Expenses, Licensees placed under restricted operations will be required to re-obtain SBA's approval of their Management Expenses or, in the case of Preferred Securities issuers, their management compensation.

Section 107.262(e), regarding repeated non-substantive violations, corresponds to § 107.261(e), previously discussed. If a Licensee fails to take the steps necessary to accomplish the remedial actions required by SBA under § 107.262(e), SBA may take the actions described in the preceding paragraph to control the flow of money in and out of the Licensee.

e. Non-Waiver

No comments were received on proposed § 107.263, which is a recodification and amplification of the non-waiver provision formerly found in § 107.203(b)(5). It has been and will continue to be SBA's policy to attempt to resolve all problems with a Licensee before taking formal remedial action. Section 107.263 clarifies that if SBA does not resort to the full measure of the remedies available under §§ 107.261 and 107.262, or does so only after a delay, SBA will not be deemed to have waived its right to pursue such remedies in connection with either the original default or any subsequent default.

Compliance With Executive Orders 12866, 12612 and 12778 and the Regulatory Flexibility and Paperwork Reduction Acts

Executive Order 12866 and Regulatory Flexibility Act

This final rule will be a significant regulatory action for purposes of E.O. 12866 because it will have an annual effect on the economy of more than $100 million. For purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it also will have a significant economic impact on a substantial number of small entities.

This final rule is being adopted pursuant to a statutory mandate (Section 415 of Pub. L. 102–366) which requires SBA to promulgate regulations implementing The Small Business Equity Enhancement Act of 1992.

Prominent among the statutory provisions implemented by this final rule is the creation of a new class of SBA-guaranteed securities (Participating Securities), as further described in this rule. The potential benefits of this final rule, and in particular the Participating Securities provisions, include attracting new capital into the SBIC Program from a variety of sources. This new capital, together with SBA Leverage, will substantially exceed $100 million per year and ultimately will be invested by SBICs in eligible small business concerns.

Financing small concerns is consistent with the Administration's goal to encourage the formation of new businesses and the growth of existing businesses. While it is not possible to quantify the anticipated benefits of this regulatory action, it is expected that the availability of new capital to small businesses will result in a substantial number of new jobs and associated increases in payroll, corporate and capital gains tax revenues.

The potential costs of this regulation cannot be quantified or estimated. A portion of the cost to the government of administering the Participating Securities program is expected to be offset by the two percent (2%) user fee imposed on Licensees issuing such securities. Potential costs of this regulation to Licensees can not be quantified; however, no Licensee is ever require to issue Participating Securities or any other form of Leverage.

There are no reasonably feasible alternatives to this final rule that would accomplish the intent and direction of Title IV of Public Law 102–366.

Executive Order 12612

SBA certifies that this final rule will have no Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Executive Order 12778

SBA certifies that this final rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of E.O. 12778.

Paperwork Reduction Act

For purposes of the Paperwork Reduction Act, 44 U.S.C., ch. 35, SBA certifies that this final rule will impose no additional reporting or recordkeeping requirements.

[Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies]

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs-business, Reporting and record-keeping requirements, Small businesses.

For the reasons set forth above, part 107 of title 13, Code of Federal Regulations is amended as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for part 107 is revised to read as follows:

Authority: Title III of the Small Business Investment Act, 15 U.S.C. 681 *et seq.*; 15 U.S.C. 687(c); 15 U.S.C. 683; 15 U.S.C. 687d; 15 U.S.C. 687g; 15 U.S.C. 687b; 15 U.S.C. 687m, as amended by Pub. L. 102–366.

2. Section 107.1 is amended by adding at the end the following two sentences, to read as follows:

§ 107.1 Scope of Part 107.

* * * Provisions of this part which are not mandated by the Act shall not supersede existing State law. A party claiming that a conflict exists shall submit an opinion of independent counsel, citing authorities, for SBA's resolution of the issues involved.

3. Section 107.3 is amended by revising the definitions for "Leverage" and "SBA" and by adding additional definitions, in alphabetical order, to read as follows:

§ 107.3 Definition of terms.[2]

Accumulated Prioritized Payments means Prioritized Payments which are not payable as of any given date because the Licensee has insufficient cumulative Earmarked Profits. It is the aggregate of cumulative Prioritized Payments less Earned Prioritized Payments.

* * * * *

[2] Terms defined in this section are capitalized hereafter.

Affiliate or Affiliates has the meaning set forth in § 121.401.

* * * * *

Central Registration Agent or *CRA* means one or more agents appointed by SBA for the purpose of issuing TCs and performing the functions enumerated in § 107.250(b) and performing similar functions for Debentures and Participating Securities funded outside the pooling process.

* * * * *

Combined Capital means the sum of Regulatory Capital and outstanding Leverage.

* * * * *

Debentures means debt obligations issued by Licensees pursuant to section 303(a) of the Act and held or guaranteed by SBA.

* * * * *

Distributable Earmarked Profits shall have the meaning set forth in § 107.243(c)(2) and shall be the source for allocation of Prioritized Payments pursuant to Section 303(g)(2) of the Act.

Distribution means any transfer of cash or non-cash assets to SBA, its agent or Trustee, or to partners in an Unincorporated Licensee, or to shareholders in a Corporate Licensee. Distributions shall include interest on Debentures, returns on Preferred Securities, Prioritized Payments and adjustments thereto pursuant to § 107.243(d), Profit Participation, returns on capital to private investors, repayment of Leverage and returns of Private Capital. Capitalization of Retained Earnings Available for Distribution shall constitute a Distribution.

Earmarked Assets shall have the meaning set forth in § 107.242(b) (See also § 107.247).

Earmarked Profits (Losses) mean the aggregate amount of Earmarked Net Investment Income (Loss) and Earmarked Realized Gain (Loss) on Securities which becomes the basis for Prioritized Payments and Profit Participation (See § 107.242).

Earned Prioritized Payments means Prioritized Payments which have been distributed, or are distributable or deferred in accordance with § 107.243(c).

Equity Capital Investments means investments in a Small Concern in the form of common or preferred stock, limited partnership interests, options, warrants, or similar equity instruments, including subordinated debt with equity features if such debt provides only for interest payments contingent upon and limited to the extent of earnings. Equity Capital Investments shall not require amortization. Equity Capital Investments may be guaranteed; however, neither Equity Capital Investments nor such guarantee shall be collateralized or otherwise secured.

* * * * *

Guaranty Agreement means the contract entered into by SBA which is a guarantee of the full faith and credit of the United States Government as to timely payment of principal and interest on Debentures or the redemption price of and Prioritized Payments on Participating Securities and SBA's rights in connection with such guarantee.

Includible Non-Cash Gains means those non-cash gains (as reported on SBA Form 468) that are realized in the form of Publicly Traded and Marketable Securities or investment grade debt instruments. For purposes of this definition, investment grade debt instruments means those instruments that are rated "BBB" or "Baa", or better, by Standard & Poor's Corporation or Moody's Investors Service, respectively. Non-rated debt may be considered to be investment grade if Licensee obtains a written opinion from an investment banking firm acceptable to SBA stating that the non-rated debt instrument is equivalent in risk to the issuer's investment grade debt.

* * * * *

Leverage means the aggregate outstanding amount of the Original Issue Price of a Licensee's Debentures, Participating Securities, and Preferred Securities.

* * * * *

Loans and Investments means Portfolio Securities, Assets Acquired in Liquidation of Portfolio Securities, Operating Concerns Acquired, and Notes and Other Securities Received, as set forth in the Statement of Financial Position (SBA Form 468).

Management Expenses means, for Licensees which have Participating Securities or have Earmarked Assets in their portfolios, those expenses that include salaries, office expenses, travel, business development, office and equipment rental, bookkeeping and the development, investigation and monitoring of investments, but shall not include the cost of services provided by specialized outside consultants, outside lawyers and independent public accountants, if they perform services not generally expected of a venture capital company, nor shall such term include the cost of services provided by any Associate of the Licensee which are not part of the normal process of making and monitoring venture capital financings. See also § 107.903.

* * * * *

Original Issue Price means the price paid by the purchaser for securities at the time of issuance.

Participating Securities means preferred stock, preferred limited partnership interests, or similar instruments, including debentures having interest payable only to the extent of earnings, all of which are subject to the terms set forth in §§ 107.240 through 107.247 and section 303(g) of the Act.

* * * * *

Pool means an aggregation of SBA guaranteed Debentures or SBA guaranteed Participating Securities approved by SBA.

* * * * *

Preferred Securities means nonvoting preferred stock issued to SBA by a for-profit section 301(d) Corporate Licensee, or securities having similar characteristics issued by a section 301(d) Licensee organized as a nonprofit corporation, or nonvoting preferred limited partnership interests issued by a section 301(d) Unincorporated Licensee. (See also § 107.230)

Prioritized Payments means amounts which are preferred and cumulative and are distributable to the holder of Participating Securities provided the issuing Licensee has sufficient cumulative Earmarked Profits, and may be represented by dividends on preferred stock or interest on qualifying Debentures issued by a corporate Licensee, or priority returns on preferred limited partnership interests issued by limited partnership Licensees. For a given fiscal period, Prioritized Payments shall be the amount resulting from multiplying the Redemption Price of Participating Securities by the Trust Certificate Rate, weighted to reflect the number of days such securities were outstanding.

* * * * *

Profit Participation means a specified percentage of a Licensee's Earmarked Profits which is computed in accordance with § 107.244 and to which SBA is entitled, by agreement, in consideration for its guarantee of such Licensee's Participating Securities.

Publicly Traded and Marketable means securities that are salable without restriction or that are salable within 12 months pursuant to Rule 144 of the Securities Act of 1933, as amended, by the holder thereof (or in the case of an In-kind Distribution by the distributee thereof), and are of a class which (a) is traded on a regulated stock exchange, or (b) is listed in the Automated Quotation System of the National Association of Securities Dealers (NASDAQ), or (c) has, at a minimum, at least two market

makers as defined in the relevant sections of the Securities Exchange Act of 1934, as amended, and in all cases the quantity of which can be sold over a reasonable period of time without having an adverse impact upon the price of the stock.

Qualified Investments shall have the meaning set forth in § 107.230(c)(4)(iv).

* * * * *

Realized Gain (Loss) on Securities means the amount by which proceeds from the disposition of Loans and Investments are greater than (less than) the cost or other basis permitted by SBA. Disposition of Loans and Investments shall include sale, exchange, write-off, recoveries from prior disposition, or any other such transaction resulting in recognition of a gain or loss.

Redemption Price means the amount required to be paid by the issuer, or successor to the issuer, of Preferred or Participating Securities to repurchase such securities from the holder. The Redemption Price shall be the Original Issue Price less any prepayments or prior redemptions.

Retained Earnings Available for Distribution means Undistributed Net Realized Earnings less any Unrealized Depreciation on Loans and Investments (as reported on SBA Form 468), and represents the amount that may be distributed to investors (including SBA) or transferred to Private Capital.

SBA means the Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

* * * * *

Trust means the legal entity created for the purpose of holding guaranteed Debentures or Participating Securities and the guaranty agreement related thereto, receiving, holding and making any related payments, and accounting for such payments.

Trust Certificate Rate means a fixed rate determined at the time Participating Securities are issued by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with maturities comparable to the maturities of the Trust Certificates being guaranteed by SBA, adjusted to the nearest one-eighth of one percent.

Trust Certificates (TCs) means certificates issued by SBA, its agent or Trustee and representing ownership of all or a fractional part of a Trust or Pool of Debentures or Participating Securities.

Trustee means the trustees or trustees of a Trust.

Undistributed Net Realized Earnings means Undistributed Realized Earnings less *Non-cash Gains/Income* as reported on SBA Form 468.

Undistributed Realized Earnings means the cumulative sum of *Net Investment Income plus Realized Gain (Loss) on Sale of Securities*, less the cumulative sum of Distributions of Earned Prioritized Payments and Other Distributions made from Retained Earnings Available for Distribution.

* * * * *

Unrealized Appreciation means the amount by which a Licensee's valuation of Loans and Investments, as determined by its Board of Directors or General Partner(s) in accordance with Licensee's valuation policies, exceeds the cost basis thereof.

Unrealized Depreciation means the amount by which a Licensee's valuation of Loans and Investments, as determined by its Board of Directors or General Partner(s) in accordance with Licensee's valuation policies, is below the cost basis thereof.

Unrealized Gain (Loss) on Securities Held means the amount by which a Licensee's aggregate valuation of its Loans and Investments is above (below) their aggregate cost basis, and is equal to the sum of the Unrealized Appreciation and Unrealized Depreciation on all Loans and Investments, net of estimated future income tax expense or estimated realizable future income tax benefit, as appropriate.

Venture Capital Financing shall have the meaning set forth in § 107.230(c)(3).

4. Part 107, title 13, of the Code of Federal Regulations is amended by removing the undesignated center heading "Borrowing by Licensee" and §§ 107.201 through § 107.205 and by adding after § 107.105 the undesignated center heading "Leverage" and §§ 107.210 through 107.263 to read as follows:

Leverage

§ 107.210 Leverage—General.

(a) *General.* (1) SBA may purchase or guarantee three types of Licensee securities:

(i) Debentures,

(ii) Preferred Securities, and

(iii) Participating Securities.

(2) All Licensees issuing Preferred Securities after August 16, 1982, or Debentures or Participating Securities shall be deemed to have agreed to the terms and conditions set forth in §§ 107.260 through 107.263 as in effect at the time of such issuance and as if fully set forth in such Preferred Securities, Debenture or Participating Securities.

(b) *Application procedures.* All Leverage applications shall be filed with SBA's Investment Division located at 409 Third Street SW., Washington, DC 20416.

(1) A section 301(c) Licensee may apply for Debentures pursuant to section 303(b) of the Act on SBA Form 1022, and for Participating Securities pursuant to section 303(g) of the Act on SBA Form 1022B, in accordance with accompanying instructions.

(2) A section 301(d) Licensee may apply for Debentures pursuant to section 303(b) of the Act on SBA Form 1022, for Preferred Securities pursuant to section 303(c) of the Act on SBA Form 1022A, and for Participating Securities pursuant to section 303(g) of the Act on SBA Form 1022B, in accordance with accompanying instructions.

(c) *Basic requirements.* Leverage applicants shall demonstrate to SBA's satisfaction that they meet the following requirements:

(1) Eligibility for the amount of Leverage requested in accordance with § 107.220 for section 301(c) Licensees and § 107.230 for section 301(d) Licensees.

(2) A need for Leverage as evidenced by Licensee's investment activity and its lack of sufficient funds available for investment; *Provided, however,* that a Leverage applicant that has invested at least fifty percent (50%) of its aggregate Leverageable Capital and outstanding Leverage shall be presumed to lack sufficient funds available for investment.

(3) Adequacy of Private Capital and an ability to meet its obligations.

(4) Applicants for Participating Securities shall meet the requirements of § 107.241 in addition to all other Leverage requirements.

(5) Compliance with the regulations as set forth in this part.

(d) *Fees and charges.* (1) Licensees offering Debentures or Participating Securities for sale to, or for guarantee by, SBA are required to pay a one-time fee equal to two percent (2%) of the face amount of the Participating Securities or of the Debentures.

(2) The fee on Debentures or Participating Securities which are issued for the purpose of refunding maturing obligations shall be paid before such Debentures or Participating Securities are purchased or guaranteed. If the Licensee's Debentures or Participating Securities evidence a new indebtedness, as distinguished from the refinancing of a pre-existing indebtedness, the fee shall be deducted from the proceeds remitted to the Licensee.

(3) No portion of the fee shall be refundable upon prepayment of any

Debenture or early redemption of any Participating Security by the Licensee.

(4) SBA may establish a fee structure for the performance of services by the CRA; however, SBA shall not collect any fee for the guarantee of TCs.

(e) *Employment of SBA officials.* Without the prior written consent of SBA, for a period of two years after the date of the most recent Leverage issued by Licensee (or the receipt of any SBA Assistance as defined in part 105 of this chapter), Licensee shall not employ, or tender any offer of employment to, or retain for professional services, any person who on or within one year prior to such date:

(1) Served as an officer, attorney, agent, or employee of SBA; and

(2) As such, occupied a position or engaged in activities which SBA shall have determined involved discretion with respect to the granting of Assistance under the Act.

(f) *SBA guarantee.* (1) SBA may in its discretion agree to guarantee a Licensee's Debentures or Participating Securities unconditionally, irrespective of the validity, regularity or enforceability of such Debentures or Participating Securities or any other circumstances which might constitute a legal or equitable discharge or defense of a guarantor and, pursuant to its guarantee, make timely payments of principal and interest on such Debentures or the Redemption Price of and Prioritized Payments on such Participating Securities, irrespective of any default by the issuing Licensee or acceleration of the maturity of such Debentures by SBA, or the inability of the Licensee to pay the Redemption Price of or to make the Prioritized Payments on such Participating Securities, or any early redemption of the Participating Securities by SBA pursuant to § 107.245.

(2) SBA in its discretion may arrange for public or private financing under its guarantee authority. Such financing arranged by SBA may be accomplished by the sale of individual Debentures or Participating Securities, aggregations of Debentures or Participating Securities, or Pools or Trusts of Debentures or Participating Securities issued or sold pursuant to § 107.250. Persons interested in providing funds to Licensees with SBA's guarantee shall notify SBA by letter, certifying any direct or indirect beneficial interest, or actual or potential voting rights, in any Licensee, or in any person directly or indirectly controlling, controlled by or under common control with, any Licensee. These reporting requirements are approved under OMB No. 3245–0081.

(3) No SBA guarantee shall be extended to any entity:

(i) Having a direct or indirect beneficial interest of ten or more percent in the Regulatory Capital of the Licensee whose securities are to be guaranteed, or in any Person directly or indirectly controlling, controlled by, or under Common Control with, such Licensee; or

(ii) Having such interest in another Licensee which has received or is about to receive, pursuant to any understanding, arrangement, cross-dealing, reciprocal or circular arrangement, any direct or indirect financing (or commitment for financing) from another lender with SBA's guarantee.

(iii) SBA may void any guarantee obtained in violation of this paragraph (f)(3), but the foregoing shall not apply to lenders whose borrowers are selected or approved by SBA or its agents.

(4) In the event SBA pays a claim under its guarantee, it shall be subrogated fully to the rights satisfied by such payment; and no state law, and no Federal law, shall preclude or limit SBA's exercise of its ownership rights acquired by subrogation upon payment under its guarantee.

(5) With respect to Debentures guaranteed after July 1, 1991, SBA's claim against any Licensee shall be subordinated, as of the effective date of SBA's guarantee, in the event of the insolvency of such Licensee, only in favor of existing and future indebtedness outstanding to lenders, not including Associates of a Licensee, and only to the extent that the aggregate amount of such indebtedness does not exceed the lesser of two hundred percent (200%) of such Licensee's Regulatory Capital, or $10 million; *Provided, however,*

(i) That in its sole discretion SBA may agree in advance and in writing to a subordination in favor of an Associate or in favor of one or more loans from Lending Institutions or other lenders that would cause the aggregate amount of outstanding senior debt to exceed the foregoing limitation;

(ii) That nothing contained in these regulations shall limit the authority of SBA to refuse to subordinate its claims against any Licensee if SBA determines at the time of issuing its guarantee, that the exercise of reasonable investment prudence and the financial soundness of the Licensee warrant such a refusal; and

(iii) That nothing contained in these regulations shall affect the seniority of any indebtedness created prior to July 11, 1991, over the claims of SBA derived from any debenture(s) and/or guarantee(s) outstanding as of that date.

(6) After April 8, 1994, no Licensee with outstanding Leverage may incur secured debt or refinance existing indebtedness with secured debt without the prior written approval of SBA. If a Licensee is in regulatory compliance and has Leverage not in excess of one hundred fifty percent (150%) of its Leverageable Capital, and the request is for approval of a secured line of credit which would not cause its aggregate indebtedness (other than Leverage) to exceed fifty percent (50%) of its Leverageable Capital, then the Licensee may consider its request approved unless notified otherwise by SBA within thirty (30) days of SBA's receipt of such request. This paragraph (f)(6) applies to secured debt, secured guarantees and other contingent obligations voluntarily assumed, and the establishment of secured lines of credit. Unless otherwise agreed to by SBA in writing, Licensees with existing secured lines of credit shall have such lines approved before increasing the amounts outstanding thereunder. SBA's approval under this paragraph may be conditioned upon such restrictions and limitations as it may determine.

(g) *SBA sale of Leverage securities.* Upon such conditions and for such consideration as it deems reasonable, SBA may sell, assign, transfer, or otherwise dispose of any Preferred Security, Debenture, Participating Security, or other security held by or on behalf of SBA in connection with Leverage. Upon notice by SBA, Licensee will make all payments of principal, dividends, interest, Prioritized Payments, and redemptions as shall be directed by SBA. Licensee shall be liable for all damage or loss which SBA may sustain by reason of such disposal, up to the amount of Licensee's liability under such security, plus court costs and reasonable attorney's fees incurred by SBA.

(h) *Maintenance of unimpaired capital.* Each Licensee with Leverage shall maintain its Regulatory Capital in sufficient amounts to avoid a condition of Capitol Impairment. A condition of Capital Impairment shall be a condition affecting Licensee's good standing pursuant to §§ 107.261(d) and 107.262(d).

(1) *Definition of Capital Impairment.* A condition of Capital Impairment shall exist when a Licensee's Capital Impairment Percentage exceeds the maximum permissible level set forth in paragraph (h)(5) of this section.

(2) *Preliminary Impairment Test.* If Unrealized Gain (Loss) on Securities Held is zero or greater, and the sum of Undistributed Net Realized Earnings plus Includible Non-Cash Gains is also

zero or greater, no Capital Impairment exists and no further procedures shall be performed pursuant to this paragraph (h). Otherwise, a Licensee shall compute its "Adjusted Unrealized Gain (Loss) on Securities Held" in accordance with paragraph (3) below.

(3) *Adjusted Unrealized Gain (Loss) on Securities Held.* (i) When a Licensee has Unrealized Depreciation in excess of Unrealized Appreciation on securities held, the Licensee's Adjusted Unrealized Gain (Loss) on Securities Held shall be equal to its Unrealized Gain (Loss) on Securities Held.

(ii) When a Licensee has Unrealized Appreciation in excess of Unrealized Depreciation on securities held, the Licensee's Adjusted Unrealized Gain (Loss) on Securities Held shall be the sum, net of estimated future income tax expense, of eighty percent (80%) of the portion of such excess which consists of Unrealized Appreciation on Publicly Traded and Marketable securities and fifty percent (50%) of the portion of such excess which consists of Unrealized Appreciation on securities which meet the following criteria:

(A) The Small Concern which issued the security received a significant subsequent equity financing by an investor whose objectives were not primarily strategic and at a price that, in SBA's judgment, would conclusively support the Unrealized Appreciation;

(B) Such financing represents a substantial investment in the form of an arm's length transaction by a sophisticated new investor in the issuer's securities; and

(C) Such financing occurred within twenty-four (24) months of the date of the calculation of the Impairment Percentage or, if the financing did not occur within such twenty-four (24) month period, the Small Concern's pre-tax cash flow from operations for the most recent fiscal year was at least ten percent (10%) of the Small Concern's average contributed capital for such fiscal year.

(4) *Computing the Capital Impairment Percentage.* Licensee shall add Adjusted Unrealized Gain (Loss) on Securities Held to the sum of Undistributed Net Realized Earnings plus Includible Non-Cash Gains. If the result is zero or greater, no Capital Impairment exits and no further computations shall be performed pursuant to this paragraph (h). If the result is less than zero, Licensee shall drop the negative sign, divide by Regulatory Capital (excluding Treasury Stock), and multiply by one hundred (100). The result shall be Licensee's Capital Impairment Percentage.

(5) *Determination of maximum permissible Capital Impairment Percentage.* (i) A section 301(c) Licensee shall determine its maximum permissible Capital Impairment Percentage at the intersection of its Leverage Percentage and its Equity Investment Percentage in the table in paragraph (h)(6) of this section. As used in such table, "Equity Investments" includes those Debt Securities which, after consideration of all of the terms, conditions and documentation of such financing, are determined by Licensee's Board of Directors or General Partner(s) to have in excess of fifty percent (50%) of the anticipated return on such financing represented by the potential for equity appreciation.

(ii) A section 301(d) Licensee's maximum permissible Capital Impairment Percentage is seventy-five percent (75%).

(6) *Capital Impairment condition.* If Licensee's Capital Impairment Percentage is greater than its maximum permissible Capital Impairment Percentage, Licensee has a condition of Capital Impairment; *Provided, however,* that until the close of Licensee's fiscal year next succeeding April 25, 1995, a section 301(c) Licensee shall not have a condition of Capital Impairment if its Capital Impairment Percentage is less than or equal to fifty percent (50%).

Note: The symbols used below have the following meanings: > means "greater than"; ≥ means "greater than or equal to"; < means "less than"; and ≯ means "not greater than".

MAXIMUM PERMISSIBLE CAPITAL IMPAIRMENT PERCENTAGES FOR SECTION 301(c) LICENSEES

Leverage percentage	Percentage of portfolio in equity investments (at cost)		
	≥67% equity	≥40% equity	<40% equity
>200	50	40	35
≯200	60	50	40
≯100	70	55	45

(7) *Forbearance for Licensees with outstanding Participating Securities.* (i) At any time during the first forty-eight (48) months following its initial issuance of Participating Securities, any Licensee which has Leverage consisting of a minimum of two-thirds Participating Securities and has at least two-thirds of its Loans and Investments, at cost, in Equity Capital Investments, shall not be considered to have a condition of Capital Impairment unless such Licensee's Capital Impairment Percentage equals or exceeds eighty-five percent (85%).

(ii) At any time during the first sixty (60) months following its initial issuance of Participating Securities, a Licensee which has Leverage consisting of a minimum of two-thirds Participating Securities and has at least two-thirds of its Loans and Investment, at cost, in Start-up Financings shall not be considered to have a condition of Capital Impairment unless such Licensee's Capital Impairment Percentage equals or exceeds eighty-five percent (85%). "Start-up Financing" shall mean an Equity Capital Investment in a growth-oriented Small Concern which:

(A) Is engaged in activities including, but not limited to, technology development or commercialization, manufacturing, and/or exporting;

(B) At the time of the investment has not been in existence, in any form, for more than three fiscal years;

(C) Has not had sales exceeding $5 million or positive cash flow in any fiscal year; and

(D) Is not formed for the purpose of acquiring any existing business.

(iii) At any time during the fifth year following its initial issuance of Participating Securities, any Licensee which meets the Leverage and investment ratios set forth in paragraph (h)(7)(i) of this section, and does not have a Capital Impairment Percentage which equals or exceeds eighty-five percent (85%), shall not be considered to have a condition of Capital Impairment if, within thirty (30) days of Licensee's determination that it has a condition of Capital Impairment, such Licensee either:

(A) Increases its Regulatory Capital by a cash contribution equal to fifteen percent (15%) of its outstanding Leverage and places such funds in an escrow account, or other account satisfactory to SBA, for the benefit of SBA, or

(B) Provides SBA with a guarantee satisfactory to SBA, for the benefit of SBA, equal to fifteen percent (15%) of its outstanding Leverage.

(iv) At any time during the sixth year following its initial issuance of Participating Securities, any Licensee which meets the Leverage and investment ratios set forth in paragraph (h)(7)(i) of this section, and does not have a Capital Impairment Percentage which equals or exceeds eighty-five percent (85%), shall not be considered to have a condition of Capital Impairment if, within thirty (30) days of Licensee's determination that it has a condition of Capital Impairment, such Licensee either:

(A) Increases its Regulatory Capital by a cash contribution equal to thirty

percent (30%) of its outstanding Leverage and places such funds in an escrow account, or other account satisfactory to SBA, for the benefit of SBA, or

(B) Provides SBA with a guarantee satisfactory to SBA, for the benefit of SBA, equal to thirty percent (30%) of its outstanding Leverage; *Provided, however,* that any escrowed funds or guarantee received pursuant to paragraphs (h)(7)(iii) of this section shall be credited toward the requirements of this paragraph (h)(7)(iv).

(v) Any funds placed in an escrow or other account pursuant to paragraph (h)(7) (iii) or (iv) of this section shall not be eligible for Leverage purposes.

(vi) Any fee and/or any claim to repayment by the party making the capital contribution or by the guarantor must be deferred and subordinate to all outstanding Leverage plus any unpaid Earned Prioritized Payments and other earned amounts.

(vii) Any funds in the escrow account and/or any guarantee received by SBA under this paragraph (h)(7) of this section shall be utilized to pay or repay any amounts due SBA in the event of an acceleration or mandatory redemption under § 107.261, or shall be released and returned to Licensee at such time as the sum of Licensee's Adjusted Unrealized Gain (Loss) on Securities Held and Undistributed Net Realized Earnings plus Includible Non-Cash Gains is determined by SBA to be zero or greater.

(8) *Quarterly Requirement and Procedure.* Each Licensee is responsible, on a quarterly basis, for determining whether it has a condition of Capital Impairment and for promptly notifying SBA if it has such condition; *Provided, however,* that SBA is not precluded from making it with determination.

(i) *Collection or compromise of SBA claims.* SBA may, upon such conditions and for such consideration as it deems reasonable, collect or compromise all claims relating to Preferred or Participating Securities or obligations held or guaranteed by SBA, and all legal or equitable rights accruing to SBA.

§ 107.220 Leverage for 301(c) Licensees.

(a) *General.* SBA may provide Leverage to any Section 301(c) Licensee through the purchase or guarantee of Debentures and/or Participating Securities.

(b) *Leverage formula.* After March 31, 1993, the amount of Leverage a section 301(c) Licensee may have outstanding at any time shall not exceed the following amounts:

(1) If Leverageable Capital is not more than $15,000,000, Leverage shall not exceed three hundred percent (300%) of Leverageable Capital;

(2) If Leverageable Capital is more than $15,000,000 but not more than $30,000,000, Leverage shall not exceed $45,000,000 plus two hundred percent (200%) of the mount of Leverageable Capital over $15,000,000;

(3) If Leverageable Capital is more than $30,000,000, Leverage shall not exceed $75,000,000 plus one hundred percent (100%) of the amount of Leverageable Capital over $30,000,000, but not to exceed an additional $15,000,000.

(c) *Maximum limits and exceptions.* Notwithstanding paragraph (b) of this section, in no event shall the aggregate amount of outstanding Leverage of any Licensee or group of two or more Licensees (including both section 301(c) and section 301(d) Licensees) under Common Control exceed $90,000,000 unless SBA determines, on a case-by-case basis, to permit a higher aggregate amount for companies under Common Control and SBA imposes such additional terms and conditions as it determines appropriate to minimize the risk of loss to SBA in the event of default.

(d) *Grandfather clause.* Nothing in these provisions shall require any section 301(c) Licensee that on March 31, 1993, has outstanding Debentures in excess of three hundred percent (300%) of Leverageable Capital to prepay such excess. Any such Licensee may apply for an additional Debenture guarantee or Participating Security guarantee, provided that the proceeds are used solely to pay the amount due on any such maturing Debenture. The maturity of such new Debenture or Participating Security shall not be later than September 30, 2002.

(e) *Limits on Participating Securities.* The aggregate amount of Participating Securities outstanding from a Licensee shall not exceed two hundred percent (200%) of Leverageable Capital.

§ 107.230 Leverage for 301(d) Licensees.

(a) *General.* SBA may provide Leverage to any Section 301(d) Licensee through the purchase or guarantee of Debentures and/or Participating Securities, and/or through the purchase of Preferred Securities.

(b) *Articles requirements for Preferred Securities Leverage.* In addition to the requirements specified in § 107.101, no Preferred Securities will be acquired by SBA from any Section 301(d) Licensee unless the following provisions are contained in such Licensee's Articles:

(1) *Corporate Section 301(d) Licensees.* (i) *Payment of dividends to SBA.* Preferred stock issued by a corporate Section 301(d) Licensee to SBA after November 21, 1989, shall provide for the preferred payment of cumulative dividends at a rate of four percent (4%) per annum on the par value of such stock, accruing from the date of issuance to the date of payment, both inclusive. Such dividends shall be declared and payable from Retained Earnings Available for Distribution before any amount shall be set aside for or paid to any other class of stock. In the event SBA has received less than four percent (4%) in any fiscal year, the deficiency shall be payable on a preferred basis from subsequent Retained Earnings Available for Distribution without interest thereon. Before any declaration of dividends or any Distribution (other than to SBA), all dividends accumulated and unpaid on Preferred Securities issued to SBA shall be paid. The dividend rate on nonvoting Preferred Securities purchased by SBA prior to November 21, 1989, shall remain three percent (3%) of their par value and otherwise be subject to the provisions of this paragraph.

(ii) *Mandatory redemption of Preferred Securities.* Preferred Securities purchased by SBA on or after November 21, 1989, shall be redeemed by the issuer not later than fifteen (15) years from the date of issuance, at a price not less than the par value, plus any unpaid dividends accrued to the redemption date. SBA may, in its discretion, guarantee Debentures offered for sale by such Licensee at the Debenture sale immediately preceding such fifteenth anniversary date, pursuant to section 321 of the Act, in such amounts as will permit the simultaneous redemption of such Preferred Securities, including all or any part of accrued and unpaid dividends, for immediate payment to SBA. SBA shall not pay any part of the interest on such Debentures except pursuant to its guarantee. See also § 107.230(f).

(2) *Unincorporated Section 301(d) Licensees.* (i) *Payment of Distributions to SBA.* Preferred limited partnership interests issued to SBA by a limited partnership section 301(d) Licensee shall provide for Distributions to SBA on a preferred and cumulative basis at an annual rate of four percent (4%) on the entire amount of SBA's capital contribution (with no adjustments other than those reflecting prior returns of capital), accruing from the date of issuance to the date of Distribution, both inclusive. SBA shall be paid from Retained Earnings Available for Distribution. In the event SBA has

received less than four percent (4%) in any fiscal year, the deficiency shall be payable on a preferred basis from subsequent Retained Earnings Available for Distribution without interest thereon. Before any allocation or Distribution (other than to SBA), all accumulated and unpaid Distributions on preferred limited partnership interests issued to SBA shall be paid.

(ii) *Mandatory redemption of preferred limited partnership interest.* Preferred limited partnership interests shall be redeemed by the issuer not later than fifteen (15) years from the date of issuance, at a price not less than the amount of SBA's contributed capital, with no adjustments other than those reflecting prior returns of capital, plus any accumulated and unpaid Distribution to and including the redemption date. SBA may, in its discretion, guarantee Debentures offered for sale by such Licensee at the Debenture sale immediately preceding such fifteenth anniversary date, pursuant to section 321 of the Act, in such amounts as will permit the simultaneous redemption of such preferred limited partnership interests, including all or any part of accumulated and unpaid Distributions, for immediate payment to SBA. SBA shall not pay any part of the interest on such Debentures except pursuant to its guarantee. See also § 107.230(f).

(c) *Maximum Leverage—General.* All Leverage issued by Section 301(d) Licensees shall be aggregated for purposes of determining Leverage eligibility. Subject to the limitations on Leverage issued by Licensees under Common Control set forth in § 107.220(c), the total amount of Leverage permissible to a section 301(d) Licensee shall be determined as follows:

(1) *Maximum Subsidized Leverage.* A section 301(d) Licensee or group of such Licensees under Common Control shall be eligible for maximum subsidized Leverage of four hundred percent (400%) of Leverageable Capital or $35,000,000, whichever is less, subject to the exceptions and limitations set forth in paragraphs (c) (3) through (6) of this section. For purposes of this paragraph, "subsidized Leverage" means Preferred Securities and Debentures issued with a rate reduction or subsidy.

(2) *Leverage above $35,000,000.* A section 301(d) Licensee is eligible for Leverage in excess of $35,000,000, in the amounts and subject to the conditions set forth in § 107.220 (b) and (c); *Provided, however,* that the aggregate amount of subsidized Leverage issued by such Licensee or group of such Licensees under Common Control shall not exceed $35,000,000.

(3) *Conditions for Leverage exceeding 300 percent.* (i) To qualify for Leverage exceeding three hundred percent (300%) of Leverageable Capital, at least thirty percent (30%) of a section 301(d) Licensee's Total Funds Available for Investment must be invested in (or committeed to) Venture Capital Financings. Licensee must maintain thirty percent (30%) of its Total Funds Available for Investment in such investments, at their cost basis, subsequent to issuing Leverage in excess of three hundred percent (300%) of Leverageable Capital. See also §§ 107.261(d)(9) and 107.262(d)(9).

(ii) "Total Funds Available for Investment" means ninety percent of the sum of total current assets plus Loans and Investments on a cost basis and net of current maturities.

(iii) "Venture Capital Financing" means an investment in a Disadvantaged Concern represented by Equity Securities as defined in § 107.3 with no repurchase requirement for at least five (5) years, except as may be approved specifically by SBA under § 107.801 for purposes of relinquishing Control over a Small Concern; any right to purchase Equity Securities in conjunction with the purchase of Equity or Debt Securities which, after consideration of all of the terms, conditions and documentation of such financing, are determined by Licensee's Board of Directors or General Partner(s) to have in excess of fifty percent (50%) of the anticipated return on such financing represented by the potential for equity appreciation; or Debt Securities or Loans which are subordinated by their terms to all borrowings of the issuer, except borrowings from officers, directors, and owners of the Small Concern, or Close Relatives thereof, and which are not amortized during the first three (3) years. A Financing which originally qualified as a Venture Capital Financing but which is currently carried as *"assets acquired in liquidation of portfolio securities"* or *"operating concerns acquired"* shall continue to qualify as a Venture Capital Financing, at original cost.

(4) *Second Tier Preferred Securities Leverage.* SBA is authorized to purchase Preferred Securities from a section 301(d) Licensee in amounts in excess of one hundred percent (100%) of Leverageable Capital, but not in excess of two hundred percent (200%) of Leverageable Capital, *Provided:*

(i) Its license was issued on or before October 13, 1971; or

(ii) Its license was issued after October 13, 1971, and Licensee has Leverageable Capital of $500,000 or more; and

(iii) In either case, it has Qualified Investments (or commitments to make such investments), at cost, equal to the amount of Preferred Securities in excess of one hundred percent (100%) of Leverageable Capital—See also § 107.262(d)(9).

(iv) For this purpose, "Qualified Investments" means, subject to §§ 107.320 and 107.801, an investment in a Disadvantaged Concern represented by stock of any class (including preferred stock) or limited partnership interests, or shares of any eligible syndicate, business trust, joint stock company or association, mutual corporation, cooperative or other joint venture for profit; or unsecured debt instruments which are subordinated by their terms to all other borrowings (as distinguished from all other debts and obligations) of the issuer and which, after consideration of all of the terms, conditions and documentation of such instruments, are determined by Licensee's Board of Directors or General Partner(s) to have in excess of fifty percent (50%) of the anticipated return on such financing represented by the potential for equity appreciation. "Qualified Investments" shall not include a debt secured by any agreement with a third party, whether or not a security interest has been created in any asset of such third party, with or without recourse against such third party.

(5) *Non-Cumulative.* If a Financing qualifies as both a Venture Capital Financing and a Qualified Investment, such Financing may be construed as both a Venture Capital Financing and a Qualified Investment.

(6) *Participating Securities Leverage.* The aggregate of a section 301(d) Licensee's outstanding Participating Securities and Preferred Securities shall not exceed two hundred percent (200%) of Leverageable Capital. The Prioritized Payments and the Profit Participation on Participating Securities issued by section 301(d) Licensees shall not be adjusted by any subsidy or rate reduction.

(d) *Debentures issued by section 301(d) Licensees.* Subject to the limitations of paragraph (c) of this section, section 301(d) Licensees may issue three types of Debentures:

(1) Debentures guaranteed by SBA pursuant to section 303(c) of the Act. During the first five (5) years of the term of such Debentures, the rate of interest payable by the issuer shall be three hundred (300) basis points below the

interest rate stated on the face of the Debenture.

(2) Debentures guaranteed by SBA pursuant to section 303(b) of the Act. Such Debentures are not entitled to a reduced interest rate.

(3) Debentures purchased by SBA pursuant to section 303(c) of the Act. Such Debentures shall be entitled to a reduced interest rate determined according to section 317 of the Act. They shall specify both the subsidized interest rate and the non-subsidized interest rate (as prescribed by sections 317 and 303(b) of the Act), together with the dates between which each applies.

(e) *Exchange of outstanding Debentures for Preferred or Participating Securities.* (1) Subject to the conditions applicable to the issuance of Preferred or Participating Securities, a section 301(d) Licensee may, in SBA's discretion, retire Debentures through the issuance of such securities. A section 301(d) Licensee proposing to exchange its outstanding Debentures shall be required to pay all unpaid accrued interest plus any applicable prepayment penalties, fees, and other charges as a condition of such exchange.

(2) Notwithstanding the provisions of paragraph (e)(1) of this section paragraph, Debentures purchased or guaranteed by SBA on the basis of funds not included in Leverageable Capital may not be retired through issuance of Preferred or Participating Securities. Such Debentures, to the extent purchased or guaranteed by SBA on the basis of ineligible funds, shall be paid at maturity, unless such maturity is extended by SBA. In this regard, SBA shall have discretion to extend such maturity to a date not more than fifteen (15) years from the date of issuance if it believes such extension is necessary to achieve an orderly liquidation of the indebtedness.

(f) *Preferred Securities—voluntary redemption rights.* A section 301(d) Licensee may redeem Preferred Securities purchased by SBA, in whole or in part, on any dividend payment date or distribution of capital date (provided that it gives SBA at least thirty days prior written notice). It shall do so by paying SBA the Original Issue Price of such securities, but not less than $50,000 in any one transaction, plus any dividends or distributions accumulated and unpaid to the date of redemption. SBA is authorized to sell Preferred Securities purchased on or before November 20, 1989 to the issuer at a price less than the sum of the Original Issue Price and any unpaid dividends or distributions. SBA shall determine the sale price of such Preferred Securities in its sole discretion after considering such factors as it deems appropriate. These factors shall include, but not be limited to, the market value of such securities, the value of benefits previously provided and anticipated to accrue to the issuer, the amount of dividends previously paid, accrued, and anticipated, and SBA's estimate of any anticipated redemption. In such event, SBA may guarantee Debentures issued by the Licensee in order to accomplish the repurchase of such Preferred Securities; *Provided, however,* that SBA shall not pay any part of the interest on such Debentures, except pursuant to its guarantee. See also §§ 107.230(b)(1)(ii) and 107.230(b)(2)(ii).

§ 107.240 Participating Securities.

The provisions of §§ 107.241 through 107.247 shall apply to Participating Securities and all Licensees issuing such securities.

§ 107.241 Participating Securities—General.

(a) *Minimum capital.* Subject to § 107.101(d), a Licensee with Regulatory Capital of $10 million or more shall be eligible to issue Participating Securities. A Licensee with Regulatory Capital of less than $10 million shall be eligible to issue Participating Securities if it demonstrates to SBA's satisfaction that it can be financially viable over the long term with such lesser amount; *Provided, however,* that no application to issue Participating Securities shall be considered if the Licensee's Regulatory Capital is less than $5 million.

(b) *Investment requirements.* Any Licensee issuing Participating Securities shall invest an amount equal to the Original Issue Price of such securities solely in Equity Capital Investments. After the initial investment of such funds, unless SBA permits otherwise, such Licensee shall maintain Equity Capital Investments as of the end of each fiscal year with an original cost of not less than the outstanding balance of Participating Securities.

(c) *Management and ownership diversity.* Unless otherwise approved by SBA, Licensee applying for Participating Securities shall have diversity between management and ownership. As long as any Earmarked Assets remain in its portfolio, the Licensee shall maintain such diversity. This diversity may be established only by satisfying both of the following requirements:

(1) The Licensee shall meet at least one of the following three conditions:

(i) The Licensee or its ultimate parent shall have three or more shareholders or limited partners who, in the aggregate, have not less than a thirty percent (30%) interest in such Licensee's Regulatory Capital and who (except for such status as a shareholder or limited partner) are not Associates of, or Affiliates of any Associate of, such Licensee; or

(ii) The Licensee or its ultimate parent shall have one or more Institutional Investors that are:

(A) Regulated by state or Federal authorities satisfactory to SBA,

(B) Public or private employee pension funds,

(C) Trusts, foundations, or endowments which are exempt from Federal income taxation, or

(D) Other Institutional Investors satisfactory to SBA, who directly or indirectly have in the aggregate not less than a thirty percent (30%) interest in such Licensee's Regulatory Capital and who (except for such status as a shareholder or limited partner) are not Associates of, or Affiliates of any Associate of, such Licensee; or

(iii) The common stock or limited partnership interests of Licensee, or at least one class of voting common stock or the limited partnership interests of the ultimate parent (if any) of Licensee, is publicly traded. For purposes of this paragraph (c)(1), "ultimate parent" shall mean an entity that directly or indirectly has an interest of more than fifty percent (50%) of the Regulatory Capital of a Licensee.

(2) Shareholders or limited partners of a Licensee shall not have delegated their voting rights to any other person or entity without prior SBA approval. Publicly traded Licensees are exempt from this provision. This restriction also shall not apply to proxies given to vote at single specified meetings, or to delegation of such rights to investment advisors that are not Affiliates of the Licensee except for their shareholder or partner status.

(d) *Approved Management Expense.* Every Licensee that has Participating Securities outstanding or has Earmarked Assets in its portfolio shall have its Management Expenses approved by SBA at the time of licensing and prior to any proposed increases in such Expenses.

(e) *Temporary Debt.* (1) The only debt other than Leverage that any Licensee with outstanding Participating Securities may incur shall be Temporary Debt. Each such Licensee must obtain the prior written approval of SBA before incurring any secured Temporary Debt. If a Licensee which is in regulatory compliance and which has Leverage not in excess of one hundred fifty percent (150%) of its Leverageable Capital shall request approval for a secured line of credit which would not cause its aggregate indebtedness (other than

Leverage) to exceed fifty percent (50%) of Leverageable Capital, then the Licensee may consider its request approved unless notified otherwise within thirty (30) days of SBA's receipt of such request.

(2) For this purpose, the term "Temporary Debt" means qualified short-term borrowings of a Licensee for the purposes of providing funds for a particular Financing of a Small Concern or funds to maintain a Licensee's operating liquidity, which are borrowed from regulated financial institutions or regulated credit companies or, if approved by SBA on a case-by-case basis, from non-regulated lenders, including shareholders or partners.

For a borrowing to qualify as Temporary Debt, total borrowings outstanding may not exceed fifty percent (50%) of Licensee's Leverageable Capital, and all such borrowings must be paid off for at least thirty (30) consecutive days during the Licensee's fiscal year so that Licensee has no Temporary Debt during such thirty-day period. A Licensee with indebtedness which does not meet the requirements of Temporary Debt must eliminate such indebtedness to qualify for issuance of Participating Securities.

(f) *Liquidity requirements.* A Licensee with outstanding Participating Securities shall maintain adequate liquidity so as to avoid a condition of Liquidity Impairment (as defined in paragraph (f)(1) of this section). Such a condition shall affect the Licensee's good standing pursuant to § 107.262(c).

(1) *Definition of Liquidity Impairment.* A condition of Liquidity Impairment shall exist when a Licensee's Liquidity Ratio, as determined in paragraph (f)(2) of this section is less than 1.20. Each Licensee is responsible for calculating whether it has a condition of Liquidity Impairment as of the close of its fiscal year, at the time of application for Leverage, or at such time as Licensee contemplates making any Distribution. SBA shall have the right to make the final determination in this regard.

(2) *Computation of Liquidity Ratio.* Licensee's Liquidity Ratio shall be equal to its Total Current Funds Available divided by its Total Current Funds Required, as determined in accordance with the following table:

CALCULATION OF SBIC LIQUIDITY RATIO

Financial account	As reported on SBA form 468	Wt.	Weighted amount
Cash and Invested Idle Funds	.....	1.00	
Commitments From Investors	.....	1.00	
Other Current Assets	.....	1.00	
Current Portion of Maturities	.....	.50	
Publicly Traded & Marketable Securities	.....	.65	
Anticipated Operating Revenue for next 12 months	(1)	1.00	
Total Ccurrent Funds Available	.....	.....	A
Current Liabilities	.....	1.00	
Commitments Outstanding	.....	.75	
Anticipated Operating Revenue for next 12 months	(1)	1.00	
Anticipated Interest Expense for next 12 months	(1)	1.00	
Contingent Liabilities (Guarantees)	.....	.25	
Total Current Funds Required	.....	.....	B
Liquidity Ratio: (A/B)	.....	.....	

1 As determined by Licensee's management, pursuant to a plan of operations.

(g) *Redemption.* The redemption date of Participating Securities shall be the same as the maturity date of the Trust Certificates for the Trust containing such securities. In no event shall such date be later than fifteen (15) years after the issue date. Participating Securities shall be redeemed at the Redemption Price plus any unpaid Earned Prioritized Payments and any additional earned amounts due pursuant to § 107.243 (c) and (d).

(h) *Priority in Liquidation.* In the event of liquidation of a Licensee, the Redemption Price of Participating Securities, together with any Prioritized Payments, any additional amounts due pursuant to § 107.243 (c) and (d), and any Profit Participation allocated pursuant to § 107.244(e), shall be senior in priority for all purposes to all other equity interests in the issuing Licensee, whenever created.

§ 107.242 Computation of Earmarked Profits (Losses).

(a) *Frequency of Calculation.* A Licensee that has Participating Securities outstanding or has Earmarked Assets in its portfolio shall compute Earmarked Profits (Losses) no less frequently than at the end of its fiscal year and at such other times as Licensee elects to make a Distribution.

(b) *Earmarked Assets.* "Earmarked Assets" means Loans and Investments that exist at the time Participating Securities are issued or that are acquired by Licensee while Participating Securities are outstanding and non-cash assets received in exchange for any such assets. Notwithstanding Licensee's redemption of all or part of its Participating Securities, Licensee's Earmarked Assets shall retain such status until their disposition. Investments made subsequent to the complete repayment or redemption of all Participating Securities are not considered Earmarked Assets unless Licensee issues additional Participating Securities, at which time all of Licensee's Loans and Investments again become Earmarked Assets. For special rules providing exclusions applicable to companies licensed prior to March 31, 1993, see § 107.247.

(c) *Earmarked Asset Ratio.* To compute Earmarked Profits (Losses), Licensee first shall compute an Earmarked Asset Ratio for the fiscal year or portion thereof, as appropriate. Earmarked Asset Ratio means, at cost basis, the ratio of Earmarked Assets plus the proceeds of Participating Securities not yet invested to Licensee's total Loans and Investments plus the proceeds of Participating Securities not yet invested, stated as a percentage. The Earmarked Asset Ratio shall be

computed on the respective weighted average amounts of Earmarked Assets, total Loans and Investments, and uninvested proceeds of Participating Securities outstanding during such fiscal year or portion thereof.

(d) *Determining Earmarked Net Investment Income (Loss).*

(1) *Determining Earmarked Investment Income.* (i) Licensee shall allocate to Earmarked Investment Income all income which is directly attributable to such Earmarked Assets.

(ii) Licensee shall multiply interest on idle funds and other income not attributable to specific assets by the Earmarked Asset Ratio.

(iii) The aggregate of (d)(1) (i) and (ii) of this section shall be Earmarked Investment Income.

(2) *Determining Earmarked Investment Expenses.* (i) *Earmarked Investment Expenses.* Earmarked Investment Expenses shall be equal to the sum of:

(A) Management Expenses as computed pursuant to paragraph (d)(1)(ii) of this section and

(B) Non-Management Expenses as computed pursuant to paragraph (d)(1)(iii) of this section.

(ii) *Management Expenses.* For the purpose of determining Earmarked Investment Expenses, Management Expenses shall be the lesser of:

(A) Licensee's approved Management Expenses times its Earmarked Asset Ratio, or

(B) An amount determined by multiplying Licensee's Combined Capital times its Earmarked Asset Ratio times 2.5 percent, and adding $125,000 times the Earmarked Asset Ratio to the product if Licensee's Combined Capital is less than $20,000,000.

(iii) *Non-Management Expenses.* Licensee shall allocate to Earmarked Assets those non-Management Expenses which are directly attributable to such assets. Licensee shall add to this amount the product obtained by multiplying the Earmarked Asset Ratio by those non-Management Expenses not attributable to specific assets. Interest on Debentures shall be considered a non-Management Expense.

(3) *Earmarked Net Investment Income (Loss).* Earmarked Investment Income in paragraph (d)(1) of this section shall be reduced by Earmarked Investment Expenses in paragraph (d)(2) of this section to determine Earmarked Net Investment Income (Loss).

(e) *Determining Earmarked Realized Gain (Loss) on Securities.* Licensee shall compute its Earmarked Realized Gain (Loss) on Securities by subtracting the basis of such assets from their net sales price, in accordance with the following:

(1) The cost of an asset shall be the basis used for computing Realized Gain (Loss), unless another basis is permitted by SBA.

(2) If an exchange of assets occurs, the basis of the acquired asset(s) shall be the cost of the original asset being exchanged.

(3) The basis of Earmarked Assets shall be increased only by additional financings to the Small Concern, or by Licensee's share of the income of an unincorporated Small Concern in which Licensee's basis is appropriately determined using the equity method of accounting. The basis of Earmarked Assets shall not be increased by capitalization of interest.

(4) Unrealized Appreciation or (Unrealized Depreciation) on Earmarked Assets that are being distributed as an In-Kind Distribution shall be recognized as Realized Gain (Loss) on Securities. (See § 107.245(e)(3))

(f) *Determining Earmarked Profits (Losses).* The aggregate of Earmarked Net Investment Income (Loss) and Earmarked Realized Gain (Loss) on Securities (paragraphs (d) and (e) of this section shall be Earmarked Profits (Losses) for the relevant period.

§ 107.243 Computation, Allocation, and Distribution of Prioritized Payments.

(a) *General.* Prioritized Payments shall be classified as either Accumulated Prioritized Payments or Earned Prioritized Payments. Earned Prioritized Payments (and additional "earned" amounts determined under this section) shall be allocated from Distributable Earmarked Profits and distributed from the Prioritized Payment Distribution Account. Such Distributions shall occur before any other Distribution and accordingly shall not be included in Distributions to SBA as set forth in § 107.245.

(b) *Accounts.* Licensee shall establish the following two accounts in its books and records:

(1) *Prioritized Payment Accumulation Account.* The Prioritized Payment Accumulation Account shall be a memorandum account to which Licensee shall add all Prioritized Payments on its Participating Securities and any additional amounts ("Adjustments") required under paragraphs (d)(1) and (d)(2) of this section. Licensee shall deduct from the Prioritized Payment Accumulation Account all Earned Prioritized Payments and those Adjustments which are considered "earned" according to the same criteria applied to Prioritized Payments in paragraph (c) of this section. The balance in this account shall represent Licensee's Accumulated Prioritized Payments and unearned Adjustments.

(2) *Prioritized Payment Distribution Account.* The Prioritized Payment Distribution Account shall be a liability account to which Licensee shall add all Earned Prioritized Payments and earned Adjustments and from which Licensee shall deduct all Distributions of Earned Prioritized Payments and earned Adjustments. The balance in this account shall represent Licensee's undistributed Earned Prioritized Payments and earned Adjustments.

(c) *Allocation and Distribution of Prioritized Payments.* At the end of each fiscal year, and at the end of any fiscal quarter for which a Distribution is contemplated, Licensee shall perform the following procedures:

(1) Add to the Prioritized Payment Accumulation Account all Prioritized Payments for the relevant fiscal period.

(2) Determine the cumulative sum of Earmarked Profits (Losses) and subtract from such sum all Earned Prioritized Payments and earned Adjustments previously allocated to the Prioritized Payment Distribution Account. The result, if greater than zero, shall be Licensee's Distributable Earmarked Profits.

(3) If Licensee has Distributable Earmarked Profits:

(i) Licensee shall allocate to the Prioritized Payment Distribution Account an amount equal to the lesser of Distributable Earmarked Profits or the balance in the Prioritized Payment Accumulation Account.

(ii) Licensee shall reduce the Prioritized Payment Accumulation Account by the amount allocated to the Prioritized Payment Distribution Account in paragraph (c)(3)(i) of this section.

(iii) Subjects to the liquidity requirement set forth in § 107.241(f) Licensee shall distribute an amount equal to the balance in its Prioritized Payment Distribution Account to SBA, or its designated agent or Trustee, within ninety (90) days after the end of Licensee's fiscal year or before any other Distribution is made, as appropriate. The Prioritized Payment Distribution Account balance shall be reduced by such Distribution.

(iv) If Licensee has issued Participating Securities on more than one occasion, Prioritized Payments shall be made on such Participating Securities in order of issue date.

(4) If a Licensee has no Distributable Earmarked Profits, no allocation shall be made to the Prioritized Payment Distribution Account.

(d) *Adjustments to Prioritized Payment Accumulation Account.* The

Prioritized Payment Accumulation Account shall be subject to the following adjustments:

(1) If, at the end of any fiscal year, there exists any balance in the Prioritized Payment Accumulation Account, Licensee shall add to such account an amount equal to the product of the average balance in such account during such fiscal year, multiplied by the average Trust Certificate Rate in effect during such fiscal year.

(2) If, at the end of any fiscal year, there remains any undistributed balance in the Prioritized Payment Distribution Account, Licensee shall compute an additional amount equal to the product of the average outstanding balance in such account during such fiscal year, multiplied by the average Trust Certificate Rate in effect during such fiscal year. Such amount shall be added to the Prioritized Payment Accumulation Account.

(3) If, after Licensee has performed the procedures required in paragraphs (c), (d)(1) and (d)(2) of this section, there remains any undistributed balance in the Prioritized Payment Distribution Account, Licensee shall continue to perform the procedures in this § 107.243 as of the end of each subsequent fiscal quarter until such amounts are paid in full.

§ 107.244 Computation and Allocation of Profit Participation.

(a) *Profit Participation Account.* Licensee shall establish a Profit Participation Account in its books and records which shall reflect the allocation and distribution of Profit Participation. This account shall be reduced by any tax Distribution made to SBA, or its designated agent or Trustee, pursuant to 107.245(b) or other Distributions pursuant to 107.245(c).

(b) *Computing the Base for Profit Participation.* At the end of each fiscal year, and at the end of any fiscal quarter for which a Distribution is contemplated, Licensee shall compute and maintain a record of its Base for Profit Participation ("Base") according to the following procedure:

(1) *Base.* The Base shall be equal to Earmarked Profits (Losses) minus Prioritized Payments and any Adjustments for the fiscal year or fiscal year-to-date, as appropriate, minus any unused loss carryforward from prior fiscal years.

(2) *Unused loss carryforward.* If Licensee has not previously computed a Base for Profit Participation at the end of a fiscal year, or if the Base computed at the end of Licensee's previous fiscal year (the "Previous Base") was zero or greater, Licensee's unused loss carryforward shall be zero. If the Previous Base was less than zero, Licensee's unused loss carryforward shall be equal to Previous Base.

(c) *Profit Participation Rates.* A Licensee which issues Participating Securities shall compute a Profit Participation Rate for the relevant fiscal year or fiscal year-to-date in accordance with the following procedure:

(1) Subject to paragraph (c)(5) of this section, the applicable Profit Participation Rate shall be based upon the highest ratio of Participating Securities Leverage to Leverageable Capital which has ever been outstanding for such Licensee, regardless of any repayment or redemption (the "PLC ratio").

(2) Subject to any indexing required in paragraph (c)(4) of this section if the PLC Ratio is one or less, the Profit Participation Rate shall be equal to the PLC ratio times nine percent (9%).

(3) Subject to any indexing required in paragraph (4) of this section, if the PLC Ratio is more than one but not greater than two, the Profit Participation Rate shall be computed as follows:

(i) Nine percent (9%), plus

(ii) The PLC Ratio minus one, times three percent (3%).

(4) The Profit Participation Rate shall be indexed to the yield-to-maturity on Treasury bonds with a remaining term of ten (10) years (the "Treasury Rate"), according to the following procedures:

(i) *Licensees that have issued Participating Securities on only one occasion.* If, on the date Participating Securities are issued, the Treasury Rate is other than eight percent (8%), the Profit Participation Rates specified in paragraphs (c) (2) and (3) of this section shall be adjusted proportionately, that is, by the percentage difference between such Treasury Rate and eight percent (8%). For example, if the Treasury Rate were eight percent (8%) when a Licensee issued Participating Securities equal to one hundred percent (100%) of Leverageable Capital, the Profit Participation Rate would be nine percent (9%) pursuant to paragraph (c)(2) of this section. If the Treasury Rate were ten percent (10%) at the time of issuance, however, the Licensee's Profit Participation Rate would be 11.25 percent

[{<.10−.08}/.08)+1}×.09×100=11.25%]

(ii) *Licensees that have issued Participating Securities on more than one occasion.* If, on any of the dates Participating Securities are issued, the Treasury Rate is other than eight percent (8%):

(A) Licensee shall compute an average of such Treasury Rates for all issuances of Participating Securities, weighted to reflect the dollar amount of each issuance and the portion of the fiscal period during which each issuance was outstanding. For example, if a Licensee issued $10 million of Participating Securities on the first day of its fiscal year when the Treasury Rate was eight percent (8%), and another $15 million on the 300th day of its fiscal year when the Treasury Rate was ten percent (10%), then the weighted average Treasury Rate computed as of the end of the fiscal year would be 8.42%.

[15,000,000× (365−300)/365=2,671,233;
10,000,000+2,671,233=12,671,233 weighted average Participating Securities;
{(10,000,000×.08)+(2,671,233×.10)}/12,671,233=8.42% weighted average Treasury Rate]

(B) The Profit Participation Rates specified in paragraphs (c) (2) and (3) of this section then shall be adjusted by the percentage difference between the weighted average Treasury Rate and eight percent (8%). In the example given in paragraph (c)(4)(ii)(A) of this section, if the $25 million of Participating Securities issued were equal to two hundred percent (200%) of Leverageable Capital, the Profit Participation Rate for the fiscal year would be 12.63%.

[{(<.0842−.08 ≤/
.08)+1}×.12×100=12.63%]

(5) The computation of the Profit Participation Rate shall not be modified due to an increase in the Leverageable Capital of Licensee unless the increase:

(i) Is the result of the takedown of commitments or the conversion of non-cash assets, provided such commitments or assets were included in the Licensee's Private Capital; or

(ii) Is expressly provided for in a plan of operations submitted to and approved by SBA in writing.

(d) *Computing the Profit Participation.* If the Base for the relevant fiscal period, as determined in paragraph (b) of this section, is greater than zero, Licensee shall compute the Profit Participation in accordance with the following procedure:

(1) The Profit Participation for the fiscal year or fiscal year-to-date shall be the result obtained by multiplying the Base by the Profit Participation Rate determined in paragraph (c) of this section.

(2) Such Profit Participation shall be reduced by any amounts of Profit Participation that were distributed or reserved for distribution to SBA, or its designated agent or Trustee, for any interim period(s) during such fiscal year.

(3) Any computation of Profit Participation made on the basis of an

interim fiscal quarter shall be adjusted, both at fiscal year-end and whenever any additional interim Distributions are made, to account for any increase in the Profit Participation Rate.

(e) *Allocation of Profit Participation.* Prior to any Distribution and in any event within ninety (90) days following the end of the Licensee's fiscal year, the Licensee shall allocate to its Profit Participation Account the amount of Profit Participation calculated pursuant to paragraph (d) of this section. Funds equal to amounts allocated to the Licensee's Profit Participation Account shall be reserved for distribution to SBA, its designated agent or Trustee; such amounts shall not be available for reinvestment in Small Concerns or for any other use by the Licensee.

(f) *Distribution of Allocated Profit Participation.* Distribution of allocated Profit Participation shall be made at the same time that profits are distributed to private capital investors either as tax Distributions or as other returns on capital (see § 107.245).

§ 107.245 Distributions.

(a) *General.* Distributions shall only be made based on computations and allocations as of the end of a Licensee's fiscal year or fiscal quarter (reflecting results for the fiscal year-to-date). For purposes of this § 107.245, Prioritized payments shall not be considered a Distribution, but Profit Participation shall be considered a Distribution and shall be included in Distributions made to SBA, or its designated agent or Trustee, under paragraphs (b) and/or (c) of this section.

(b) *Distributions for tax purposes.* After all Prioritized Payments have been paid, and subject to the liquidity requirements set forth in § 107.241(f), a Licensee that is operating as a limited partnership, an "S Corporation", or an equivalent pass-through entity for tax purposes, may make an annual distribution from Retained Earnings Available for Distribution to its investors (including SBA) in an amount not greater than the Licensee's Maximum Tax Liability. SBA, or its designated agent or Trustee, shall receive a "tax Distribution" equal to its Profit Participation Rate specified in § 107.244(c) times the Maximum Tax Liability. For purposes of this paragraph, the term "Maximum Tax Liability" means the aggregate amount of income allocated to partners or shareholders for Federal income tax purposes with respect to the fiscal year of the Licensee immediately preceding such Distribution, multiplied by the highest combined marginal Federal and State income tax rates for corporations or individuals, whichever is higher, on each type of income included in such return. For purposes of this paragraph, the term "State income tax" means the state income tax of the State where the Licensee's principal place of business is located.

(c) *Returns on Capital.* After all Prioritized Payments and tax Distributions permitted under paragraph (b) of this section have been made, and the liquidity requirement set forth in § 107.241(f) has been satisfied, a Licensee which has Participating Securities outstanding or has Earmarked Assets shall make Distributions to its investors, specifically including SBA, or its designated agent or Trustee, as if it were an investor, in the ratios/percentages specified below within one hundred twenty (120) days after Licensee's fiscal year end. Subject to prior written approval from SBA, a Licensee may withhold from such Distributions reasonable reserves necessary to protect Licensee's investments or relative position in Loans and Investments and to meet contingent liabilities, without giving rise to a payment failure in violation of § 107.262(d)(6). Under no circumstances shall such reserves be used to make investments in additional portfolio companies. A Licensee requesting prior approval under this paragraph may consider its request approved if SBA has not notified the Licensee otherwise within thirty (30) days of receipt of such request. A Licensee may make Distributions pursuant to this paragraph (c) as of the end of any fiscal quarter, subject to the same restrictions as provided in this section. All Distributions under this paragraph (c) to private investors shall be from Retained Earnings Available for Distribution and shall be a return on capital. Distributions of Profit Participation to SBA, its designated agent or Trustee, also shall be from Retained Earnings Available for Distribution. Distributions under this paragraph to SBA, its designated agent or Trustee, which are in excess of the Profit Participation shall be from Retained Earnings Available for Distribution if they are applied to dividends or equivalent distributions on Preferred Securities (as provided in paragraph (c)(5) of this section, but shall be from other than Retained Earnings Available for Distribution if they are applied as a repayment or redemption of Leverage (see paragraph (c)(5) of this section). All Distributions pursuant to this paragraph shall be calculated as follows:

(1) When the amount of Leverage outstanding as of the date of the proposed Distribution is more than two hundred percent (200%) of Leverageable Capital, Distribution to the private investors and to SBA, its designated agent or Trustee, shall be made in the ratio of Leverageable Capital to Leverage.

(2) When the amount of Leverage outstanding as of the date of the proposed Distribution is more than one hundred percent (100%) but not more than two hundred percent (200%) of the amount of Leverageable Capital, Distributions to private investors and to SBA, its designated agent or Trustee, shall be made in a one-to-one (1:1) ratio.

(3) When the amount of Leverage outstanding as of the date of the proposed Distribution is one hundred percent (100%), or less, of the amount of Leverageable Capital, SBA's percentage share of such Distribution shall be at the Profit Participation Rate.

(4) SBA may restrict Distributions under this paragraph (c) if SBA determines that the value of Licensee's assets are materially overstated, provided that SBA gives the Licensee notice of such determination in advance of the proposed Distribution.

(5) Distributions to SBA, its designated agent or Trustee, under this paragraph (c) shall be applied first to Profit Participation; second, to the extent there remain any Retained Earnings Available for Distribution, to dividends or equivalent distributions on Preferred Securities; third, as a redemption of Participating Securities; fourth, as a redemption of Preferred Securities; and fifth, as the repayment of principal of any outstanding Debentures, such repayment to be made into escrow on terms and conditions determined by SBA.

(d) *Returns of capital.* Notwithstanding § 107.802, after all Earned Prioritized Payments and any additional earned amounts computed pursuant to § 107.243 (c) and (d) and all Profit Participation computed pursuant to § 107.244(e) have been distributed, and provided Licensee does not have a condition of Capital Impairment, a Licensee which has Participating Securities outstanding or has Earmarked Assets may return capital to its investors, specifically including SBA, its designated agent or Trustee, as if it were an investor. It may do so, however, only if the amount of such Distribution does not reduce Licensee's Regulatory Capital below the minimum required, or cause Licensee to have excess Leverage contrary to Section 303 of the Act. Any return of capital under this paragraph shall be made to private investors and to SBA in the ratio of Leverageable Capital to Leverage as of the date of the proposed Distribution; *Provided,*

however, that if a Licensee is required to compute a Capital Impairment Percentage under § 107.210(h), such ratio shall be modified by replacing Leverageable Capital with the product of Leverageable Capital multiplied by the complement of the Capital Impairment Percentage. For this purpose, "complement" means a percentage equal to one hundred percent (100%) minus the Capital Impairment Percentage, but not less than zero. Notwithstanding the above, returns of capital shall be subject to the liquidity requirement set forth in § 107.241(f) unless SBA's prior written approval is obtained. Any amounts received by SBA, its designated agent or Trustee, under this paragraph (d) shall be applied to Leverage in the order set forth in paragraph (c)(5) of this section.

(e) *In-Kind Distributions.* A Licensee making a Distribution pursuant to paragraph (c) or (d) of this section may elect to make such Distribution in the form of securities (an In-Kind Distribution), subject to the following conditions:

(1) An In-Kind Distribution may be made only if the specific securities to be distributed are Publicly Traded and Marketable at the time of Distribution.

(2) An In-Kind Distribution may be made only if the Distribution of each security is made to all investors and to SBA, its designated agent or Trustee, pro-rata based on the amounts that would have been distributed to each if such Distributions were in cash.

(3) A Licensee making an In-Kind Distribution shall impute a gain (loss) on the securities being distributed as if such securities were being sold, using the value of such securities as of the declaration date of the planned Distribution in the case of a corporate Licensee, and on the distribution date in the case of an Unincorporated Licensee. Such gain (loss) shall be included in the calculation of Earmarked Profits (Losses) pursuant to § 107.242(e) as if it were realized.

(4) A Licensee making an In-Kind Distribution shall deposit SBA's share of such securities for disposition with the CRA which will select a Disposition Agent. Alternatively, if Licensee agrees, SBA may direct that the Licensee dispose of SBA's share. If Licensee disposes of SBA's share, it shall remit the proceeds promptly to SBA, its designated agent or Trustee. As used in this paragraph, the term "Disposition Agent" means a Person who is knowledgeable about and proficient in the marketing of thinly traded securities.

§ 107.246 Post-redemption obligations.

After all Participating Securities have been redeemed, a Licensee shall have the following obligations:

(a) When a Licensee has Accumulated Prioritized Payments as specified in § 107.243 and has not disposed of all Earmarked Assets as specified in § 107.242(b), Licensee's obligation to distribute such Accumulated Prioritized Payments shall continue and Distributions shall be made, at the end of each fiscal quarter, from Distributable Earmarked Profits, if any, computed as set forth in § 107.243.

(b) After the disposition of all Earmarked Assets, if there remain any Accumulated Prioritized Payments, the obligation to make such payments shall be extinguished.

(c) Notwithstanding § 107.245, from the time of redemption of all Participating Securities and until all Earmarked Assets have been disposed of, Licensee shall not make any In-Kind Distributions of such assets unless it pays to SBA such sums, up to the amount of the Unrealized Appreciation on such assets, as may be necessary to pay in full any Accumulated Prioritized Payments. Prior to making any such distribution of assets which are not Publicly Traded and Marketable, Licensee shall obtain the written approval of SBA, specifically including approval of the valuation of such asset(s).

§ 107.247 Special Rules for Companies Licensed on or Before March 31, 1993.

Companies licensed on or before March 31, 1993 that apply for Participating Securities are subject to the following special rules:

(a) *Election to exclude pre-existing portfolio.* If the proceeds of the Participating Security are not used to refinance outstanding Debentures at the time of its first application for Participating Securities, such Licensee may elect to have its entire portfolio in existence as of March 31, 1993 excluded from classification as Earmarked Assets. Payment or prepayment of any outstanding Debenture shall be presumed to be a refinancing of such Debenture unless Licensee can demonstrate to the satisfaction of SBA that it had financial resources to pay the principal amount due on the Debenture independent of the proceeds of the Participating Securities.

(b) *Non-Election.* If such Licensee does not elect to exclude such assets, they shall be considered Earmarked Assets, and SBA shall receive a Profit Participation on such Earmarked Assets in accordance with the conditions specified in § 107.244.

(c) *Refinancing Debentures with Participating Securities.* SBA may permit the proceeds of a Participating Security to be used to pay the principal amount due on outstanding Debentures of such Licensee, provided Licensee has outstanding Equity Capital Investments in an amount, at cost, equal to the amount of the Debentures being refinanced, and Licensee has not elected to exclude assets from Earmarked Assets.

(d) *Requirements for first issuance of Participating Securities.* Whether or not a company licensed prior to March 31, 1993 elects to exclude its portfolio under paragraph (a) of this section, such Licensee's application for a guarantee of its first issuance of Participating Securities shall be subject to the following requirements:

(1) Licensee shall submit a valuation report for each of its Loans and Investments as of the date of the financial statements submitted with its application and as of the end of each of the prior three fiscal years, together with the last annual report (and/or fiscal year-end financial statements) and most recent interim financial statements of each Small Concern.

(2) If Licensee has negative Undistributed Realized Earnings and/or a net Unrealized Loss on Securities Held, SBA may require Licensee to undergo a quasi-reorganization in accordance with generally accepted accounting principles.

(3) If Licensee's financial statements submitted with its application are interim financial statements, Licensee shall have a limited scope audit performed by its SBA-approved independent public accountant. For purposes of this paragraph, "limited scope audit" means auditing procedures sufficient to enable the independent public accountant to express an opinion on the Statement of Financial Position and the accompanying Schedule of Investments.

§ 107.250 Financing by use of SBA Guaranteed Trust Certificates ("TCs").

(a) *Authority.* (1) *Full Faith and Credit.* Sections 321 (a) and (b) of the Act authorize SBA or its CRA to issue TCs, and SBA to guarantee the timely payment of the principal and interest thereon. Any guarantee by SBA of such TC shall be limited to the principal and interest due on the Debentures or the Redemption Price of and Prioritized Payments on Participating Securities in any Trust or Pool backing such TC. The full faith and credit of the United States is pledged to the payment of all amounts due under the guarantee of any TC.

(2) *Periodic Exercise of Authority.* SBA shall issue guarantees of Debentures and Participating Securities under section 303 and of TCs under section 321 of the Act at three month intervals, or at shorter intervals, taking into account the amount and number of such guarantees or TCs.

(3) *Terms and Conditions of the TCs.* TCs shall provide for a pass-through to their holders of all amounts of principal and interest paid on the Debentures, or the Redemption Price of and Prioritized Payments on the Participating Securities, in the Pool or Trust against which they are issued. SBA shall determine the legal and other terms and conditions of TCs in conjunction with the Secretary of the Treasury and its own statutory authority and such other requirements as may be mandated by law. The interest rate on Debentures or the Prioritized Payment rate on the Participating Securities in a Trust or Pool shall be determined pursuant to section 303 (b) or (g), respectively, of the Act.

(4) *Section 301(d) Subsidy.* Subject to the limits of § 107.203(c), if SBA guarantees Debentures of a section 301(d) Licensee, section 303(d) of the Act requires SBA to make payments to the CRA, or to the holder of any such Debenture, sufficient to reduce the effective rate of interest to such Licensee during the first five years of the term of such Debenture by three percentage points.

(5) *Rights of Prepayment of Debentures or Early Redemption of Participating Securities on a TC.*

(i) The rights, if any, of a Licensee to prepay any Debenture or make early redemption of any Participating Security are established by the terms of such securities, and no such right is created or denied by the regulations in this part.

(ii) SBA's rights to purchase or prepay and Debenture without premium are established by the terms of the Guaranty Agreement relating to the Debenture. SBA's rights to redeem, at any time, any Participating Security without premium are established by the terms of the Guaranty Agreement relating to the Participating Security.

(iii) Any prepayment of a Debenture or early redemption of a Participating Security pursuant to the terms of the Guaranty Agreement relating to such securities, shall reduce the SBA guarantee of timely payment of principal and interest on a TC in proportion to the amount of principal or Redemption Price that such prepaid Debenture or redeemed Participating Security represents in the Trust or Pool backing such TC.

(iv) SBA shall be discharged from its guarantee obligation to the holder or holders of any TC, or any successor or transferee of such holder, to the extent of any such prepayment, whether or not such successor or transferee shall have notice of any such prepayment.

(v) Interest on prepaid Debentures and Prioritized Payments on Participating Securities shall accrue only through the date of such voluntary prepayment or SBA payment, as the case may be.

(vi) In the event that all Debentures or Participating Securities constituting a Trust or Pool are prepaid, the TCs backed by such Trust or Pool shall be redeemed by payment of the unpaid principal and interest on the TCs; *Provided, however,* that in the case of the prepayment of a Debenture pursuant to the provisions of the Guaranty Agreement relating to the Debenture, the CRA shall pass through pro rata to the holders of the TCs any such prepayments including any prepayment penalty paid by the obligor Licensee pursuant to the terms of the Debenture.

(6) *SBA ownership rights.* In the event SBA pays a claim under the guarantee of a TC, it shall be subrogated fully to the rights satisfied by such payment; no state or Federal law shall preclude or limit SBA's exercise of its ownership rights acquired by subrogation upon payment under its guarantee.

(7) *Pool or Trust approval.* SBA shall approve the formation of each Pool or Trust.

(8) *Pool or Trust attributes.* SBA may, in its discretion, establish the size of the Pools and their composition, the interest rate on the TCs issued against Trusts or Pools, fees, discounts, premiums and other charges made in connection with the Pools, Trusts, and TCs, and any other characteristics of a Pool or Trust it deems appropriate.

(b) *Functions of the CRA.* Pursuant to a contract entered into with SBA, the CRA shall do the following as agent of SBA:

(1) *Issuance of the TCs.* Upon the formation of any Pool or Trust approved by SBA, CRA shall issue TCs, in the form prescribed by SBA, upon the primary sale of Debentures or Participating Securities, and shall issue or effect the transfer of TCs upon the sale of original issue TCs in any secondary market transaction.

(2) *Receipt of amounts due on Debentures and Participating Securities.* CRA shall receive payments from Licensees of amounts due on Debentures and Participating Securities, and amounts paid under voluntary prepayments or prepayments by SBA pursuant to the terms of the relevant Guaranty Agreements.

(3) *Payments of amounts due on TCs.* CRA shall make periodic payments as scheduled or required by the terms of the TCs, and pay all amounts required to be paid upon prepayment of Debentures or redemption of Participating Securities.

(4) *Custody of Debentures and Participating Securities and Documentation.* CRA shall hold and safeguard all Debentures and Participating Securities constituting Trusts or Pools and shall release, upon instructions of SBA, the Dentures and Participating Securities paid in full at maturity or prepaid in full prior to maturity. CRA also shall be custodian of such other documentation as SBA shall direct by written instructions.

(5) *Registration of Debentures and Participating Securities and TCs.* CRA shall provide for the registration of all pooled Debentures and Participating Securities, all Pools and Trusts, and all TCs. With respect to each sale of Debentures or Participating Securities, such registration shall include:

(i) The identification of the selling License;

(ii)The interest rate to be paid on the Debentures;

(iii) The Prioritized Payment rate to be paid on the Participating Securities;

(iv) All commissions, fees, and/or discounts paid to brokers and dealers in TCs or others;

(v) Identification of each purchaser and any subsequent purchaser of any TC;

(vi) The interest rate on any TC;

(vii) The price paid by any purchaser for a TC;

(viii) The fee of the CRA; and

(ix) Such other information as SBA may deem appropriate or that may be customary in the markets for transactions of similar type.

(6) *Fidelity bond or insurance.* CRA shall provide a fidelity bond or insurance in such amount as SBA may require to fully protect the interest of the government.

(7) *Other necessary functions.* CRA shall perform such other functions as SBA may deem necessary to implement the provisions of this section.

(c) *SBA regulation of disclosure and Brokers and Dealers.* (1) *Disclosure to purchasers.* Prior to any sale of a Debenture, Participating Security, or TC, SBA shall require the seller, or the broker or dealer as agent for the seller, to disclose to the purchaser, in a form prescribed or approved by SBA, specified information on the terms, conditions, and yield of such instrument.

(2) *Brokers and Dealers.* Each broker, dealer, and Pool or Trust assembler

approved by SBA pursuant to these regulations shall either be regulated by a Federal financial regulatory agency, or be a member of the National Association of Securities Dealers (NASD), and shall be in good standing in respect to compliance with the financial, ethical, and reporting requirements of such body. They also shall be in good standing with SBA as determined by the SBA Associate Administrator for Investment (see paragraph (c)(3)(v) of this section) and shall provide a fidelity bond or insurance in such amount as SBA may require. Nothing in these provisions shall affect the applicability of the securities laws, as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, or any of the rules and regulations thereunder, or otherwise supersede or limit the jurisdiction of the Securities and Exchange Commission or any authority at any time conferred under the securities laws.

(3) *Suspension and/or termination of Broker or Dealer.* SBA shall exclude from the sale and all other dealings in Debentures, Participating Securities or TCs any broker or dealer:

(i) If such broker's or dealer's authority to engage in the securities business has been revoked or suspended by a supervisory agency. When such authority has been suspended, such broker or dealer will be suspended by SBA for the duration of such suspension by the supervisory agency.

(ii) If such broker or dealer has been indicted or otherwise formally charged with a misdemeanor or felony bearing on its fitness to participate in the market for Debentures, Participating Securities or TCs, such broker or dealer may be suspended while the charge is pending. Upon conviction, participation may be terminated.

(iii) When such broker or dealer has suffered an adverse final civil judgment, holding that such broker or dealer has committed a breach of trust or violation of law or regulation protecting the integrity of business transactions or relationships, participation in the market for Debentures, Participating Securities or TCs may be terminated.

(iv) When such broker or dealer has failed to make full disclosure of the information required by § 107.250(c)(1) of this part, such broker's or dealer's participation in the market for Debentures, Participating Securities or TCs may be terminated.

(v) Proceedings to terminate such broker's or dealer's participation in the market for Debentures, Participating Securities or TCs shall be conducted in accordance with Part 134 of this Title. SBA may, for any of the reasons stated above, suspend the privilege of any broker or dealer to participate in this market. SBA shall give written notice at least ten (10) business days prior to the effective date of such suspension. Such notice shall inform the broker or dealer of the opportunity for a hearing pursuant to part 134 of this Title. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of §§ 134.32(b)(7) and 134.34.

(d) *Access to records.* The CRA and any broker, dealer and Pool or Trust assembler operating under the regulations in this part shall make all books, records and related materials associated with Debentures, Participating Securities and TCs available to SBA for review and copying purposes. Such access shall be at such party's primary place of business during normal business hours.

(e) *Selling Debentures, Participating Securities and TCs.* The function of locating purchasers, and negotiating and closing the sale of Debentures, Participating Securities and TCs, may be performed either by SBA or an agent appointed by SBA. Nothing in the regulations in this part shall be interpreted to prevent the CRA from acting as SBA's agent for this purpose.

(f) *Agents.* SBA will appoint or cause to be appointed agent(s) to perform functions necessary to market and service Debentures, Participating Securities, or TCs pursuant to this part.

(1) *Selling Agent.* As a condition of guaranteeing a Debenture or Participating Security, SBA shall cause each Licensee to appoint a Selling Agent to perform functions which include, but are not limited to:

(i) Selecting qualified entities to become pool or Trust assemblers ("Poolers"). Such actions shall be subject to SBA prior written approval and to the provisions of paragraph (c)(2) of this section.

(ii) Receiving guaranteed Debentures and Participating Securities as well as negotiating the terms and conditions of periodic offerings of Debentures and/or TCs with Poolers on behalf of Licensees.

(iii) Directing and coordinating periodic sales of Debentures and Participating Securities and/or TCs.

(iv) Arranging for the production of the Offering Circular, certificates, and such other documents as may be required from time to time.

(2) *Fiscal Agent.* SBA shall appoint a Fiscal Agent to:

(i) Establish performance criteria for Poolers.

(ii) Monitor and evaluate the financial markets to determine those factors that will minimize or reduce the cost of funding Debentures or Participating Securities.

(iii) Monitor the performance of the Selling Agent, Poolers, CRA, and the Trustee.

(iv) Perform such other functions as SBA, from time to time, may prescribe.

§ 107.260 Conditions affecting good standing of Licensees with Leverage.

Licensees with outstanding Debentures issued after April 25, 1994 are subject to the provisions of § 107.261. Licensees with outstanding Preferred Securities issued after April 25, 1994 and/or with outstanding Participating Securities or with Earmarked Assets in their portfolios are subject to the provisions of § 107.262.

§ 107.261 Conditions affecting issuers of Debentures.

(a) *Applicability.* The provisions of this section apply to Licensees issuing Debentures after April 25, 1994. All such Licensees shall be deemed to have agreed to the terms, conditions and remedies set forth in this section, as in effect at the time of such issuance and as if fully set forth in such Debentures. Debentures issued prior to April 25, 1994 shall continue to be governed by the remedies in effect at the time of their issuance.

(b) *Automatic Events of Default.* Without notice, presentation or demand, the entire indebtedness evidenced by Debentures, including accrued interest, and any other amounts owed SBA with respect thereto, shall be immediately due and payable, and Licensee shall be deemed to have consented to the appointment of SBA or its designee as receiver of Licensee pursuant to Section 311(c) of the Act, upon the occurrence of any one or more of the following events:

(1) *Insolvency.* Licensee becomes equitably or legally insolvent.

(2) *Voluntary assignment.* Licensee makes a voluntary assignment for the benefit of creditors without SBA's prior written approval.

(3) *Bankruptcy.* A petition is filed by Licensee in commencement of any bankruptcy or reorganization proceeding, receivership, dissolution or other similar creditors' rights proceeding, or such action is initiated against Licensee and is not dismissed within 60 days.

(c) *Events of Default with notice.* Upon written notice, SBA may declare the entire indebtedness evidenced by Debentures, including accrued interest, and/or any other amounts owed SBA with respect thereto, immediately due and payable, and SBA may avail itself

of any remedy available under the Act, specifically including institution of proceedings for the appointment of SBA or its designee as receiver of Licensee pursuant to Section 311(c) thereof, upon the occurrence of any one or more of the following events as determined by SBA:

(1) *Fraud.* Licensee commits a fraudulent act which causes detriment to SBA's position as a creditor or guarantor.

(2) *Fraudulent transfers.* Licensee makes any transfer or incurs any obligation that is fraudulent under the terms of 11 U.S.C. 548.

(3) *Willful conflicts of interest.* Licensee willfully violates § 107.903.

(4) *Willful non-compliance.* Licensee willfully violates one or more of the substantive provisions of the Act, specifically including but not limited to the provisions summarized in Section 310(c) of the Act, or any substantive regulation promulgated under the Act.

(5) *Repeated Events of Default.* At any time after being notified by SBA of the occurrence of an Event of Default under paragraph (d) of this section, Licensee engages in similar behavior which results in another occurrence of the same Event of Default.

(6) *Transfer of Control.* Licensee violates § 107.104 and/or willfully violates § 107.601, and such violation results in a transfer of Control of Licensee.

(7) *Non-cooperation under § 107.261(e).* Licensee fails to take appropriate steps, satisfactory to SBA, to accomplish such action as SBA may have required pursuant to paragraph (e) of this section.

(8) *Non-notification of Events of Default.* Licensee fails to notify SBA as soon as it knows or reasonably should have known that any Event of Default exists as set forth in this section.

(9) *Non-notification of defaults to others.* Licensee fails to notify SBA in writing within ten days from the date of a declaration of an event of default or nonperformance by Licensee under any note, debenture or indebtedness of Licensee issued to, or held by, anyone other than SBA.

(d) *Events of Default with opportunity to cure.* Upon written notice by SBA to a Licensee of the existence of one or more of the following Events of Default as determined by SBA, and the provision by SBA of an opportunity to cure such default(s) within a time period of not less than fifteen (15) days, and only if Licensee fails to cure such default(s) to SBA's satisfaction within such time period, SBA may declare the entire indebtedness evidenced by Debentures, including accrued interest, and/or any other amounts owed SBA with respect thereto, to be immediately due and payable, and SBA may avail itself of any remedy available under the Act, specifically including institution of proceedings for the appointment of SBA or its designee as receiver of Licensee pursuant to Section 311(c) thereof:

(1) *Excessive fees.* (i) If SBA has previously approved an aggregate amount to be paid for salaries or other compensation of officers, directors, employees, or fees paid to Investment Advisers/Managers, and such amount has increased without SBA's prior written approval, or (ii) if SBA has previously approved a formula for the aggregate amount to be paid for salaries or other compensation of officers, directors, or employees, or fees paid to Investment Advisers/Managers, and the aggregate amount paid exceeds the formula amount or the formula has changed without SBA's prior written approval.

(2) *Improper Distributions.* Licensee makes any Distribution to its shareholders or partners, except with the prior written consent of SBA, other than:

(i) As permitted under § 107.802;

(ii) Payments out of Retained Earnings Available for Distribution based on either the shareholders' pro-rata interests or the provisions for profit distributions in Licensee's partnership agreement, as appropriate; and

(iii) Distributions by Licensees issuing Participating Securities as permitted under §§ 107.243 and 107.245.

(3) *Failure to make payment.* Unless otherwise approved by SBA, failure by Licensee to make timely payment of any amount due under any security or obligation of Licensee, issued to, held or guaranteed by SBA.

(4) *Failure to maintain Regulatory Capital.* Licensee fails to maintain its minimum Regulatory Capital as required under these regulations or, without the prior written consent of SBA, reduces its Regulatory Capital, except as permitted by §§ 107.245 and 107.802.

(5) *Capital Impairment.* Licensee has a condition of Capital Impairment as determined under § 107.210(h).

(6) *Cross-default.* Failure of Licensee to pay any amount when due on any obligation greater than $100,000 or the occurrence of any event or the existence of any condition, the effect of which default or event or condition is to cause or to permit such obligation to become due or to become payable (with or without notice) prior to its stated maturity, unless Licensee pays such amount within any applicable grace period or contests the payment of such obligation in good faith by appropriate proceedings.

(7) *Nonperformance.* Nonperformance or violation by Licensee of one or more of the terms and conditions of any note, Debenture, or other obligation of Licensee issued to, held or guaranteed by SBA, or of any agreement with or conditions imposed by SBA in its administration of the Act and the regulations promulgated thereunder.

(8) *Noncompliance.* Except as otherwise provided in paragraph (c)(5) of this section, failure of Licensee, as determined by SBA, to comply with one or more of the substantive provisions of the Act, specifically including but not limited to the provisions summarized in section 310(c) of the Act, or any substantive regulation promulgated under the Act.

(9) *Failure to maintain investment ratios.* Failure of Licensee to maintain the investment ratio for Leverage in excess of three hundred percent (300%) of Leverageable Capital (§ 107.230(c)(3)), if applicable to such Licensee, as of the end of each fiscal year. For this purpose, any prepayment, sale, or disposition of Venture Capital Financing, increase in Leverageable Capital, and receipt of additional Leverage, within 120 days prior to the end of the fiscal year shall be disregarded in determining whether Licensee meets the foregoing requirement as of the close of its fiscal year.

(e) *Repeated non-substantive violations.* If a Licensee repeatedly fails to comply with any one or more of the non-substantive provisions of the Act or any non-substantive regulation promulgated thereunder, SBA, after written notification to the Licensee and until such condition is cured to SBA's satisfaction, shall deny additional Leverage to such Licensee and/or require such Licensee to take such actions as SBA may determine to be appropriate under the circumstances.

(f) *Consent to removal of officers, directors, or general partners and/or appointment of receiver.* The Articles of any Licensee issuing Debentures after April 25, 1994, shall include the following provisions as a condition to the purchase or guarantee by SBA of such Leverage. Upon the occurrence of any of the events specified in 13 CFR 107.261(c) (1) through (6) or 107.261(d) (1) through (3) as determined by SBA, SBA shall have the right, and Licensee consents to SBA's exercise of such right:

(1) With respect to a Corporate Licensee, upon written notice, to require Licensee to replace, with individuals approved by SBA, one or more of Licensee's officers and/or such number of directors of Licensee's board of

directors as is sufficient to constitute a majority of such board; or

(2) With respect to an Unincorporated Licensee, upon written notice, to require Licensee to remove the person(s) responsible for such occurrence and/or to remove the general partner of Licensee, which general partner shall then be replaced in accordance with Licensee's Articles by a new general partner approved by SBA; and/or

(3) With respect to either a Corporate or Unincorporated Licensee, to obtain the appointment of SBA or its designee as receiver of Licensee pursuant to section 311(c) of the Act for the purpose of continuing to operate Licensee. The appointment of a receiver to liquidate a Licensee shall not be within such consent, but shall instead be governed by the relevant provisions of the Act.

§ 107.262 Conditions affecting issuers of Preferred Securities and/or Participating Securities.

(a) *Applicability.* The conditions of this section apply to Licensees issuing Preferred Securities after April 25, 1994, and to Licensees with outstanding Participating Securities or with Earmarked Assets in their portfolios. The Articles of any such Licensee shall include the provisions of this § 107.262 as a condition to the purchase by SBA of Preferred Securities, or as a condition to the guarantee by SBA of Participating Securities and for so long as the Licensee owns Earmarked Assets. Preferred Securities issued prior to April 25, 1994 shall continue to be governed by the remedies in effect at the time of their issuance.

(b) *Consent to removal of officers, directors, or general partners, and/or appointment of receiver.* Upon the occurrence of any of the conditions set forth below, as determined by SBA, SBA shall have the following rights, and Licensee consents to SBA's exercise of any or all of such rights: With respect to a Corporate Licensee, upon written notice, to require Licensee to replace, with individuals approved by SBA, one or more of Licensee's officers and/or such number of directors of Licensee's board of directors as is sufficient to constitute a majority of such board; or with respect to an Unincorporated Licensee, upon written notice, to require Licensee to remove the person(s) responsible for such occurrence and/or to remove the general partner of Licensee, which general partner shall then be replaced in accordance with Licensee's Articles by a new general partner approved by SBA; and/or with respect to either a Corporate or Unincorporated Licensee, to the appointment of SBA or its designee as receiver of Licensee pursuant to section 311(c) of the Act for the purpose of continuing to operate Licensee. The appointment of a receiver to liquidate a Licensee shall not be within such consent, but shall instead be governed by the relevant provisions of the Act. The conditions shall be as follows:

(1) *Insolvency or extreme Capital Impairment.* Licensee becomes equitably or legally insolvent, or has a Capital Impairment Percentage of one hundred percent (100%) or more ("extreme Capital Impairment") and has not cured such Capital Impairment within the time limits set by SBA in writing. In this regard, no issuer of Participating Securities shall be deemed to have a condition of extreme Capital Impairment during the first eight (8) years following its initial issuance of Participating Securities, and no Licensee shall be afforded an opportunity to cure under this paragraph if it has already been afforded an opportunity to cure its Capital Impairment under paragraph (d)(3) of this section.

(2) *Voluntary assignment.* Licensee makes a voluntary assignment for the benefit of creditors.

(3) *Bankruptcy.* Licensee commences any bankruptcy or reorganization proceeding, receivership, dissolution or other similar creditors' rights proceeding, or such action is initiated against Licensee and is not dismissed within sixty (60) days.

(4) *Transfer of Control.* Licensee violates § 107.104 and/or willfully violates § 107.601, and such violation results in a transfer of Control of Licensee.

(5) *Fraud.* Licensee commits a fraudulent act which causes serious detriment to SBA's position as a guarantor.

(6) *Fraudulent transfers.* Licensee makes any transfer or incurs any obligation that is fraudulent under the terms of 11 U.S.C. 548.

(c) *Failure to remove.* Upon the occurrence of any of the conditions set forth below, as determined by SBA, and only if Licensee fails to remove the person(s) SBA identifies as responsible for such occurrence and/or cure such occurrence to SBA's satisfaction within a time period determined by SBA (but not less than fifteen (15) days), SBA shall have the following rights, and Licensee consents to SBA's exercise of any or all of such rights: With respect to a Corporate Licensee, upon written notice, to replace one or more of Licensee's officers and/or such number of directors of Licensee's board of directors as is sufficient to constitute a majority of such board; or with respect to an Unincorporated Licensee, upon written notice, to require Licensee to remove the person(s) responsible for such occurrence and/or to remove the general partner of Licensee, which general partner shall then be replaced in accordance with Licensee's Articles by a new general partner approved by SBA; and/or with respect to either a Corporate or Unincorporated Licensee, to obtain the appointment of SBA or its designee as receiver of Licensee pursuant to section 311(c) of the Act for the purpose of continuing to operate Licensee. The appointment of a receiver to liquidate a Licensee shall not be within such consent, but shall instead be governed by the relevant provisions of the Act. The conditions shall be as follows:

(1) *Willful conflicts of interest.* Licensee willfully violates § 107.903.

(2) *Willful or repeated noncompliance.* Licensee willfully or repeatedly violates one or more of the substantive provisions of the Act, specifically including but not limited to the provisions summarized in section 310(c) of the Act, or any substantive regulation promulgated under the Act.

(3) *Failure to comply with restrictions under Section 107.262(d).* Licensee fails to comply with the restrictions imposed by SBA under paragraph (d) of this section.

(d) *Consent to restricted operations.* Upon the occurrence of any of the conditions set forth in this paragraph (d), as determined by SBA, and until such condition(s) are cured to SBA's satisfaction within a time period determined by SBA (but not less than fifteen (15) days), upon written notice SBA shall have the following rights, and Licensee consents to SBA's exercise of any or all of such rights: To prohibit Licensee from making any additional investments except for investments pursuant to legally binding commitments entered into by Licensee prior to such notice and, subject to SBA's prior written approval, investments that are necessary to protect Licensee's investment; until all Leverage is redeemed and amounts due are paid, to prohibit Distributions by the Licensee to any party other than SBA, its agent or Trustee; to require all commitments to Licensee to be funded at the earliest time(s) permitted in accordance with Licensee's Articles; and to review and re-determine Licensee's approved Management Expenses or, for Preferred Securities issuers, Licensee's approved management compensation. The conditions shall be as follows:

(1) *Removal Conditions.* Any condition occurs which is listed in paragraph (b) or (c) of this section.

(2) *Failure to maintain Regulatory Capital.* Licensee fails to maintain its minimum Regulatory Capital as required by these regulations.

(3) *Capital or Liquidity Impairment.* Licensee has a condition of Capital Impairment as determined under § 107.210(h) or, if applicable to such Licensee, a condition of Liquidity Impairment as determined under § 107.241(f), and fails to cure the impairment within time limits set by SBA in writing.

(4) *Improper Distributions.* A Licensee makes any Distribution to its shareholders or partners other than those permitted by §§ 107.245 and 107.802.

(5) *Excessive Management Expenses or fees.* Without the prior written consent of SBA:

(i) Licensee incurs Management Expenses in excess of those permitted under § 107.241(d), if applicable to such Licensee; or

(ii) If SBA has previously approved an aggregate amount to be paid for salaries or other compensation of officers, directors, employees, or fees paid to Investment Advisers/Managers, Licensee increases such amount; or

(iii) If SBA has previously approved a formula for the aggregate amount to be paid for salaries or other compensation of officers, directors, or employees, or fees paid to Investment Advisers/Managers, Licensee pays an aggregate amount in excess of the formula amount or changes the formula.

(6) *Failure to make payment.* Licensee fails to pay any amounts due under Preferred Securities or required by §§ 107.240 through 107.247, unless otherwise permitted by SBA.

(7) *Noncompliance.* Except as otherwise provided for in paragraphs (c)(1) and (c)(2) of this section, SBA determines that Licensee has failed to comply with one or more of the substantive provisions of the Act, specifically including but not limited to the provisions summarized in section 310(c) of the Act, or any substantive regulation promulgated under the Act.

(8) *Failure to maintain diversity.* Licensee fails to maintain diversity between management and ownership as required by § 107.241(c), if applicable to such Licensee.

(9) *Failure to maintain investment ratios.* Licensee fails to maintain the investment ratios or amounts required for Participating Securities (§ 107.241(b)) or Leverage in excess of three hundred percent (300%) of Leverageable Capital (§ 107.230(c)(3)) or Preferred Securities in excess of one hundred percent (100%) of Leverageable Capital (§ 107.230(c)(4)), if applicable to such Licensee, as of the end of each fiscal year. In this regard, any

(i) Prepayment, sale, or disposition of Equity Capital Investments or Venture Capital Financing or Qualified Investments, as appropriate,

(ii) Increase in Leverageable Capital, or

(iii) Receipt of additional Leverage, occurring within one hundred twenty (120) days prior to the end of the fiscal year shall be disregarded in determining whether Licensee meets the foregoing requirements as of the close of its fiscal year.

(10) *Nonperformance.* Licensee violates or fails to perform one or more of the terms and conditions of any Participating Security or Preferred Security or of any agreement with or conditions imposed by SBA in its administration of the Act and the regulations promulgated thereunder.

(11) *Noncooperation under Section 107.262(e).* Licensee fails to take appropriate steps, satisfactory to SBA, to accomplish such action as SBA may have required pursuant to paragraph (e) of this section.

(e) *Repeated non-substantive violations.* If a Licensee repeatedly fails to comply with any one or more of the non-substantive provisions of the Act or any non-substantive regulation promulgated thereunder, SBA, after written notification to the Licensee and until such condition is cured to SBA's satisfaction, shall deny additional Leverage to such Licensee and/or require such Licensee to take such actions as SBA may determine to be appropriate under the circumstances.

§ 107.263 Non-waiver.

No failure to exercise or delay in exercising any right or remedy under the Act or the regulations in this part shall operate as a waiver of any such right or remedy by SBA. No failure(s) by SBA to require the performance by Licensee of any one or more of the terms or provisions of any debt instrument, Preferred Security or Participating Security of Licensee issued to, held, or guaranteed by SBA shall in any way affect SBA's right to enforce the same. Similarly, SBA's waiver of, or failure to enforce, any term or provision of any debt instrument, Preferred Security or Participating Security of Licensee issued to, held, or guaranteed by SBA or of any event or condition set forth in §§ 107.261 or 107.262 shall not be taken or held to be a waiver of any succeeding breach of any such term or provision or condition.

5. Section 107.901 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 107.901 Prohibited use of funds.

* * * * *

(a) *Relending, reinvesting, etc.* For relending or reinvesting, if its primary business activity involves, directly or indirectly, providing funds to others, the purchase of debt obligations, factoring, or long-term leasing of equipment with no provision for maintenance or repair; *Provided, however,* that Venture Capital Financings (as defined in § 107.230(c)(3)) of a Disadvantaged Concern engaged primarily in relending or reinvesting activities shall be permitted, except for banks and savings and loan associations not insured by agencies of the Federal Government, and agricultural credit companies.* * *

* * * * *

6. Section 107.906 is amended by revising paragraph (a) to read as follows:

§ 107.906 Violations based on false filings and nonperformance of agreements with SBA.

* * * * *

(a) *Nonperformance.* Nonperformance of any of the requirements of any Debenture, Participating Security or Preferred Security issued to, held or guaranteed by SBA, or of any written agreement with SBA.

* * * * *

7. Section 107.1004 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 107.1004 Reporting changes not subject to prior SBA approval.

(a) *Changes to be reported.* Any change of Licensee's name, address, telephone number, officers, directors, or other participants in the management of Licensee, articles, operating area, investment policy, or increase in capitalization not otherwise required to be submitted for prior approval (see, for example, § 107.601) shall be reported to SBA not later than thirty days after these events. * * *

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Dated: February 25, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–7843 Filed 4–7–94; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies; Definitions of Various Terms; Miscellaneous Final Rules; Valuation Guidelines

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This final rule adopts proposed rules published by the Small Business Administration (SBA) on August 5, 1993. The purpose of this rule is to implement certain provisions of the Small Business Equity Enhancement Act of 1992, and to clarify and simplify the regulations governing Small Business Investment Companies (Licensees) in order to encourage increased private investment in Licensees.

EFFECTIVE DATE: April 25, 1994.

ADDRESSES: Robert D. Stillman, Associate Administrator for Investment; Small Business Administration; suite 6300; 409 3rd Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT:

Marvin D. Klapp, Acting Director, Office of Program Development; Telephone (202) 205–6515.

SUPPLEMENTARY INFORMATION:

Alter Ego Financing

SBA had proposed to amend its regulations in order to permit Licensees to extend Financial Assistance to a Small Concern whose sole business was the leasing of commercial or industrial real estate to an operating concern under identical ownership. In the Small Business Investment Company Program there has never been an "alter ego" exception to the general rule that forbids Financial Assistance to Small Concerns engaged in leasing real estate, although other programs administered by SBA had such exceptions in their rules. See 13 CFR §§ 108.8(d) and 120.101–2(e). One reason for the proposal was to bring the rules of the Small Business Investment Company Program into greater, though not absolute, conformity with these rules. However, SBA has since published proposals that would change these other "alter ego" rules. Accordingly, SBA has decided to defer consideration of the rule proposed on August 5, 1993 until it has completed the rule-making process with respect to Parts 108 and 120 of its regulations. It should be clearly understood that the proposed rule is neither withdrawn nor adopted in final to become effective simultaneously with the adoption of final amendments to Parts 108 and 120. Licensees also are reminded that no existing rule forbids the extension of Financial Assistance to an eligible Small Concern for the acquisition of industrial or commercial real estate on which their business operations will be conducted.

Associate of a Licensee

The proposal to amend the definition of Control Person in connection with the proposal to allow limited partnerships to serve as a general partner of a Licensee elicited a number of comments raising issues that SBA deemed best addressed by a change in the definition of Associate of a Licensee.

Generally speaking, an investor with an equity interest of 10 percent or more in a Licensee will continue to fall within the definition of Associate of a Licensee, without regard to whether that equity interest consists of stock or a limited partner's interest. The rule reflects SBA's assumption that anyone with a 10 percent equity interest in a Licensee will have a degree of influence with the Licensee's management, even if such influence can't be openly exercised by virtue of the investor's status as a limited partner. However, the statutory changes intended to make the program more attractive to large institutional investors, and the response received by SBA in connection with its proposal to amend the definition Control Person, have persuaded SBA of the necessity to draw a distinction between a limited partner whose policy in dealing with the Licensee and/or the general partner is likely to be "hands off", and a limited partner that is likely to seek to influence the general partner. Accordingly, the distinction is being drawn between the generality of investors with a stake of 10 percent or more in the Licensee, and an Institutional Investor whose investment as a limited partner in the Licensee does not represent more than 33 percent of the Licensee's partnership capital and does not exceed 5 percent of such investor's net worth.

Commitment

Although the proposed new definition of "Commitment" is being adopted without change, the comments received indicate a need for a more detailed explanation of SBA's underlying purpose. Since "Commitment" is being defined as an undertaking by a Licensee to Finance a Small Concern, there was some concern as to whether the use of the word "commitment" to describe an Institutional Investor's undertaking to make future investments in a Licensee might not be unduly confusing. Upon consideration, the term "commitment", which is the term used in the Act, will continue to be used to describe an Institutional Investor's undertaking or obligation; the context will preclude confusion on the reader's part.

SBA intends to apply the new definition primarily to determine whether a Licensee is inactive within the meaning of § 107.902, and whether the Licensee is obligated to return part of any processing fee it may have collected pursuant to § 107.402(d), as adopted this day. Therefore SBA has no particular concern with the terms of any Commitment or purported Commitment extended after the adoption of this regulation that has been fully funded by a Financing to a Small Concern.

The new definition of "Commitment" assigns a meaning to the term that is narrower than the sense in which many Licensees have used the term. SBA, in practice, has never considered a general statement of willingness to extend Financing to constitute a Commitment. Now, SBA's position is a matter of record. Even though the new definition of "Commitment" excludes a number of letters that some Licensees may have previously considered to be commitments, the effect of such exclusion will not be as disruptive as some comments have predicted.

In general, the new definition will not be used to test a Licensee's need for Leverage. However, the definition of Commitment will be used in the review of any application submitted for Preferred Securities Leverage in excess of 100 percent of the Licensee's Leverageable Capital, or Leverage in excess of 300 percent of the Licensee's Leverageable Capital. This distinction is mandated by the language of sections 303(c)(1)(E) and 303(c)(4) of the Act, respectively, both of which speak of "funds * * * legally committed".

Some comments had expressed concern that the new definition of Commitment would impair the right of a Licensee to provide additional Financing, pursuant to § 107.706, to a portfolio concern that was no longer a Small Concern. In response to these and other comments, SBA has revised paragraph (a) of § 107.706 to eliminate existing restrictions or preconditions with respect to further Financing of portfolio concerns that have ceased to be eligible solely because they have ceased to be Small Concerns, but which have not yet made a public offering of their securities.

Two themes ran through almost all the comments submitted to SBA. One was that "reasonable conditions precedent" should be further defined or described; the other was that completion of the Licensee's due diligence process with results satisfactory to the Licensee should be considered a reasonable condition precedent. Although SBA is reluctant to provide a list of reasonable conditions precedent in the regulation for fear that such list might be regarded as an exclusive one, it is willing to describe

"reasonable conditions precedent" in general terms. A "reasonable condition precedent" is one that does not lie within the Licensee's ability to cause or prevent. "Completion of due diligence with results satisfactory to the Licensee" is an example of a condition precedent that lies within the Licensee's control. On the other hand, requirements that a disinterested person verify the value of the Small Concern's assets or its net worth, or that there be no adverse change in the Small Concern's financial condition between the date of the commitment and the scheduled disbursement date, or that the Small Concern do or achieve something that lies reasonably within its capacity would all be considered a "reasonable condition precedent."

Common Control

The proposed definitions of "Common Control" and of "Control" are adopted with an editorial change. The last two sentences of the proposed definition of "Control", beginning with the words "Two or more Licensees * * *" have been moved, without change, to the definition of "Common Control."

A change in the present definition of "Control" and a new definition, "Common Control" both were made necessary because section 402 of Public Law 102–366 (September 4, 1992) imposed a $90 million ceiling on the aggregate amount of Leverage of all forms that might be outstanding in any Licensee, or in any group of Licensees under common control, "unless the Administration determines on a case by case basis to permit a higher amount for companies under common control and imposes such additional terms and conditions as it determines appropriate to minimize the risk of loss to the Administration in the event of default."

SBA believes that Congress did not intend the words "commonly controlled" to mean only "commonly owned", since there are many different methods of control other than mere ownership of record. Rather, SBA believes that Congress intended to limit the dollar amount for which SBA would be at risk as a result of the business judgment of a single management group, even though the managers are not the owners. Consequently, the intention of this regulation is that two or more Licensees will be presumed to be "commonly controlled" if there is an affiliate relationship between or among them, which could be based upon ownership of stock or partnership capital of the Licensees, or upon management (including arrangements that are characterized as investment advisory contracts in which the adviser participates in the selection of the Licensee's investments) by affiliated persons or entities, even if there is no affiliation between or among the owners of the Licensees. The presumption that two or more Licensees are "Commonly Controlled" is not precluded solely because of the absence of any affiliation between or among their respective owners, or any interlock of their respective officers and/or directors, or general partners or Control Persons. Subject to the right of any Licensee to present evidence or arguments in rebuttal, Licensees shall be presumed to be under "Common Control" under the terms of the proposed rule if day-to-day management is contracted out to a single entity, or to two or more affiliated entities.

The fact of common ownership need not compel the conclusion of Common Control if it can be satisfactorily demonstrated to SBA that, for example, two or more Licensees under common ownership operate under entirely different management teams, are located in different regions, and pursue different investment plans. On the other hand, the presumption of Common Control would not be rebutted by a showing that two or more Licensees are separately owned and that each has a separate board of directors or general partner, if it also appeared that each board or general partner had effectively delegated operational control to a common adviser/manager.

Although public comment was generally favorable, one comment considered the $90 million Leverage ceiling for a single Licensee to be excessive. It is apparent from other provisions of Public Law 102–366 that Congress intended to make as much as $90 million available to qualifying Licensees.

Another comment urged that two or more Licensees with different ownership and different directors and/or general partners not be considered under Common Control solely because the day-to-day management has been delegated to a common manager.

SBA believes that any definition of "Common Control" that did not cover the case of a common manager would be too narrow; especially with regard to a company whose investors were led to believe that their company would be run by a particular management team.

Yet another comment objected to the use of the words "or otherwise" in the first sentences of the respective definitions of "Control" and "Common Control." In each case, "or otherwise" appears at the end of a list of the means by which one might obtain or exercise control over a business. Concern was expressed that an institutional investor intending ultimately to form its own wholly owned Licensee might be reluctant to become a 10 percent limited partner in another Licensee lest SBA consider both Licensees to be under common control, thus limiting the amount of Leverage available to the wholly owned Licensee.

SBA understands these concerns, which are believed to arise not so much from the definitions of Common Control and Control as from the definition of Control Person, which has also been revised.

With regard to Common Control and Control, the point of both definitions is to address the factual issue of whether A controls Licensee X, without distinction as to how A came to control X. SBA does not wish to leave open the possibility that someone might control a Licensee and yet not be covered by these definitions; and it is not confident that an enumeration consisting only of "ownership, management, [or] contract" represents all the ways by which A might control X. For example, if A were a 10 percent limited partner in Licensee X, and the general partner received no salary or management fee from X, but was instead an at-will employee of A, A's control of the general partner's salary might justify a conclusion that A actually controls X, even though A is only a 10 percent limited partner.

Control Person

The proposed amendment is adopted with changes to meet some of the concerns touched upon in the discussion of Common Control and Control. Some of these concerns have already been touched upon in discussing the change in the definition of "Associate of a Licensee".

The term "Control Person" is concededly a misnomer as applied to some of the persons described in the definition. For many years SBA's regulations have defined the term "Associate of a Licensee" to include any person with an equity interest of 10 percent or more in a Licensee; it was thought that a person with a 10 percent interest or more would have a significant, even if sometimes informal, influence over the Licensee's operations. When SBA decided to allow Licensees organized as limited partnerships to have a corporate general partner, it was necessary to coin a term to cover those persons that might control, or at least influence, the Licensee's corporate general partner and thus the Licensee itself even though they themselves might have no direct relationship to the Licensee. The term

chosen to describe such persons was "Control Person", even though it is defined in language that includes persons that could only be described as potentially having an influential, but not controlling, voice in the Licensee's affairs. On the one hand, SBA's intention was to bring such persons within the definition of "Associate of a Licensee" in order to prevent self-dealing by or in favor of such persons. On the other hand, it was never SBA's intention to create a presumption that an ownership interest of 10 percent or more in an entity that serves as a general partner of the Licensee would, by itself, constitute control over the Licensee, even though the language of the proposal may have given that impression. Accordingly, the final regulation draws a distinction between a Person that has an interest in a corporation or partnership, including a limited partnership interest, that serves directly or indirectly as a general partner of a Licensee, and also participates in that entity's operations and thus ultimately in the Licensee's investment decisions; and, in contrast, a passive investor in the same kind of entity. In the case of a participant in the entity's affairs, an interest of 10 percent or more will bring such Person within the definition of Control Person. A passive investor with an interest of less than 33 percent in an entity that serves directly or indirectly as a general partner of a Licensee is now excluded from the definition of Control Person.

Cost of Money (COM)

SBA proposed three regulatory changes intended to increase the income a Licensee might derive from Loans and Debt Security Financings.

The first proposal, amending the definition of COM to allow Licensees to impose upon Small Concerns certain additional fees and charges that would be excluded from the computation of COM, is adopted as final without change. The other two regulatory proposals intended to allow a Licensee to charge more for Financial Assistance will be discussed hereafter.

All comments were favorable, though some expressed the view that SBA had not gone far enough. One comment urged that the definition of COM explicitly exclude, in addition to any other excluded fees, charges and fees paid to non-Associate consultants, accountants, and lawyers.

SBA does not believe that any further amendment to the definition is needed to accomplish the objective sought by this comment. COM is defined in terms of payments to a Licensee and its Associates. Thus, payments to non-Associates for technical and professional services are already excluded from the definition.

Another comment had urged that a Licensee be allowed to charge a fee, excluded from COM calculation, for arranging financing from an Associate of that Licensee regularly engaged in investment banking. While SBA considers this proposal to be worthy of serious consideration, SBA declines to adopt it at this time.

The amended definition of COM no longer excludes commitment fees. Instead, the definition permits Licensees to charge a processing fee of up to 3 percent of the requested amount of Financing, without including it in COM; and to collect this fee, in full or in part, before processing the Small Concern's application. In other words, a Licensee may charge interest at the maximum permissible rate, and collect an additional processing fee, not to exceed 3 percent of the amount of the Financing. If the Financing closes, the Licensee may collect or retain the full amount of the processing fee, even if no commitment was extended, and no part of this fee will be included in the computation of COM. On the other hand, if the Licensee has collected a processing fee equal to 3 percent of the requested Financing, any additional fee, whether based on the extension of a commitment, or otherwise, will be included in computation of COM.

Although the regulatory changes will permit a Licensee to require a processing fee before processing an application for Financing, § 107.402 makes it clear that it is not intended that any Licensee will derive a profit from a rejected application. In such a case, the Licensee must return the entire amount of any processing fee collected in excess of certain specified out-of-pocket costs. See § 107.402, as adopted. If the application is rejected, the Small Concern will have no obligation to reimburse the Licensee for any additional expenses the Licensee may have incurred, even if the Licensee has previously charged a smaller advance processing fee than it might have charged, or no processing fee at all.

If the Licensee does provide Financing, the Small Concern also may be required to reimburse the Licensee for out-of-pocket conveyance and/or recordation fees, taxes, and reasonable closing costs. Such reimbursement, which may be required in addition to the processing fee, is not to be included in the computation of COM.

The definition of COM also would allow Licensees to impose upon Small Concerns three other charges, in addition to presently-excluded charges, that would be excluded from the computation of COM.

By agreement with a Small Concern, a Licensee may receive a reasonable fee for its efforts in arranging financing from non-SBIC non-Associate sources, and the amount of such fee, whether or not the Licensee itself participates in the financing, is excluded from the computation of COM.

A Licensee may require the Small Concern to reimburse it for the reasonable and necessary costs incurred by the Licensee in monitoring the Financing, and the amount of such reimbursement is excluded from computation of COM.

A Licensee that has a "watchdog" director serving on the board of a Small Concern pursuant to § 107.903(f) may receive reasonable director's fees, not in excess of those paid to outside directors; and such fees are not to be included in computing COM.

Finally, the language presently found in the definition of COM that requires a Licensee, in the event of prepayment under certain circumstances, to refund unearned front-end charges has been moved to § 107.402(f), and will be discussed later.

Disadvantaged Concern

The definition is revised to reflect SBA's current position, but SBA expects to undertake a separate rule-making in the near future on this subject.

Institutional Investor

Section 410 of Public Law 102–366 added a definition of "private capital" to the Act that, among other things, requires SBA to recognize "unfunded commitments from Institutional Investors that meet criteria established by the Administration" as part of a Licensee's Private Capital for certain purposes. Accordingly, SBA proposed a definition of "Institutional Investor" which is now adopted with a number of changes.

The most important change entails the imposition, with one exception, of a minimum net worth requirement on all entities or persons that which to be considered Institutional Investors, so that their unfunded commitments may be recognized by SBA as a part of a Licensee's Private Capital for regulatory purposes. The net worth requirement does not affect any Person that actually makes an equity investment in a Licensee, but only SBA's recognition of an unfunded commitment for regulatory purposes.

Even though SBA does not extend Leverage against unfunded commitments, the inability of an investor to fund a commitment may

adversely affect SBA's risks with respect to Leverage previously extended. Although it was SBA's intention to define "Institutional Investor" broadly and inclusively it is also important that there be a substantial probability that the commitment recognized by SBA will be fully funded when the time comes. This probability does not necessarily exist with respect to every institution that falls within the proposed definition of Institutional Investor. Accordingly, SBA has determined to impose a $1 million minimum net worth test upon all entities that seek to qualify as Institutional Investors, and a $2 million minimum net worth standard upon all persons that seek to qualify. However, while the final rule exempts individuals who are Accredited Investors from the $2 million net worth test, such individuals will be considered Institutional Investors only if such person's commitment is backed by a letter of credit from another Institutional Investor.

At this point it is appropriate to note that while an Accredited Investor with a net worth of less than $2 million is the only kind of individual who will be required to provide a letter of credit in order to be considered an Institutional Investor, it does not follow that SBA will automatically recognize as a part of a Licensee's Private Capital the full amount of the commitment made by every individual Institutional Investor with a net worth of $2 million or more.

Unless an individual Institutional Investor has a net worth of $10 million or more, a letter of credit from another Institutional Investor will be required to back up that part of the commitment that exceeds 10 percent of the Institutional Investor's net worth. See the definition of Private Capital.

Another change relates to the requirement of a letter of credit. A number of comments had pointed out that compliance with the proposed requirement that an individual investor's (unfunded) commitment be backed by a letter of credit from a qualified Institutional Investor was not feasible in the case of a commitment that was not to be fully funded within one year; banks and similar Institutional Investors normally do not issue letters of credit with terms in excess of one year.

Upon reflection, SBA will recognize a commitment backed by a one-year letter of credit as long as the letter of credit is renewed or replaced at its expiration with another letter equal to the unfunded amount of the commitment, expiring on the anniversary of its issuance or on the date the commitment is to be fully funded, whichever shall first occur. An unfunded commitment not backed by a current letter of credit shall cease to be recognized as a part of Regulatory Capital as of the date the letter of credit expires, which may cause the Licensee to be in violation of any regulatory restrictions or requirements that are expressed in terms of the Licensee's Regulatory Capital.

Another change represents a response to certain inquiries concerning foreign investors. SBA never intended that an individual investor who meets the standards set forth in the definition of "Institutional Investor" should be excluded from the definition solely because he or she was not a permanent resident of the United States, as long as he or she irrevocably designates an agent in the United States for service of process. The definition is amended to reflect this intention.

Private Capital

With one significant change, and with three changes of an editorial nature, the definition of Private Capital is adopted as proposed.

The proposed definition had allowed "funds invested which are income derived from the investment of grants that have been made by a state or local government agency or instrumentality into a nonprofit corporation or institution exercising discretionary authority with respect to such funds; and funds invested by a State financing agency, or similar agency or instrumentality, to the extent such funds are derived from such agency's income and not from appropriated State or local funds" to be included in the Regulatory Capital of a Section 301(d) Licensee, subject to the limitation that the aggregate amount of such funds and funds invested in the Licensee directly by any State or local government or instrumentality might not exceed 40 percent of that Licensee's Regulatory Capital. This 40 percent limit is not in the final version. Thus, a Section 301(d) Licensee may be capitalized entirely with such indirect funds.

However, it does not follow that a State or local governmental entity supplying such funds to a section 301(d) Licensee can control the Licensee. Section 301(b) of the Act requires SBA to make a positive determination as to the probability of successful operation by any applicant before it may issue a license, specifically considering the applicant's prospects of "adequate profitability". In making this determination, SBA considers it essential that control of a Licensee be in hands other than the representatives of public sector investors.

One editorial change has been made to reflect the fact that, while the law requires unfunded binding commitments to invest in a Licensee to be treated as a part of the Licensee's Regulatory Capital for some purposes, fundamental accounting principles forbid the inclusion of unfunded commitments in "paid-in capital and paid-in surplus."

The proposed definition of Private Capital included a paragraph (4) providing in relevant part that for the purpose of determining whether a Licensee was in compliance with certain cited regulations, the term Private Capital used in each such regulation should be considered to mean "Regulatory Capital". For ease of reference, the term Regulatory Capital has been substituted in each cited regulation and the corresponding language of paragraph (4) is deleted.

To encourage license applicants to assist Small Concerns as soon as they are able, even before they receive a license, language has been added to make it clear that securities of eligible Small Concerns Financed by an applicant or by the applicant's investors after the date its license application has been physically received by the Office of Investment, but before the license is issued, will be regarded as a part of Regulatory Capital for Licensing and other purposes, subject to SBA approval. The added language reflects SBA's present practice.

Section 301(d) Licensee

The proposed definition is adopted with editorial changes that conform to the changes in the definition of Disadvantaged Concern.

Limited Partnerships

The proposed rule is adopted with one significant change. The requirement that the funds of a corporate or limited partnership general partner not invested in the Licensee be either co-invested with those of the Licensee or invested in "idle funds" investments is eliminated. SBA has never Leveraged such funds, and SBA does not hold general partners as such personally liable for the repayment of Leverage obligations. No purpose is served by treating such general partners differently from unleveraged Licensees.

Operational Requirements

Except as hereafter noted, SBA adopts as final its proposal to amend § 107.101 regarding operational requirements in order both to increase the chances of successful operation on the part of Licensees, and to minimize SBA's exposure to loss.

A company that applies for a license, or a Licensee that applies for leverage, must demonstrate to SBA that its management has something more than general business experience. Such applicant or Licensee must show that management has experience making the sizes and types of loans or investments in Small Concerns of the sizes and types contemplated in the Licensee's Plan of Operations.

SBA's experience has shown that companies entering the SBIC program with only the statutory minimum amount of capital have little chance of carrying on the "successful operations" and achieving the "adequate profitability" required by section 301(c) of the Act. Accordingly, every applicant will be required to have sufficient capital in excess of the minimum to operate soundly and profitably within the context of its plan of operations as approved by SBA. Each prospective Licensee must have sufficient capital so that it will be able to pay its expenses without dissipating its Regulatory Capital. Based on SBA's experience, given Licensees' fixed expenses for management and rent, and their costs of due diligence, even in the case of straight loans, SBA believes that a stand-alone company bearing the full expense of rent, management, accounting services, etc. has only a limited prospect of profitability if its Regulatory Capital is less than $5 million. Accordingly, SBA would prefer that applicants have minimum capital of $5 million before admission to the program. It does not follow, though, that SBA will never hereafter license a company with Regulatory Capital of less than $5 million. In appropriate cases, consideration will be given to the possibility that the applicant's overhead expenses may be substantially less than customary because they will be shared with other companies having similar investment policies, or underwritten by the applicant's investors.

SBA's experience also has shown that the portfolio valuation process is a weakness of some Licensees. Accordingly, SBA has taken steps to improve the process and the valuation standards. Each Licensee is required to adopt a policy for the valuation of its portfolio investments, to evaluate portfolio investments in accordance with such policy, and to report such evaluations to SBA. For their guidance, SBA adds an Appendix III to Part 107 setting forth the basis upon which valuation guidelines should be framed. Appendix III as adopted differs somewhat from its proposed form because of SBA's response to comments it has received.

With the widespread use of computers in virtually all businesses, SBA is in the process of developing systems to enable SBICs to perform their reporting requirements through electronic transmission from the most commonly used types of personal computers. SBA will provide SBICs with custom software that will enable SBICs to perform their reporting tasks more easily, more accurately, and more quickly. To this end, SBA is requiring all SBICs to have personal computers, to run SBA-provided software, and to report electronically as directed by SBA by June 30, 1994.

The final version of § 107.101 adopted today includes a new paragraph (i) that was not a part of the original proposal. The combination of the tendency within the Small Business Investment Company industry toward the formation of larger companies and increases in the size standards applicable to the industry (see 58 FR 40603, proposed July 29, 1993 and adopted as final simultaneously herewith) raises the possibility that the flow of investment capital into smaller concerns may be substantially reduced. Accordingly, SBA will require Licensees to ensure that a percentage of the Financings they extend in the future go to Smaller Concerns—concerns that qualify as Small either under the standard set forth in 13 CFR § 121.802(a)(2)(i) as in effect on January 1, 1993, or under the industry size standard in effect at the time of the Financing—as defined in § 107.3. A Licensee that fails to meet the goal set forth in this regulation may make no Financings of concerns that do not qualify as Smaller Concerns until it has brought itself into compliance.

At the end of each Licensee's first full fiscal year following the adoption of this rule, at least 10 percent of the dollar amount of all Financings made by the Licensee between those dates shall have been extended to such Smaller Concerns. At the end of each subsequent fiscal year following the adoption of this rule, the cumulative dollar amount of Financings extended to such Smaller Concerns by each Licensee since the adoption of this rule must equal at least 20 percent of the cumulative total of Financings over the same period. For the purpose of determining whether a Licensee has achieved these objectives, a change of ownership Financing pursuant to § 107.711 in which the resulting concern qualifies as a Smaller Concern will be counted as a Financing of such Smaller Concern.

The purpose of this rule is to insure a continued flow of Financial Assistance to Smaller Concerns despite the adoption of a new size standard. Therefore the rule does not mean that a certain percentage of the Licensee's portfolio as of the end of any (full) fiscal year following the adoption of this rule must consist of investments in Smaller Concerns. In the case of any present Licensee, 100 percent of its portfolio on the date of this final rule would consist of investments in Smaller Concerns. Thus, such Licensee would be free to operate for a number of years without Financing any Smaller Concerns if the rule were addressed to a specific percentage of portfolio as of the close of a fiscal year. Such a result would be inconsistent with the previously-declared purpose of the rule, which is aimed at future investments. Given the purpose of the rule, events such as prepayments, the sale or exchange of portfolio securities, or the write-down or write-off of portfolio securities will not affect the Licensee's compliance.

Nor does the rule necessarily require a specific percentage of Financings to Smaller Concerns within any given fiscal year; the object of the rule is a cumulative percentage as of the end of a period. The wording of the rule is intended to imply a carry-forward from one fiscal year to the next, of Financings to Smaller Concerns made after the effective date of the rule.

Calculation of Cost of Money Ceiling

The proposal to allow Licensees to calculate an alternative Cost of Money Ceiling based on their own weighted average cost of money is adopted with a number of significant changes.

Until now, the maximum permissible rate of interest that any Licensee might impose upon any Small Concern was calculated with reference to the rate of interest on the SBA-guaranteed debentures underlying the most recent offering of trust certificates to the public. While the existing rule facilitated the determination of a uniform ceiling throughout the industry, it ignored the actual interest expense on the debenture leverage drawn down by any individual Licensee.

SBA had originally proposed to amend § 107.302 to allow Licensees that have been leveraged through the sale of debentures to use their own weighted average cost of funds borrowed from SBA, or with SBA's guarantee, as the case may be, as an alternative basis for calculating their respective interest rate ceilings. Although companies licensed under section 301(d) of the Act that sell debentures to SBA (or to the public with SBA's guarantee) may enjoy the benefits of a subsidized interest rate for the first five years of the debenture's term, this subsidy is to be disregarded in the calculation of the alternative interest

rate ceiling. On the other hand, Licensees that have sold Preferred Securities (stock or limited partnership interests) or Participating Securities may not include dividends or distributions on such securities in the calculation of their alternative interest rate ceilings.

The entire focus of the proposal was on Leveraged Licensees, partly because section 305 of the Act, as amended by section 411 of Public Law 102–366, spoke only of "companies which have issued debentures pursuant to this Act", and partly because it was assumed that non-Leveraged Licensees did not utilize borrowed funds. The final regulation reflects the numerous comments that informed SBA that non-Leveraged Licensees do indeed have borrowings, albeit from other sources. Accordingly, the final rule will allow a Licensee to utilize Weighted Average Cost of Qualified Borrowings (including SBA-guaranteed Debentures) rather than Weighted Average Cost of Leverage as an alternative basis for the calculation of its Cost of Money limit.

The use of the term "Qualified Borrowings", defined in § 107.3, is intended to discourage a Licensee's acceptance of extremely high (above-market) interest loans, presumably from Associates, for the purpose of maximizing the COM that the Licensee may then impose upon a Small Concern.

It should be understood that under the terms of the regulation as proposed and adopted, the Weighted Average Cost of Qualified Borrowings that is to be used by a Licensee is its cost over the Licensee's preceding fiscal year, certified to SBA when the Licensee's Annual Report (Form 468) is transmitted. However, it is also SBA's intention to make this alternative method available as soon as possible to any Licensee that may wish to use it without waiting until the end of its fiscal year.

Following the publication of this final rule, any Licensee may promptly certify its Weighted Average Cost of Qualified Borrowings to SBA as if this regulation had been in effect prior to the close of the Licensee's preceding fiscal year. Solely for the purposes of determining whether the notification is timely within the meaning of § 107.302(f), SBA will regard the effective date of this rule as the closing date of the Licensee's fiscal year. In other words, if the Licensee's fiscal year ends on December 31, and this rule is adopted as final on the following May 1, a Licensee may certify a Weighted Average Cost of Borrowed Funds based on the fiscal year that closed on the preceding December 31, and the required notification to SBA will be considered timely if made within 30 days after May 1.

If a Licensee does not make a timely certification of its Weighted Average Cost of Qualified Borrowings, it will be presumed that its Weighted Average Cost of Borrowed Funds for the preceding fiscal year is zero, so that the COM ceiling applicable to its Financings will be that based on the current Debenture Rate. It should be understood clearly that the interest rate ceiling based on the Debenture Rate remains the only permissible ceiling applicable to Loans or Debt Security Financings committed or disbursed prior to the certification of the Licensee's Weighted Average Cost of Qualified Borrowings.

Since each Licensee may have its own individual COM ceiling, SBA proposed a solution to the question of the applicable ceiling when two or more Licensees participate in a joint financing. See § 107.302(g) as proposed. In response to comments, SBA has determined to adopt a simpler final rule. The applicable COM limit for a joint financing is the highest of any of the three following ceilings:

(1) A ceiling based on the current Debenture Rate, which is the same for all Licensees at any given time;

(2) A ceiling determined with reference to the lead lender's Weighted Average Cost of Qualified Borrowings; or

(3) A ceiling equal to the weighted average of the highest ceiling available to each participating Licensee. If a Licensee has not certified a Weighted Average Cost of Qualified Borrowings to SBA at the time it participates in a joint financing, or has no Qualified Borrowings, the "highest ceiling available" to such Licensee is, of course, a ceiling based on the current Debenture Rate. SBA acknowledges that on occasion some participating Licensees may be able to collect interest and/or other charges for the use of money in excess of the limit that would apply if they had done the Financing separately; but SBA considers that such situations will arise only rarely, and the excess cost to the Small Concern will be minimal.

SBA had proposed to adopt a new rule that would limit both the amount of default penalty that a Licensee may impose, and the circumstances under which a penalty might be imposed. Based upon the comments received, SBA now believes that a rule limiting post-default interest to the maximum rate permitted by the Cost of Money ceiling in effect at the time of default may be insufficient to deter deliberate default. Accordingly, the final rule will permit a Licensee to impose and collect a default penalty not to exceed 7 percentage points over the rate specified in the Note or Loan Agreement, for as long as the default shall continue.

As proposed, the rule would have allowed a default penalty to be imposed only if the Small Concern failed to make payment in accordance with the terms of its obligation. The final rule will also allow a default penalty to be imposed for failure to furnish required reports or other information. Inasmuch as SBA will require Licensees to furnish information concerning the economic impact of the loans and investments they make, and to verify the use of Financing proceeds by Small Concerns; and to obtain the necessary documentation pertaining to such use and to economic impact generally, SBA considers the Licensee's ability to impose a monetary sanction on the Small Concern both an inducement to the Licensee to force compliance by the Small Concern and an indispensable tool for that purpose.

Regulatory Relief for Unleveraged Licensees

As directed by section 408 of Public Law 102–366, SBA reviewed and proposed to revise those regulations "intended to provide for the safety and soundness of" leveraged Licensees with a view toward exempting unleveraged Licensees from compliance with such regulations, or promulgating different rules for unleveraged Licensees. SBA's proposal to exempt unleveraged Licensees from compliance with § 107.303 (overline limitation) is adopted as proposed.

SBA's proposal to relieve unleveraged Licensees from compliance with § 107.708 (idle funds) is also adopted without change. SBA's proposal to amend § 107.708 as it applies to Leveraged Licensees will be discussed later.

The language of § 107.708 now reflects SBA's position with respect to a Licensee's deposit of idle funds in an Associate bank, which has always been that such a deposit does not constitute the Financing of an Associate unless the Licensee is receiving a lower interest rate than the Associate gives the public. In the case of an unleveraged Licensee, SBA will not consider the deposit of funds with an Associate bank to constitute self-dealing, even if the Licensee accepts a lower interest rate than the Associate gives the public.

SBA does not intend that any Licensee shall simultaneously be leveraged and exempted from compliance with §§ 107.303 and 107.708, or with any other regulations

that may later be made inapplicable to unleveraged Licensees. Accordingly, no Leverage is to be made available to any unleveraged Licensee that is not, at the time of the request for Leverage, in compliance with regulations applicable to Licensees with outstanding Leverage.

Economic Impact

SBA had proposed to add a paragraph (c) to § 107.304 to require that each Portfolio Financing Report (Form 1031) set forth the economic impact expected to result from the financing in terms of job creation or retention, expanded business activity, or other identified indicators of economic impact. In response to comments, SBA has determined that it would be more appropriate to require the Licensee to include in its own annual reports to SBA additional information reflecting the actual economic impact of its Financing on each Portfolio Concern, instead of requiring the Licensee to submit its predictions of economic impact.

Verification of Use of Proceeds

SBA's proposal to require Licensees to take reasonable steps to verify the use of Financing proceeds by portfolio concerns is adopted with certain changes intended to clarify what is expected of Licensees.

The purpose of this regulation is to reduce the possibility that Licensee funds may be used for purposes beyond the contemplation of the Act or for purposes forbidden by the regulations; it is intended to make existing prohibitions more effective.

For example, § 107.901(c) has long forbidden the extension of Financing to concerns engaged in the operation of rental real estate, but the scope of the prohibition is not limited to concerns that openly hold themselves out (to the Licensee, at least) as being engaged in the operation of rental real estate. Also prohibited is the use of Licensee funds to acquire or improve rental real estate even if the Small Concern's primary business (at least immediately before the Financing) is classifiable other than as a prohibited Major Group 65 activity. SBA seeks to make it as difficult as possible for a Small Concern to divert funds from the legitimate purpose represented to the Licensee and reported to SBA on the Form 1031. As the preceding sentence suggests, SBA considers the diversion-of-proceeds problem to be one primarily involving innocent Licensees that have been wrongfully induced by a Small Concern to make a Financing.

Certainly a Small Concern's representations pertaining to the eligibility of the end use of its funds are as material as those pertaining to the value of its assets or its revenues. Nor should a Small Concern be able to deceive Licensees with impunity as to the ultimate intended use of Financing proceeds. While the cooperation of Licensees is necessary to prevent such deceit, the real obligation should fall upon the Small Concerns themselves. Accordingly, the regulation adopted today clarifies the Licensee's duty to verify that the use of funds was in accordance with the representations made to the Licensee. To assist the Licensee in obtaining such information, SBA has adopted other regulations that will permit a Licensee to impose a substantial default penalty on a Small Concern that fails to furnish required post-financing information (see § 107.302(h)) and that allow a Licensee to recover from the Small Concern the reasonable and necessary out-of-pocket expenses incurred in monitoring the Financing (see paragraph (7) of the definition of Cost of Money).

Accordingly, Licensees will be required to enter in their own files, and to maintain therein, the expected date of a post-closing review for the purpose of monitoring use of proceeds, which shall be not later than 90 days after the scheduled use of the funds.

In conducting a post-closing review or monitoring the subsequent activities of a portfolio concern, Licensees should be alert to the possibility of diversion of proceeds. If post-Financing financial statements from the Small Concern, or visits to the Small Concern, disclose substantial amounts of newly-created non-trade receivables or investment assets, suspicion is warranted.

Similarly, since "working capital" is always understood to mean money for use in the portfolio concern's business, as represented to the Licensee and reported on the Form 1031, a request for a "working capital" loan that seems wholly out of proportion for an enterprise of the Small Concern's size in the same line of business should be a warning signal.

Prepayment Penalties

Most of the substance of the proposed § 107.402 has already been discussed in connection with the proposed definition of Cost of Money. However, the proposed § 107.402 reflected a new approach to the treatment of prepayment penalties by a Licensee that has also charged front-end fees. Under the rule adopted today, which is substantially as proposed, every Licensee may charge a reasonable prepayment penalty for voluntary prepayment without regard to front-end charges, but a Licensee that charges an excessive prepayment penalty shall be required to refund the entire amount of the penalty to the Small Concern.

A number of comments had sought some guidance as to what SBA would consider a reasonable prepayment penalty. Accordingly, the regulation clarifies that SBA will presume that a prepayment penalty equal to 5 percent of the outstanding balance in the first year of the Financing's term, and declining by one percentage point per year until the fifth year, is a reasonable prepayment penalty. The formula is that employed in the case of prepayment of SBA-guaranteed Debentures. SBA considers this a more precise and useful standard than one referring to a penalty "customary for financial institutions in the geographic area in which the financing is being made."

If a Licensee has imposed front-end charges that are not specifically excluded from computation of COM (such as points, discounts, or processing fees in excess of 3 percent) such charges shall be prorated over the stated term of the Financing and if the sum of interest and unearned front-end charges exceeds the applicable COM limit, the excess shall be repaid to the Small Concern.

Special Situations for Short-Term Financing

The proposal to amend § 107.403(b)(1) by adding a narrow exception to the general requirement that all Financings have a term of at least five years is adopted without change. The new exception is created in favor of Small Concerns that have received government contracts under Federal, State, or local set-aside programs for "minority" or "disadvantaged" concerns, so that Licensees may provide the short-term contract financing that the Small Concern needs to perform the contract.

Although such Financing would only go to firms receiving contracts under set-aside programs wherein eligibility had been established by the contracting agency, Licensees extending short-term contract Financing would have a responsibility to assure that the Small Concern in question is a "Disadvantaged Concern", as defined in § 107.3.

Consideration for Issuance of Licensee's Securities

The proposal to amend § 107.705 to allow a Licensee to issue its securities in exchange for non-cash assets approved by SBA is adopted with an editorial change.

Paragraph (4) of the definition of "Private Capital", as originally proposed, had included a warning concerning future Financings of, and/or

assumptions of Control over, concerns whose securities were exchanged with the Licensee for stock or partnership interests therein. The intended gist of the warning was that if the legality of a certain action or Financing depends upon the need to protect a Licensee's investment, a Licensee that has only issued its stock or partnership interests in exchange for securities of a Small Concern is not considered to have any investment to protect. This warning language, adopted without change, will now be a part of § 107.705 as adopted; it is transferred from paragraph (4) of the definition of Private Capital. However, this restriction will not apply to securities of eligible Small Concerns that SBA has approved for inclusion in Regulatory Capital.

Retention of Investments

The final version of § 107.706 differs substantially from the proposed version. Section 107.706 originally had addressed the right of a Licensee to retain its investment in, and to provide additional Financing to, a concern that had ceased to be a Small Concern. SBA had proposed to broaden the scope of the regulation to cover the case in which a concern's eligibility is lost, either because it ceases to be an alter ego of another eligible concern, or because it has shifted its activity into an ineligible line of business. The policy decision, previously discussed, to defer adoption of an alter ego rule required the elimination of all such references in the proposed rule. The other changes, discussed below, respond to comments received from the public.

The proposed rule would have left untouched the present rule restricting the right of Licensees to provide additional Financing to concerns whose growth and expansion was such as to take them out of the definition of Small Concern. After further consideration, SBA is persuaded that growth and expansion are desirable processes that should neither restrict the access of the successful portfolio concern to additional Financing from the Licensees that Financed it when it was small, or the right of the Licensees to take additional advantage of an unusually promising investment opportunity. Accordingly, paragraph (a) has been revised to allow a Licensee with a pre-existing investment in a concern that is no longer small to make additional investments until the portfolio concern makes a public offering of its securities; and, even after that, to exercise options, warrants or other rights to acquire Equity Securities of the portfolio concern.

The regulation adopted this day with respect to additional Financing of concerns that have become ineligible by reason of a change in business operations represents the reconciliation of two conflicting policy considerations. On the one hand, if SBA regulations declare Small Concerns engaged in certain lines of business to be ineligible, it makes no sense to allow Licensees to Finance an initially-eligible concern so that it can shift its business activities into an ineligible area. On the other hand, SBA recognizes that subsequent and unforeseen occurrences may require a Small Concern to shift its activities into an ineligible area.

Accordingly, the final regulation distinguishes between the case of a concern that becomes ineligible by reason of a change in its business activities within one year after the Licensee's Financing and that of a concern that changes its business activities more than a year after the Licensee's Financing. The regulation provides that if the concern moves into an ineligible line of business within one year from the date of the Licensee's Financing, a rebuttable presumption will arise that the change in business activity was contemplated by the Small Concern at the time of the Licensee's Financing. Accordingly, the Licensee shall have the right to treat such change as a default or other breach of covenant on the Small Concern's part, and to sue for any resulting damages. See § 107.305. The Licensee may also divest itself of the investment if it considers such action to be in its best interests. However, the Licensee's retention of such an investment in its portfolio is a matter of balancing of program integrity against possible loss to the Licensee, which is something that can only be done on a case-by-case basis. Accordingly, requests for retention of the investment should be accompanied by evidence tending to rebut the presumption of bad faith on the part of the Small Concern by a showing that the change in the Small Concern's business was prompted by a change in circumstances subsequent to the date of the Licensee's Financing and not reasonably foreseeable by the Small Concern.

If the change in business activity takes place more than one year or more after the Licensee's Financing, of if the presumption of regulatory violation has been rebutted, the Licensee may provide additional Financing, but only to the extent necessary to prevent loss of its original investment. SBA intends to allow only the most narrow exception to its policy forbidding the Financing of concerns engaged in ineligible business activities.

A change that takes place within one year gives the Licensee the option to treat the event as a default and to accelerate the maturity of all obligations. If the Licensee wishes to retain its investment in the portfolio concern, it must obtain SBA's approval; and to obtain such approval, it must rebut the presumption that the change was within the contemplation of the parties, and, hence, in violation of the applicable regulation, at the time of the Licensee's Financing. The Licensee may rebut this presumption with evidence that the change was the result of changed circumstances, unforeseen at the time of the Licensee's Financing.

A change that takes place more than a year after the Licensee's Financing may be treated by the Licensee as a default, but there is neither a presumption that the change was within the contemplation of the parties at the time of the Licensee's Financing, nor a requirement of SBA approval should the Licensee decide to retain its investment.

Purchase of Portfolio Securities From SBA or From Licensees in Liquidation

SBA's proposal to amend § 107.707 to clarify the authority of Licensees to purchase securities of Small Concerns from SBA, as either the receiver or the assignee of another Licensee, is adopted without change.

Licensees are reminded that § 107.403(b)(3) presently allows them to purchase securities of a Small Concern, including its promissory notes, from any (non-Associate) non-issuer (including the receiver of a failed financial institution), provided such acquisition "constitutes a reasonably necessary part of the overall sound financing of such concern." In contrast, § 107.707 contains no such restriction and is therefore narrowly drawn. SBA has determined that no benefit to the Program or to small business would result from broadening the scope of § 107.707 to allow the purchase of a Small Concern's Notes from the liquidators of a failed lending institution when such purchase is made for its own sake, and not as a "reasonably necessary part of the overall sound financing of such concern."

Idle Funds Investments

So far as this proposal deals with unleveraged Licensees, its effects have already been discussed. That part of the proposal dealing with investments of idle funds by Leveraged Licensees is adopted with certain changes.

The final regulation clarifies in two ways the authority of Leveraged

Licensees to invest in repurchase agreements (repos).

The subject matter of the repo may only be obligations of, or obligations guaranteed as to principal and interest by, the United States; it is not enough that such Federal or Federally-guaranteed obligations serve as collateral security for the performance of a repo whose subject is some other kind of security.

The securities underlying the repo must be maintained in a custodial account at a Federally-insured institution. They may not remain in the hands of a party that is not itself Federally-insured; and they may not be held as commingled assets of the custodial institution.

The proposed regulation would not have allowed Licensees to maintain idle funds deposits in excess of the insurance limit. The final regulation permits Licensees to maintain idle funds in a Federally-insured institution in excess of the insurance limit, but only if that institution is "well capitalized" in accordance with the standard set forth in 12 CFR 325.103(b)(1), as amended from time to time.

Financing Changes of Ownership

The proposed rule is adopted with three changes.

The effect of the only significant substantive change is to allow non-Leveraged Licensees to Finance changes of ownership if the debt-to-equity ratio of the resulting concern is no higher than 8 to 1. As proposed, the ratio had been 7 to 1.

The focus of § 107.711 as proposed and adopted is the concern that would emerge from the transfer of ownership, giving effect to all financings, mergers and reorganizations contemplated by the parties. In fact, the term "contemplated" has been substituted for "agreed to" to cover the case in which two or more parties agree in principle on a general course of conduct, but have not reached definitive agreement on all points.

If the concern resulting from the consummated acquisition will have no more than 500 full-time equivalent employees, the Licensee may finance the acquisition. If the concern resulting from the consummated acquisition will have more than 500 full-time equivalent employees, the Licensee may still finance the acquisition if, and only if, the resulting concern also meets either one of two alternative debt/equity ratio tests. If the Licensee in question has outstanding Leverage, the resulting concern's debt/equity ratio may not exceed 5:1; in the case of an unleveraged Licensee, the applicable debt/equity ratio may not exceed 8:1.

The regulation contains a paragraph (b)(2)(iii) that excludes certain classes of debt and other obligations from the category of "debt" for the purpose of determining the resulting concern's debt/equity ratio. To preclude confusion, the paragraph has been slightly modified to include contingent liabilities within the definition of "debt".

It should be understood that § 107.711 does not constitute an amendment of the size standards. The standards to be set forth in § 107.711 are applicable only in the context of financing a change of ownership.

Minimum Capital Requirements

The proposal to amend § 107.712(c) is adopted without change; the amendment is a clerical one, mandated by statute.

Compliance With Executive Orders 12866 and 12612, 12778, and With the Regulatory Flexibility and Paperwork Reduction Acts

This final rule will be a significant regulatory action for purposes of Executive Order 12866 because it will have an annual effect on the economy of more than $100 million, and, for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, it is likely to have a substantial impact upon a number of small entities.

Much of this final rule is adopted pursuant to a statutory mandate (section 415 of Pub. L. 102–366) that requires SBA to promulgate regulations implementing The Small Business Equity Enhancement Act of 1992.

Among the statutory provisions to be implemented by regulation is a definition of "Private Capital" that includes funds invested by State and local governments and their instrumentalities, and by pension funds managed by State or local government officials. Another provision mandates the recognition of unfunded commitments of institutional investors as a part of "Private Capital" for certain purposes. The effect of these provisions is to encourage the investment of additional capital in the Small Business Investment Company program; and the amount of such new capital, together with SBA Leverage, is expected to be substantially in excess of $100 million per year.

The potential benefits of this regulation have been set forth under Supplementary Information. The potential cost of this regulation cannot be quantified or estimated.

Executive Order 12612

SBA certifies that this regulation will not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Executive Order 12278

For the purposes of Executive Order 12278, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

Paperwork Reduction Act

This final rule will impose only minimal additional recordkeeping and reporting requirements on Licensees and on the Small Concerns Financed by them. SBA believes that much of the information needed to ensure that funds advanced by Licensees are used by Small Concerns in accordance with the Act and regulations, or to verify the effect of the program in terms of job creation and additional tax purposes, or to verify that Licensee Financing of changes of ownership serves a public purpose by encouraging the preservation or creation of jobs, is customarily provided by Small Concerns as part of their business plan projections, or developed by Licensees as part of its due diligence.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs—business, Small businesses.

For the reasons set forth above, part 107 of title 13, Code of Federal Regulations is hereby amended as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for part 107 is revised to read as follows:

Authority: Title III of the Small Business Investment Act, 15 U.S.C. 681 *et seq.*, as amended; 15 U.S.C. 687(c); 15 U.S.C. 683; 15 U.S.C. 687d; 15 U.S.C. 687g; 15 U.S.C. 687b; 15 U.S.C. 687m, as amended by Pub. L. 102–366.

2. Section 107.1 is amended by adding at the end the following two sentences, to read as follows:

§ 107.1 Scope of Part 107.

* * * Provisions of this part which are not mandated by the Act shall not supersede existing State law. A party claiming that a conflict exists shall submit an opinion of independent

counsel, citing authorities, for SBA's resolution of the issues involved.

* * * * *

3. Section 107.3 is amended by revising the definitions of "Control", "Control Person", "Cost of Money", "Disadvantaged Concern" "Private Capital", and "Section 301(d) Licensee" and by adding definitions of "Commitment", "Common Control", "Institutional Investor", "Leverageable Capital", "Qualified Borrowing", "Regulatory Capital", "Section 301(c) Licensee", and "Smaller Concern" in the appropriate alphabetical order and by revising paragraph (b) of the definition of "Associate of a Licensee", to read as follows:

§ 107.3 Definition of terms.[2]

* * * * *

Associate of a Licensee means:

* * * * *

(b)(1) Any Person owning or controlling, directly or indirectly, ten percent or more of any class of stock of a Corporate Licensee; or (2) any Person owning or controlling, directly or indirectly, a limited partner's interest representing ten percent or more of the partnership capital of an Unincorporated Licensee; *Provided, however,* That if a Person described in the preceding paragraph (b)(2) of this definition is an Institutional Investor and the amount of such Person's investment in a Licensee, including commitments, does not exceed 5 percent of that Person's net worth, then such Person shall not be considered an Associate unless the amount of such Person's limited partnership interest represents 33 percent or more of partnership capital.

* * * * *

Commitment means a written agreement between a Licensee and a Small Concern that obligates the Licensee to provide Financing (except a guarantee) to a Small Concern (whose eligibility has already been determined by the Licensee) in a fixed or determinable sum, by a fixed or determinable future date. In this context the term "agreement" means that there has been agreement on the principal economic terms of the Financing; Provided, however, that the terms of the Commitment may include reasonable conditions precedent not within the control of the Licensee to the Licensee's obligation to fund the Commitment.

* * * * *

Common Control means a condition where two or more Licensees either through ownership, management, contract, or otherwise, are under the Control of one group or Person. Two or more Licensees are presumed to be under Common Control if they are affiliates of each other by reason of common ownership or common officers, directors, or general partners; or if they are managed or their investments are significantly directed either by a common independent investment advisor or managerial contractor, or by two or more such contractors that are affiliates of each other. This presumption may be rebutted by evidence satisfactory to SBA. The term "affiliate" is defined in § 121.401 of this title.

Control means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Licensee or a Small Concern, whether through the ownership of voting securities, by contract, or otherwise.

Control Person means (a) A general partner of an Unincorporated Licensee, including all general partners of a partnership serving either as a general partner of an Unincorporated Licensee or as a general partner of any other (intervening) partnership, limited or general, that serves directly or indirectly as a general partner of an Unincorporated Licensee;

(b) Any officer, director, agent or employee of a corporate general partner of an Unincorporated Licensee, or of any corporation that is a general partner in a partnership serving as a general partner of an Unincorporated Licensee, or as a general partner of any other (intervening) partnership, limited or general, that serves directly or indirectly as a general partner of an Unincorporated Licensee;

(c) Any Person that participates in the investment decisions of the general partner of an Unincorporated Licensee and owns or controls, directly or indirectly, an interest of 10 percent or more as a stockholder in, or limited partner of, any corporation or limited partnership that serves directly or indirectly as a general partner of such Unincorporated Licensee;

(d) Any Person that does not participate in the investment decisions of the general partner of an Unincorporated Licensee and owns or controls, directly or indirectly, an interest of 40 percent or more as a stockholder in, or limited partner of, any corporation or limited partnership that serves directly or indirectly as a general partner of such Unincorporated Licensee.

* * * * *

Cost of Money generally includes all consideration that a Small Concern and/or its affiliates is (are) contractually obligated to pay to a Licensee and/or the Associates of such Licensee in connection with Financial Assistance from such Licensee, such as interest, discounts, points, fees, commissions, and any other thing of value, except as hereinafter set forth.

(a) The following fees and charges are not to be included in calculating Cost of Money:

(1) Processing fees determined in accordance with § 107.402;

(2) Out-of-pocket conveyance and/or recordation fees and taxes;

(3) Reasonable closing costs;

(4) A reasonable fee for arranging financing from non-SBIC non-Associate sources of capital, whether or not the Licensee participates in such financing, if there is a written agreement in advance with the Small Concern to pay such fee;

(5) Fees for management consulting services, but only if calculated on a per hour, commercially reasonable basis for services actually rendered,

(6) Prepayment penalties pursuant to § 107.402;

(7) Reasonable and necessary out-of-pocket expenses incurred in monitoring the financing; and

(8) Board of Director fees not to exceed those paid to other outside directors and pursuant to § 107.903(f).

(b) All other fees and charges shall be included in calculating Cost of Money.

* * * * *

Disadvantaged Concern means a Small Concern that is at least 50 percent owned, and controlled and managed, by a person or persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

* * * * *

Institutional Investor means any of the following classes of entities having a net worth of not less than $1 million; or of persons having a net worth of not less than $2 million, exclusive of the value of the equity in his or her most valuable residence, unless otherwise specified:

(a) *Entities.* (1) Any State or National bank, trust company, savings bank, or savings and loan association, including any such institution investing the funds of others in a fiduciary capacity;

(2) Any insurance company

(3) Any 1940 Act Investment Company or Business Development Company, as defined in the Investment Company Act of 1940, as amended;

(4) Any holding company of the foregoing;

(5) Any employee benefit or pension plan established for the benefit of

[2] Terms defined in this section are capitalized hereafter.

employees of the Federal government or any State, their political subdivisions, or any agency or instrumentality thereof;

(6) Any employee benefit or pension plan, as defined in the Employee Retirement Income Security Act of 1974, as amended;

(7) Any trust, foundation or endowment exempt from Federal income taxation under the Internal Revenue Code, as amended;

(8) Any corporation, partnership, or other entity with a net worth in excess of $10,000,000;

(9) Any State, its respective political subdivisions, or any agency or instrumentality thereof;

(10) Any entity whose primary purpose is to manage and invest non-Federal funds on behalf of any of the foregoing Institutional Investors; or

(11) Any other entity that SBA shall determine to be an Institutional Investor.

(b) *Persons.* (1)(i) Any individual with a personal net worth of less than $2 million who is an Accredited Investor as defined by the Securities Act of 1933, as amended, and whose commitment to the Licensee is backed by a letter of credit from a qualified Institutional Investor;

(ii) Any individual whose personal net worth (exclusive of the value of his or her most valuable residence) is equal to not less than ten times the amount of his or her commitment; or

(iii) Any individual whose personal net worth (exclusive of the value of any equity in his or her most valuable residence) equals or exceeds $10 million: *Provided, however,* That the commitment of any individual who is not a permanent resident of the United States shall also be backed by an irrevocable appointment of an agent within the United States for the service of process.

(2) See paragraph (b) of the definition of Private Capital for restrictions on the amount of an Institutional Investor's commitment that will be recognized by SBA as a part of a Licensee's Private Capital. See also the definition of Regulatory Capital in § 107.3, and § 107.241(c).

* * * * *

Leverageable Capital means Regulatory Capital, excluding unfunded commitments and qualified non-private funds whose source is Federal funds.

* * * * *

Private Capital—(a) *General. Private Capital* means the combined private (non-governmental) paid-in capital and paid-in surplus of a Corporate Licensee, or the private (non-governmental) partnership capital of an Unincorporated Licensee, plus unfunded binding commitments by an Institutional Investor (including commitments evidenced by a promissory note) to purchase stock or limited partnership interests in, or to make capital contributions to a Licensee. The private paid-in capital and paid-in surplus of a Corporate Licensee, or the private partnership capital of an Unincorporated Licensee, may include funds invested by a public or private pension fund; and qualified nonprivate funds as described in paragraph (c) of this definition. Notwithstanding the foregoing, non-cash assets purchased by a license applicant and non-cash assets contributed to a Licensee or a license applicant will not be considered part of Private Capital, except as permitted by § 107.705(a) (1) through (6), or unless approved by SBA.

(b) *Exclusions.* Private Capital shall not include:

(1) Funds borrowed by a Licensee from any source,

(2) Leverage funds obtained as a result of SBA's purchase or guarantee of securities,

(3) Funds obtained directly or indirectly from any Federal, State, or local government, or agency or instrumentality thereof, unless such funds are qualified nonprivate funds, or

(4) That part of a commitment from an Institutional Investor with a net worth of less than $10 million that exceeds 10 percent of such Institutional Investor's net worth, except to the extent that such excess is backed by a letter of credit from another Institutional Investor.

(c) *Qualified nonprivate funds.* "Qualified nonprivate funds" means:

(1) Funds directly or indirectly invested in any Licensee on or before August 16, 1982 by any Federal agency except SBA, pursuant to a statute explicitly mandating the inclusion of such funds in "Private Capital";

(2) Funds directly or indirectly invested in any Licensee by any Federal agency pursuant to a statute that is enacted after September 4, 1992, explicitly mandating the inclusion of such funds in "Private Capital";

(3) Funds invested in any Licensee by any State or local government entity, including the amount of any guarantee extended by such entity; and

(4) In any section 301(d) Licensee or such applicant, funds invested which are income derived from the investment of grants that have been made by a state or local government agency or instrumentality into a nonprofit corporation or institution exercising discretionary authority with respect to such funds; and funds invested by a State financing agency, or similar agency or instrumentality, to the extent such funds are derived from such agency's income and not from appropriated State or local funds; *Provided, however,* that for any Licensee or applicant, the funds described in paragraph (c)(3) of this definition shall not exceed 33% of Regulatory Capital.

* * * * *

Qualified Borrowing means a loan to a Licensee bearing interest at a rate not in excess of the usual rate charged on the date of the loan by banks in the locality in which the Licensee's principal office is located; and/or a Debenture purchased or guaranteed by SBA. See § 107.302.

* * * * *

Regulatory Capital.—(a) *General.* Regulatory Capital means Private Capital, excluding non-cash assets contributed to a Licensee or a license applicant and non-cash assets purchased by a license applicant unless such assets have been converted to cash or have been approved by SBA for inclusion in Regulatory Capital. For purposes of this definition, sales of contributed non-cash assets with recourse or borrowing against such assets shall not constitute a conversion to cash.

(b) *Exclusions.* The amount of a commitment, the collectibility of which SBA determines to be questionable, shall also be excluded from Regulatory Capital.

* * * * *

Section 301(c) Licensee means an SBIC organized as a for-profit corporation, a limited liability company or a limited partnership organized in accordance with § 107.4, and licensed pursuant to section 301(c) of the Act.

Section 301(d) Licensee means an SBIC organized as a for-profit corporation, a non-profit corporation, a limited liability company or a limited partnership organized in accordance with section 107.4, and licensed pursuant to section 301(d) of the Act. Such Licensees are permitted to provide assistance only to Disadvantaged Concerns.

* * * * *

Smaller Concern means a concern that together with its affiliates does not have net worth in excess of $6.0 million, and does not have average net income after Federal income taxes (excluding any carry-over losses) for the preceding two years in excess of $2.0 million; or a concern that together with its affiliates, meets the size standard in effect at the time of the Financing for the industry in which it is then primarily engaged, and excluding its affiliates meets the size

standard in effect at the time of the Financing for the industry in which it is then primarily engaged.

* * * * *

4. Section 107.4 is amended by revising paragraphs (b) (1), (2) and (3)(i), by revising the fourth sentence in paragraph (c), and by adding a new paragraph (f), to read as follows:

§ 107.4 Limited Partnership SBIC.

* * * * *

(b) *Application.* * * *

(1) *Number of General Partners.* A Licensee shall have as its general partners at least two individuals; or one or more corporations (including limited liability corporations), or one or more partnerships (including limited partnerships), or any combination of individuals, and/or corporations, and/or partnerships. General partners of a general partner of an Unincorporated Licensee shall be considered for all purposes to be general partners of such Licensee. For the status of limited partners of a limited partnership that serves as a general partner of a Licensee, see the definition of *Control Person* in § 107.3.

(2) *General Partner.* A general partner which is a corporation, limited liability company or limited partnership (an "Entity General Partner") shall be organized under state law solely for service as such and its Articles or Certificate of Incorporation or Limited Partnership Agreement or other similar governing instrument (which, in each case, shall accompany the license application) shall specify that no person shall serve as an officer, director or general partner without SBA's approval. No Entity General Partner may serve as such for any other Licensee and where an Entity General Partner is a limited partnership, such partnership shall be subject to the number of general partners defined in paragraph (b)(1) of this section. An Entity General Partner is subject to the same examination and reporting requirements as a Licensee under § 310(b) of the Act. The restrictions and obligations imposed upon a Licensee by §§ 107.210 through 107.263, and 107.601, 107.603, 107.701, 107.702, 107.703, 107.709, 107.801, 107.802, 107.803, 107.1001, 107.1002, and 107.1004 apply also to an Entity general partner of a Licensee.

(3) *Articles of Partnership.* * * *

(i) The partnership shall have a minimum duration of not less than the longer of ten years or two years following the maturity of the last-maturing security issued by the partnership evidencing Leverage from SBA. After 10 years and provided all Leverage has been repaid or redeemed and provided that all amounts due SBA, its agency, or trustee have been paid, the partnership may be terminated by a vote of the Licensee's partners. (For purposes of this provision SBA shall not be considered a partner.)

* * * * *

(c) *Obligations of a Control Person.* * * * The conditions specified in §§ 107.210 through 107.263 shall apply to all general partners; the conditions specified in § 107.210(e) shall apply to all Control Persons. * * *

* * * * *

(f) *Special Leverage requirement.* Prior to the extension of any Leverage, an Unincorporated Licensee shall furnish SBA with evidence that it qualifies as a partnership for tax purposes, either by a ruling from the Internal Revenue Service, or by any opinion of counsel.

5. Section 107.101 is amended by revising paragraph (a), by redesignating paragraphs (d) and (e) as paragraphs (e) and (f), by adding a new paragraph (d), by revising the introductory text of newly designated paragraph (e), and by adding new paragraphs (g), (h) and (i), to read as follows:

§ 107.101 Operational requirements.

* * * * *

(a) *Management.* Each Licensee shall have and maintain qualified management (or an Investment Adviser/Manager pursuant to § 107.709) in charge of its operations who will be available during normal business hours to the public. Any manager of a Licensee shall be deemed an officer thereof. When applying for a license or for Leverage, a Licensee must demonstrate, to the satisfaction of SBA, that its management has the knowledge, experience and capability necessary for investing in the types of businesses contemplated by the Act, these regulations, and Licensee's Plan of Operations. Neither management, nor any board of directors, nor any general partner shall be controlled either directly or indirectly by investors of qualified non-private funds.

* * * * *

(d) *General capital requirements.* Each company shall have at licensing, and thereafter shall maintain Regulatory Capital adequate to assure a reasonable prospect that the company will be operated soundly and profitably over the long term, and managed actively and prudently in accordance with its articles or partnership agreement and within the context of its Plan of Operations, as approved by SBA. In this regard, SBA shall determine the ability of the company to be economically viable, both prior to licensing and prior to approving any request for financing, taking into consideration the income and losses which the company anticipates on its Loans and Investments, and the experience and qualifications of the company's owner's and managers. Compliance with these requirements shall be determined within the context of capital impairment and other regulations that relate to safety and soundness.

(e) *Minimum Capital.* Any company licensed after April 8, 1994 shall have Regulatory Capital in U.S. dollars sufficient to meet the requirements of paragraph (d) of this section, but in no case shall a Licensee have Regulatory Capital (not including commitments to invest in a Licensee) less than the following minimum levels:

* * * * *

(g) *Valuation guidelines and responsibility.* (1) Each Licensee shall adopt a written Valuation Policy for its use in determining the value of its Loans and Investments, and each applicant for a License shall submit such Policy as part of its application. Such Policy shall adhere to the provisions of Appendix III. The boards of directors of corporations and the general partners of partnerships shall have sole responsibility for adopting the Licensee's valuation policy and, pursuant thereto, for valuing Loans and Investments of such Licensee. Loans and Investments shall be valued individually and in the aggregate by the Board of Directors or General Partners at least semiannually—as of the end of the second quarter of Licensee's fiscal year and as of the end of Licensee's fiscal year, *Provided however,* That Licensees without Leverage need only perform valuations as of the end of the fiscal year. On a case-by-case basis, SBA may require valuations to be made more frequently.

(2) Licensee shall forward valuation reports to SBA within 90 days of the end of the fiscal year in the case of annual valuations, and within thirty days following the close of other reporting periods. Material changes in valuations shall be reported not less often than quarterly within thirty days following the close of the quarter.

(3) Only valuations performed as of the fiscal year-end are required to be reviewed by the Licensee's independent public accountant. Such accountant shall have responsibility to review the Licensee's valuation procedures and the implementation of such procedures, including adequacy of documentation. Such accountant also shall have reporting responsibilities regarding the results of this review (see Appendix I,

section III and section V, paragraphs I and J).

(4) Any Licensee that adopts the exact wording of those parts of section III of Appendix III, entitled "Valuation Policy", that are set in bold type, without any additions or changes will be presumed to have an acceptable Valuation Policy. A Licensee may write a policy which differs from the bold type, but must have such policy approved by SBA, in writing. Applicants for either a 301(c) or 301(d) license must submit their Valuation Policies for approval as part of the licensing application process.

(h) *Computer requirements.* By June 30, 1994 all Licensees shall have a personal computer facility with modem capable of running software provided by SBA and person(s) trained in the use of SBA-provided software and shall electronically transmit information and reports as required by SBA. Such Licensees shall use such software for the purpose of reporting specific financial information required by SBA.

(i) *Financing of Smaller Concerns.* As of the close of the Licensee's first full fiscal year commencing on or after April 8, 1994, at least 10 percent of the cumulative dollar amount of Financing extended during the period between April 8, 1994 and the close of such fiscal year shall consist of Financings of Smaller Concerns. As of the close of each subsequent fiscal year, the cumulative dollar amount of Financing extended to Smaller Concerns shall be no less than 20 percent of the total dollar amount of Financing extended since April 8, 1994. Unless a Licensee is in compliance with the requirements of this paragraph, Financing may be extended only to a Smaller Concern. A Financing extended pursuant to § 107.711 in which the resulting concern qualifies as a Smaller Concern will be considered a Financing of a Smaller Concern.

6. Section 107.103 is revised to read as follows:

§ 107.103 Public notice.

SBA shall publish notice of the license application in the **Federal Register**. It shall include such appropriate information as the name and location of the proposed Corporate Licensee, its area of operation, the names and addresses of its officers, directors, and owners of, or persons controlling 10 or more percent of its voting stock; and in the case of an Unincorporated Licensee, its name, location, and area of operation, and the names and addresses of its Control Persons. If any Control Person is a corporation, the notice shall set forth the names and addresses of any officers, directors, and owners of, or persons controlling 10 percent or more of the stock of such corporation. In the case of an Unincorporated Licensee, the notice shall also include the name and address of each owner of 10 percent or more of the Licensee's Regulatory Capital. The public shall be afforded reasonable opportunity for the submission of written comments. The proposed Licensee shall publish a similar notice in a newspaper of general circulation in the city or proposed area of operation, and shall furnish a certified copy to SBA within 10 days of the date of publication.

7. Section 107.302 is revised to read as follows:

§ 107.302 Cost of money; loans and debt securities.

Subject to lower ceilings prescribed by local law, Cost of Money on Loans and Debt Securities shall not exceed the higher of the following:

(a) *Loans.* The higher of either the Licensee's certified Weighted Average Cost of Qualified Borrowings, computed in accordance with paragraph (e) of this section, or the current Debenture Rate, plus, in either case, 7 percentage points, rounded off to the next lower eighth of one percent; *Provided, however;* That if the current Debenture Rate is 8 percent per annum or lower, a Licensee is permitted to charge up to 15 percent.

(b) *Debt securities.* The higher of either the Licensee's certified Weighted Average Cost of Qualified Borrowings, computed in accordance with paragraph (e) of this section, or the current Debenture Rate, plus, in either case, 6 percentage points, rounded off to the next lower eighth of one percent; Provided, however; That if the current Debenture Rate is 8 percent per annum or lower, a Licensee is permitted to charge up to 14 percent.

(c) *Maximum Cost of Money.* The maximum Cost of Money on any specific Financing shall be determined with reference to either the Licensee's certified Weighted Average Cost of Qualified Borrowings or the Debenture Rate in effect as of the day the Licensee collects a processing fee or enters into a Commitment, or makes the first disbursement, whichever shall first occur.

(d) *Effective date.* The Cost of Money limitation in effect on April 24, 1994 shall remain applicable to all Financings committed or disbursed on or before that date.

(e) *Computation of Weighted Average Cost of Qualified Borrowings.* Licensee's Weighted Average Cost of Qualified Borrowings (as a percent) shall be computed as follows:

$$W = \left(\frac{A}{\sum_{i=1}^{n} \left[\frac{P_i \times D_i}{365} \right]} \right) \times 100$$

where:

W=Weighted Average Cost of Qualified Borrowings

A=Dollar amount of Interest on Qualified Borrowings still outstanding at the end of the prior fiscal year, as found on Form 468. (SSBICs are presumed to have paid interest at the coupon rate, without regard to any subsidy payments by SBA)

P=Outstanding principal amount of Qualified Borrowings at the end of the prior fiscal year, net of related fees

D=Days outstanding for prior fiscal year

i=Individual Note, Debenture, or other debt instrument

n=Number of Notes, Debentures, or other debt instruments outstanding at end of fiscal year

Σ=sum of

This equation is read as: Multiply the principal balance (net of Leverage fees) of each Note, Debenture, or other debt instrument still outstanding at the end of the preceding fiscal year by the number of days that the instrument was outstanding in that fiscal year and divide this product by 365; take the sum of these amounts and divide that sum into total interest expense for those Qualified Borrowings still outstanding at the end of the fiscal year; finally multiply the resulting number by 100.

(f) *Notification of Weighted Average Cost of Qualified Borrowings.* A Licensee that wishes to utilize its Weighted Average Cost of Qualified Borrowings as the basis of an alternative COM ceiling for its next succeeding fiscal year shall transmit a written certification of its Weighted Average Cost of Qualified Borrowings to SBA as a part of its Annual Financial Report (SBA Form 468) for the prior fiscal year; provided however, that where such licensee provides Financing using the Weighted Average Cost of Qualified Borrowings before submitting its Annual Financial Report, such Licensee shall submit its certified Weighted Average Cost of Qualified Borrowings as an attachment to the SBA Form 1031 for each such financing. Such Weighted Average Cost of Qualified Borrowings shall be reviewed by the Licensee's independent public accountant, who shall provide a certification that the

Weighted Average Cost of Qualified Borrowings was calculated in accordance with SBA's regulations. Failure to submit timely a certified Weighted Average Cost of Qualified Borrowings in such manner shall constitute a binding waiver of Licensee's right to use its Weighted Average Cost of Qualified Borrowings as the basis for an alternative Cost of Money limitation for the remainder of the Licensee's fiscal year, unless for good cause shown, SBA grants written approval for its use.

(g) *Application of Weighted Average Cost of Qualified Borrowings to Financings Involving Multiple Licensees.* (1) If two or more Licensees participate in the same Financing of a Small Concern, the basis for determining the applicable COM ceiling shall be the highest of any of the following:

(i) The current Debenture Rate; or

(ii) The certified Weighted Average Cost of Qualified Borrowings of the lead Licensee in the Financing; or

(iii) The weighted average of the Weighted Average Cost of Qualified Borrowings of all Licensees participating in the Financing.

(2) For the purposes of the calculation in paragraph (q)(1)(iii) of this section, the Weighted Average Cost of Qualified Borrowings of a Licensee that has not certified such cost to SBA or that has no outstanding Qualified Borrowings shall be the Debenture Rate in effect at the time of the Financing.

(h) *Default Penalties.* In the event of a monetary default by a Small Concern or a failure to provide any post-Financing report or other document required by the terms of the Loan Agreement or SBA regulations, Licensees may, by way of default penalty and without regard to any Cost of Money limit that may otherwise be applicable, raise the interest rate by as much as seven percentage points over the rate specified in the Financing, until such time as the default shall be cured.

8. Section 107.303 is amended by revising paragraph (a), by redesignating paragraph (b) as paragraph (c), by adding a new paragraph (b), and by revising the newly designated paragraph (c) introductory text, (c)(6) and the example that follows newly designated paragraph (c)(7), to read as follows:

§ 107.303 Overline limitation.

(a) *Leveraged Licensees.* Without written SBA approval, the aggregate amount of funds disbursed for securities acquired (exclusive of write-down), and of Commitments and guaranties issued for a Small Concern (including affiliated concerns as defined in § 121.401 of this chapter) shall not exceed twenty percent of a Licensee's Regulatory Capital: *Provided, however,* That for section 301(d) Licensees the limitation shall be thirty percent.

(b) *Non-Leveraged Licensees.* Any Licensee that does not have outstanding Leverage shall be exempt from this section; *Provided, however,* that no Leverage will be extended to any Licensee until such Licensee is in compliance with paragraph (a) of this section.

(c) *Increased Limit.* For purposes of this section only, Regulatory Capital may include the net unrealized gains of a Licensee represented by marketable securities and support an additional overline limitation (increased limit) subject to the following conditions:

* * * * *

(6) By availing itself of this increased limit, Licensee agrees that, in the event the net unrealized gains show a reduction on the first business day of any calendar quarter and for at least thirty days thereafter, below seventy percent of the net unrealized gains, Licensee will (not later than ninety (90) days from such date) cause to be injected sufficient Regulatory Capital to restore support for the increased limit or reduce the increased limit of its investments to a point at which no investment exceeds 20 percent of the sum of its Regulatory Capital plus the remaining net unrealized appreciation represented by marketable securities.

* * * * *

Example: On January 15, 1995 the Licensee documents net unrealized gains of $100,000. Licensee adds $100,000 to its Regulatory Capital and increases its overline limitation accordingly. Licensee now makes one or more investments in reliance on this increased limit. Hereafter, on each subsequent first business day of April, July, October, and January, Licensee must document net unrealized gains of a least $100,000. On April 15, 1996 Licensee can document further net unrealized gains for an aggregate of $150,000 and invest pursuant to an increased limit of $30,000 (20% of $150,000). Following the first business day of April, 1997, Licensee documents net unrealized gains of only $120,000. All investments within the increased limit remain undiminished in the portfolio. Licensee is now required to cause to be injected sufficient cash into Regulatory Capital before July 1, 1997, so that the sum of the remaining net unrealized gains and the added cash equals at least five times the increased limit of its largest investment. In the alternative, Licensee must reduce before July 1, 1997, its overline investments made in reliance on this subsection so that none will exceed 20 percent of Regulatory Capital plus $24,000. Any further reduction of net unrealized gains will require additional proportionate injection of cash or reduction of investments.

* * * * *

9. Section 107.304 is amended by revising the heading and paragraphs (a)(1) and (b) and by adding paragraph (c) to read as follows:

§ 107.304 Size status, financial report, and non-discrimination.

(a) * * *

(1) The Licensee has determined that the concern being assisted is a Small Concern based on the financial size standards set forth in § 121.802(a)(3)(i) or the single industry standard covering the industry in which the applicant Small Concern is, or will be, primarily engaged as set forth in § 121.802(a)(3)(ii); or SBA has determined at the request of the Licensee or of such concern that the latter is a Small Concern. The Licensee and the Small Concern shall execute SBA Form 480, Size Status Declaration, including Licensee's representation that applicable size standards have been met, unless the size determination has been made by SBA.

* * * * *

(b) *Financial reports.*—(1) *Initial Financing decision.* In considering any Financing for a Small Concern the Licensee shall require the concern to submit such financial statements, plans of operation (including intended use of financing proceeds), cash flow analyses and projections as are necessary to support the Licensee's investment decisions, considering the size and type of the business and the amount of the Financing being considered. Such materials shall be in English and shall be retained by, and become a part of the permanent record of, the Licensee.

(2) *Subsequent reports.* The terms of the Financing shall require each assisted Small Concern to forward to the Licensee, at least annually, such financial statements (including verification of the use of financing proceeds) as are necessary to verify not only the financial condition of the Small Concern for the purpose of valuing the Licensee's investment therein, but also the continued eligibility of such Small Concern. Such statements shall be in English and be certified by the chief financial officer, general partner, or proprietor of such Small Concern and shall be retained by, and become a part of the permanent records of, the Licensee. If the Licensee shall deem it appropriate, considering the size and type of the business involved, the Licensee may accept, for financial and valuation purposes only, a complete copy of the Federal income tax return, including all appropriate schedules

thereto, filed by the business or by the proprietor, as the case may be. The foregoing requirements shall not apply, however, when the Licensee acquires the securities from an underwriter in a public offering (see 107.404), in which event the Licensee shall keep copies of all reports furnished by such Small Concern to the holders of its securities.

(c) *Economic impact.* When a Licensee's Form 468 is forwarded to SBA it shall be accompanied by an assessment of the economic impact of each Financing, specifying the full-time equivalent jobs created or retained, the impact of the financing on the business in terms of expanded revenue and taxes, and other appropriate economic benefits including, but not limited to, technology development or commercialization, minority business development, urban or rural business development, expansion of exports and assistance to manufacturing firms (SIC Major Groups 20–39)

10. Part 107 is amended by adding a new § 107.305 before the heading "Equity Capital" to read as follows:

§ 107.305 Use of proceeds.

Proceeds of financings by a Licensee shall be used by the Small Concern for its sound financing and for its growth, modernization, or expansion and such use shall be reported on SBA Form 1031. Accordingly, Licensees shall obtain sufficient information to give reasonable assurance that the proposed financing will be used for purposes intended by the Act and this Part of the regulations. Financing documents shall contain provisions which require the Small Concern to provide information specified in § 107.304(b), and which give the Licensee and/or SBA access to the Small Concern's records to confirm such use of proceeds. The Licensee shall conduct a reasonable post closing review within 90 days after disbursement of the proceeds to assure that proceeds were used for the intended purposes. The financing documents shall also provide that any diversion by a Small Concern of financing proceeds from their reported use without the Licensee's prior written consent shall constitute an event of default when the Licensee has made a loan or a violation of a covenant with the Licensee when the Licensee has made an investment. The financing documents also shall specify that such event of default or covenant violation shall give the Licensee the right to demand immediate repayment of the financing. Nothing in this paragraph shall be construed to restrict the Licensee's right to sue the Small Concern for any additional damages it may sustain as a result of the improper diversion of funds or to bring suit against the individuals responsible for such diversion of funds. Any unauthorized diversion that comes to the attention of a Licensee shall be reported promptly to SBA for such action against the Small Concern as SBA may consider proper. See also § 107.906(b).

11. Section 107.401(a)(5) is revised to read as follows:

§ 107.401 SBIC guaranty of loans.

(a) * * *

(5) The total guaranties issued and outstanding for all Small Concerns shall not exceed one hundred percent of Regulatory Capital.

* * * * *

12. Section 107.402 is amended by revising paragraphs (a) and (d) and adding paragraphs (e), (f), and (g) to read as follows:

§ 107.402 Commitments.

(a) *General.* A Licensee is authorized to enter into a written Commitment to furnish Financing to a Small Concern.

* * * * *

(d) *Processing fees.* A Licensee is authorized to charge a processing fee, in no event to exceed three percent of the amount of Financing requested: *Provided, however,* That if the amount of Financing offered in response by the Licensee and agreed to by the Small Concern is a lesser amount, the maximum processing fee may not exceed three percent of such lesser amount. A processing fee that does not exceed the foregoing limits shall not be considered part of the Small Concern's Cost of Money. A processing fee that exceeds the foregoing limits shall, to the extent of such excess, be considered part of the Small Concern's Cost of Money.

(1) *Collection of processing fee.* (i) The processing fee may be collected, in full or in part, when the Licensee accepts the Small Concern's application for financing, or such fee may be deducted from Financing proceeds. When the application is accepted for processing, however, the Licensee shall furnish the applicant Small Concern with a written statement setting forth:

(A) The maximum Cost of Money determined with reference to Licensee's certified Weighted Average Cost of Qualified Borrowings, if any, or the present Debenture Rate, as appropriate;

(B) A date by which Licensee will notify the applicant of its decision; and

(C) The specific processing services to be performed by the Licensee.

(ii) Failure to furnish such statement shall cause the amount of any processing fee to be included in Cost of Money if the requested Financing closes, or shall obligate Licensee to refund the entire amount of the processing fee if the request for Financing is denied.

(2) *Partial refund of processing fee when Financing does not close.*

(i) *No Commitment extended.* If the Licensee has not provided a Commitment and the Small Concern and the Licensee do not close the Financing, that part of the processing fee in excess of Eligible Costs, hereafter enumerated, that were incurred by the Licensee shall be refunded within thirty days to the Small Concern, together with a detailed accounting of the Eligible Costs incurred by the Licensee.

(ii) *Commitment extended.* If the Licensee has provided a Commitment and the Small Concern and the Licensee do not close the Financing, any refund of the processing fee, in whole or in part, is dependent upon which party caused the Financing not to close, as follows:

(A) *Failure to close attributable to Small Concern.* If the Financing does not close due to actions of the Small Concern, the Licensee is entitled to retain the processing fee, not to exceed three percent of the amount of the Licensee's Commitment. If Eligible Costs exceed the processing fee, Licensee may obtain reimbursement for such excess Eligible Costs only if the Small Concern has entered into a contractual agreement providing for such reimbursement. If no such contractual agreement exists, a Small Concern shall not be required to pay an additional processing fee, even if the amount of the Licensee's Eligible Costs exceed the amount of the processing fee advanced by the Small Concern.

(B) *Failure to close attributable to Licensee.* If the failure to close is attributable to actions of the Licensee, that part of the processing fee in excess of Eligible Costs incurred by the Licensee shall be refunded to the Small Concern within thirty days, together with a detailed accounting of the Eligible Costs incurred by the Licensee.

(3) *Eligible costs.* As used in this Section, Eligible Costs means: (i) Actual computed costs incurred in the segregation of money to fund a Commitment, if one was extended;

(ii) Ordinary and reasonable out-of-pocket expenses necessary to process the application and perform due diligence, and

(iii) Actual costs paid to non-Associates of the Licensee for specialized application processing services which are not ordinarily performed by the Licensee.

(e) *Additional fees.* If the Small Concern and the Licensee close the Financing, Licensee is authorized to deduct from the proceeds the unpaid remainder of any processing fee previously agreed upon, not to exceed 3 percent of the total Financing provided at the closing, and, in addition, to charge the Small Concern for Eligible Costs incurred by the Licensee and reasonable closing costs. Such fees and charges shall not be included in the calculation of Cost of Money.

(f) *Prepayment penalties.* A Licensee may charge a reasonable penalty for prepayment of a Financing which shall be excluded from the Cost of Money calculation. If such prepayment penalty is considered by SBA to be unreasonable, however, Licensee shall not be entitled to such prepayment penalty, and if the penalty has been collected, shall refund the entire prepayment penalty to the Small Concern. A prepayment penalty equal to 5 percent of the outstanding balance during the first year of any Financing, declining by one percentage point per year through the fifth year, will be considered a reasonable penalty.

(g) *Front-end charges.* If a Licensee has imposed front end charges such as points, discount, loan origination fee, a processing fee to the extent it exceeds three percent, or other such charges, regardless of the label the Licensee may apply, that are not specifically excluded from Cost of Money, such charges shall be prorated over the stated term of the Financing. In that case, the sum of interest and unearned front-end charges shall not exceed the Cost of Money limit in effect at the time of the Financing; and in the event of prepayment, any resulting excess Cost of Money shall be returned to the Small Concern.

13. Section 107.403 is amended by revising paragraph (b)(1), to read as follows:

§ 107.403 Other Permissible Financing.

* * * * *

(b) * * *

(1) *Short-term Financing.* Financing with a term of less than five years when it constitutes:

(i) Interim financing in contemplation of long-term Financing of a Small Concern by the Licensee or a group including the Licensee and others in an amount at least equal to such total interim financing: *Provided, however,* That the maximum aggregate period for short-term Financing in contemplation of long-term Financing shall not exceed one year; or

(ii) Protection of prior investments; or

(iii) Financing ownership change pursuant to § 107.711; or

(iv) Financing required by a Small Concern to perform a contract that it has been awarded under any Federal, State, or local government set-aside program for "minority" or "disadvantaged" contractors.

This paragraph (b)(1) supplements the authority to make short term investments in Disadvantaged Concerns under § 107.301(a).

* * * * *

15. Section 107.501(c) is amended by revising the last sentence thereof, to read as follows:

§ 107.501 Management services.

* * * * *

(c) *Management Services Corporation.* * * * Licensee's investments in and receivables from such corporation shall not exceed 3 percent of the Licensee's Regulatory Capital.

15. Section 107.601 is amended by revising the first sentence of paragraph (g) and by revising paragraph (h)(1), to read as follows:

§ 107.601 Changes in ownership or control of Licensee.

* * * * *

(g) *Public notice.* SBA shall publish notice in the **Federal Register** concerning the application for approval of a proposed transfer of Control over a Licensee, including such appropriate information as the name and location of the Licensee and of the proposed transferees who will own ten or more percent of any class of its Regulatory Capital. * * *

(h) *Standards governing SBA approval.* (1) SBA may, as a condition of approving a proposed transfer of Control, require an increase in Licensee's Regulatory Capital.

* * * * *

16. Section 107.705 is amended by adding a new paragraph (a)(8) to read as follows:

§ 107.705 Consideration for issuance of Licensee securities.

(a) * * *

(8) With SBA's prior written approval, contributed non-cash assets: *Provided, however,* That for the purposes of §§ 107.403(b), 107.706(b), and 107.710, under which the legality of certain Financings is conditional upon a need to protect the Licensee's investment, and for the purpose of § 107.801, under which assumption of control over a Small Concern is permitted only to protect the Licensee's investment, Licensees are not considered to have any investment to protect in such contributed assets unless such assets are included in Regulatory Capital.

* * * * *

17. Section 107.706 is revised to read as follows:

§ 107.706 Retention of investments.

(a) *Change in size.* A Licensee may retain its investment in a concern which qualified as small at the time of initial financing, but which subsequently became large. Subject to § 107.303, additional Financing may be provided at any time before such concern makes a public offering of its securities. In addition, stock options, warrants, or other rights to purchase Equity Securities of such concern, if acquired while the concern qualified as a Small Concern, may be exercised even after a public offering has been made.

(b) *Change in business activity or ownership*—(1) *Change within one year of Licensee Financing.* Without SBA's written approval, a Licensee may not retain its investment in a Portfolio Concern, small or otherwise, that has become ineligible by reason of a subsequent change in such concern's business activity within one year from the date of the Licensee's initial Financing. Any such change shall be presumed to have been within the contemplation of the Small Concern at the time of the Licensee's Financing, and shall constitute a default or breach of the terms of the Licensee's Financing by the Small Concern, thereby giving the Licensee the right to demand immediate repayment of all indebtedness and redemption of all equity investments in such concern. See § 107.305. A Licensee's request to SBA for approval to retain its investment shall be accompanied by evidence sufficient to rebut this presumption that the Small Concern's change to an ineligible business activity within one year of the Licensee's Financing was within the contemplation of the Small Concern at the time the Licensee provided Financing and, hence, in violation of applicable regulations. Such presumption may be rebutted by a showing that the change in business activity was prompted by an unforeseen change in circumstances.

(2) *Change more than one year after Financing; additional Financing.* If SBA has granted approval for the retention of an investment as provided in paragraph (b)(1) of this section, or if the change to an ineligible business has taken place more than one year after the Licensee's initial Financing, additional Financing may be provided to the extent necessary to protect the Licensee against the loss of the amount of its original investment.

18. Section 107.707 is revised to read as follows:

§ 107.707 Purchases of securities from another Licensee or from SBA.

A Licensee may exchange with or purchase for cash from another Licensee, or from SBA as the receiver or assignee of another Licensee or former Licensee, Portfolio securities (or any interest therein), but only on a non-recourse basis, and only if:

(a) The Licensee shall not have at any time more than one-third of its total assets (valued at cost) invested in such securities; and

(b) The Licensee, if it has previously sold Portfolio securities (or any interest therein) on a recourse basis, shall include the amount for which it may be contingently liable in its overline limit under § 107.303.

19. Section 107.708 is revised to read as follows:

§ 107.708 Deposits and investments of idle funds.

(a) *General.* Except as set forth in paragraphs (b) and (c) of this section, all funds of a Licensee (other than a petty cash fund of up to $2,000) shall be deposited without delay in an account in a federally insured financial institution.

(b) *Leveraged Licensees.* (1) Funds of a Licensee with outstanding Leverage, or that has applied for Leverage, that are not invested in Small Concerns and not reasonably needed for its day-to-day operations shall be invested in:

(i) Direct obligations of, or obligations guaranteed as to principal and interest by the United States, the remaining maturities of which do not exceed fifteen months; or

(ii) In repurchase agreements with federally insured institutions, the maturity of which does not exceed seven days, in which the securities being sold and repurchased shall only be direct obligations of, or obligations guaranteed as to principal and interest by the United States, such securities to be maintained in a custodial account at a federally insured institution; or

(iii) In certificates of deposit maturing within one year or less issued by a federally insured institution, up to the amount of insurance; or

(iv) In a deposit account in a federally insured institution, up to the amount of the insurance, subject to a withdrawal restriction not to exceed one year;

(2) *Provided, however,* That funds in excess of the insured amount may be maintained in certificates of deposit or a deposit account in a federally insured institution which is deemed to be "well capitalized" in accordance with the definition set forth in regulations of the Federal Deposit Insurance Corporation, as amended (12 CFR 325.103); and *Provided, further,* That nothing in this paragraph shall be interpreted to forbid the temporary deposit, not to exceed 30 days, of Licensee's funds in excess of the insured amount in a federally insured institution in a transfer account established to facilitate the receipt and disbursement of funds or to hold funds necessary to honor Commitments issued by the Licensee. For the purposes of this paragraph (b) a deposit in, or repurchase agreement with, a federally insured institution that is an Associate of the Licensee shall not be considered a Financing of such Associate if the terms of such deposit or repurchase agreement are the same, or more favorable, than those available to the general public.

(c) *Non-Leveraged Licensees.* Funds of an unleveraged Licensee that are not invested in Small Concerns and not reasonably needed for its day-to-day operations and exempt from the provisions of paragraph (b) of this section, but nothing contained in this paragraph shall be deemed to authorize any Licensee to Finance an Associate in violation of § 107.903, or to engage in any other activity prohibited by this part. No Leverage will be extended to any Licensee until such Licensee is in compliance with paragraph (b) of this section. For purpose of this paragraph, a Licensee's deposit of funds in a federally insured institution that is an Associate of the Licensee is not considered a Financing of an Associate under § 107.903.

20. Section 107.710 is amended by revising paragraph (b)(3), to read as follows:

§ 107.710 Assets in liquidation.

* * * * *

(b) *Preservation of assets.* * * *

(3) In addition to the amounts authorized by paragraphs (a) and (b) of this section, a Licensee may make the following required expenditures allocable to such assets in an aggregate amount which, together with its total investment attributable thereto, and its expenditures pursuant to paragraphs (a) and (b) of this section do not exceed 35 percent of its Regulatory Capital, except as specifically approved in writing by SBA: Prior mortgage interest; principal payments; taxes and necessary insurance coverage.

* * * * *

21. Section 107.711 is revised to read as follows:

§ 107.711 Financing changes of ownership.

(a) *General.* A Licensee may finance a change of ownership in a Small Concern when it will promote the sound development or preserve the existence of the Small Concern; or will assist in creation of a Small Concern as a result of a corporate divestiture, or facilitate ownership in a Disadvantaged Concern.

(b) *Special size standard; debt/equity ratios.* In determining whether the existence of a Small Concern has been preserved, or whether a Small Concern has been created as a result of a divestiture, the Licensee must make an assessment of the concern as though the change of control had been accomplished, giving effect to all contemplated financings, mergers, and acquisitions.

(1) *Concerns with not more than 500 employees.* Such Financings shall be permitted where the resulting concern has been determined to be small (see § 107.304(a)(1)) and its full-time equivalent employment does not exceed 500 employees.

(2) *Concerns with more than 500 employees.* If the full-time equivalent employment exceeds 500 employees, the Financing will only be permitted when the concern meets one of the following debt/equity ratio tests:

(i) If the Financing is provided by a Licensee with outstanding Leverage, the Concern's ratio of debt to equity is no more than 5 to 1;

(ii) If the Financing is provided by a Licensee with no outstanding Leverage, the Concern's ratio of debt to equity is no more than 8 to 1.

(iii) As used herein, "debt" means long-term debt, including contingent liabilities, but exclusive of accounts payable, short-term working capital loans which require that the Concern have no outstanding balance for at least 30 consecutive days during its fiscal year, operating leases, letters of credit and subordinated notes payable to the seller, and any other liabilities approved by SBA on a case-by-case basis; and "equity" means common and preferred stock in the case of a corporation, or contributed capital in the case of a partnership.

22. Section 107.712 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 107.712 Section 301(d) Licensee wholly or partly owned by Licensee companies.

* * * * *

(c) *Capital contribution.* The capital contribution of a participant Licensee in excess of the minimum capital ($1,500,000, which shall be in cash or cash equivalents, in U.S. dollars) of the section 301(d) Licensee, may (notwithstanding § 107.705(a)) be represented by securities of Small Concerns eligible for investment by a

section 301(d) Licensee, at cost or value, whichever is lower. * * *

* * * * *

23. Section 107.901(a) is amended by revising the last sentence thereof to read as follows:

§ 107.901 Prohibited uses of funds.

No funds may be provided to a Small Concern:

(a) *Relending, reinvesting, etc.* * * * Without SBA's prior written approval, all Financings pursuant to this proviso shall not exceed the Licensee's Regulatory Capital as of the close of any full fiscal year.[8]

* * * * *

24. Part 107 is amended by adding, at the end thereof, a new Appendix III, to read as follows:

Appendix III to Part 107—Valuation Guidelines for SBICs

I. Introduction

This appendix describes the policies and procedures to which Licensees (SBICs and SSBICs) must conform in valuing their Loans and Investments and provides guidance as to the techniques and standards which are generally applicable to such valuations.

The need for clearly defined valuation policies and procedures and understandable techniques arises in connection with the requirement that Licensees report the worth of their portfolios to investors and SBA. This information assists SBA in its assessment of the overall operational performance and financial condition of individual Licensees and of the industry.

II. Overall Guidelines

A. Definitions

1. *Asset Value* means the amount that the general partners or board of directors of an SBIC have established as a current value in accordance with its Valuation Policy.

2. *Marketable Securities* means securities for which market quotations are readily available and the market is not "thin", either in absolute terms, or relative to the potentially saleable holdings of the Licensee and other investors with saleable blocks of such securities. These securities are valued as follows:

(a) For over-the-counter stocks, taking the average of the bid price at the close for the valuation date and the preceding two days, and

(b) For listed stocks, taking the average of the close for the valuation date and the preceding two days. This classification does not include securities which are subject to resale restrictions, either under securities laws or contractual agreements, although other securities of the same class may be freely marketable.

3. *Other Securities* means all Loans and Investments not defined in paragraph A.(2) of this section. Such securities shall be valued at Asset Value. Most SBIC and SSBIC investments will fall in this classification.

4. *Valuation Policy* means the official document of a Licensee that definitively sets forth the Licensee's methods of valuing Loans and Investments in accordance with the requirements of § 101(g) and this appendix.

B. Objective

The goal of a Licensee's valuation process is to value its Loans and Investments. However, the very nature of Licensees' investments sometimes makes the determination of fair market value problematical. In most cases there is no market for the investment at the time of valuation. Therefore, except where market quotations are readily available and the markets are not "thin", the Boards of Directors or General Partners are necessarily responsible for determining in good faith the value of Loans and Investments.

Determination of value will depend upon the circumstances in each case. No exact formula can be devised that will be generally applicable to the multitude of different valuation issues that will arise. This is especially true for semiannual valuation updates of relatively new investments for which current results either exceed or do not meet the Small Concern's forecasts. A sound valuation should be based upon all of the relevant facts, with common sense and informed judgment influencing the process of weighing those facts and determining their significance in the aggregate.

C. General Considerations

The Asset Value of Loans and Investments will depend upon the circumstances of each individual case and will be based upon the nature of the asset and the stage of a company's existence.

In negotiating the terms and conditions of an investment with a Small Concern, the Licensee, in effect, establishes an initial valuation for the investment, which is cost. Cost shall be the Asset Value until there is a basis to increase or decrease the valuation.

Unrealized appreciation should be recognized when warranted, but should be limited to those investments that have a sustained economic basis for an increase in value. Temporary market fluctuations or a temporary increase in earnings should not be the cause or sole reason for appreciation.

Unrealized depreciation should be recorded when portfolio companies show sustained unfavorable financial performance. Continuous close scrutiny of Loans and Investments will provide insight into the business cycles and problems encountered by small business concerns. This insight will allow the Licensee to differentiate between a temporary downturn or setback and a long-term problem indicating a measurable decline in Asset Value.

When a decline in Asset Value appears permanent, a complete or partial write-off of the asset (i.e., recording a realized loss rather than unrealized depreciation) should occur. Some of the more obvious indications of permanent impairment of an investment include the termination of business operations, a petition for bankruptcy protection or liquidation, or the absence of a verifiable forwarding address of the business or its proprietor(s). Less obvious situations may include the loss of major revenue accounts, the shut down of a critical distribution channel, an adverse legal or regulatory ruling, or the expiration of a priority claim on collateral in a distressed Small Concern. These and other possible circumstances should be assessed on a case-by-case basis, with supporting documentation on file.

D. Valuation Responsibility

As specified in 13 CFR 107.101(g), the Licensee's Board of Directors or General Partners have the sole responsibility for determining Asset Value. In determining Asset Value, the Board of Directors or General Partners must satisfy themselves that all appropriate factors relevant to a good faith valuation have been considered and that the methods used are reasonable and prudent and are consistently applied. Although the Board of Directors or General Partners have the ultimate responsibility for determining Asset Value, they may appoint management or other persons to assist them in such determinations and to provide supporting data and make the necessary calculations pursuant to the Board's or General Partner's direction. It is essential that a careful, conservative, yet realistic approach be taken by Licensees in determining the Asset Value of each Loan and Investment.

As part of the annual audit of the Licensee's financial statements, the Licensee's independent public accountant has responsibility to review the Licensee's valuation procedures and implementation of such procedures including adequacy of documentation. The independent public accountant also has reporting responsibility regarding the results of this review. (See appendix I to this part, section III and section V, paragraphs I and J).

E. Frequency of Valuation

Loans and Investments shall be valued individually and in the aggregate by the Board of Directors or General Partners at least semiannually—as of the end of the second quarter of Licensee's fiscal year and as of the end of Licensee's fiscal year, *Provided however,* That Licensees without Leverage need only perform valuations once a year. On a case-by-case basis, SBA may require valuations to be made more frequently. Only valuations performed as of the fiscal year-end are required to be reviewed by the Licensee's independent public accountant, as discussed in paragraph D. of this section. Each Licensee shall forward a valuation report to SBA within 90 days of the end of its fiscal year in the case of annual valuations, and within thirty days following the close of other reporting periods. Material changes in valuations shall be reported not less often than quarterly within thirty days following the close of the quarter. Since the valuations will only be as sound as the timeliness of the financial information upon which they are based, Licensees shall require frequent financial statements from Small Concerns. Monthly financial statements are normally appropriate.

[8] 1940 Act Companies are reminded that sections 12(d) (2) and (3) of that Act impose additional restrictions on certain investments otherwise permitted by this § 107.901(a).

F. Written Valuation Policy

Each Licensee shall establish a written Valuation Policy approved by its Board of Directors or General Partners that includes a statement of policies and procedures that are consistent with section III of this appendix.

G. Documentation

Each Licensee shall prepare and retain in its permanent files a valuation report as of each valuation date documenting, for each portfolio security, the cost, the current Fair Value and the previous Fair Value, plus the methodology and supporting data used to determine the value of each such portfolio security. The minutes of meetings of Boards of Directors or General Partners at which valuations are determined will contain a resolution confirming that the valuations of each portfolio security were determined in accordance with Licensee's duly adopted valuation procedures and will incorporate by reference the valuation report signed by each Director or General Partner along with any dissenting valuation opinions.

H. Instructions

In section III below, certain sentences are in bold type and others are in regular type. Those sentences that are in bold type generally should be included in the Valuation Policy of each Licensee. However, this exact wording is not mandatory and may be modified, substituted, added to, or omitted. Sentences in regular type are commentary provided by SBA that need not be included in a Licensee's Valuation Policy, but may be adapted, if desired.

I. Approval

1. Any Licensee that utilizes the exact wording of Section III that is set in bold type, without any additions, deletions, or changes will be presumed to have an acceptable Valuation Policy. However, it is acknowledged that this wording may not be directly applicable to all Licensees, and if a Valuation Policy by an existing Licensee is written which differs from the bold type, approval by SBA, in writing, of the Valuation Policy must be obtained. If changes from the bold type are minor, it is suggested that the Licensee indicate deletions with a caret (^) and underline additions.

2. Applicants for either a 301(c) or 301(d) License must submit their Valuation Policies for approval as part of the licensing application process.

III. Valuation Policy

A. General

1. The Board of Directors [General Partners] have sole responsibility for determining the Asset Value of each of the Loans and Investments and of the portfolio in the aggregate.

2. Loans and Investments shall be valued individually and in the aggregate at least semi-annually—as of the end of the second quarter of the fiscal year-end and as of the end of the fiscal year. [* * * at least annually—as of the end of the fiscal year.] Fiscal year-end valuations are audited as set forth in 13 CFR part 107 appendix III, section II, paragraph D.

3. This Valuation Policy is intended to provide a consistent, conservative basis for establishing the Asset Value of the portfolio. The Policy presumes that Loans and Investments are acquired with the intent that they are to be held until maturity or disposed of in the ordinary course of business.

B. Interest-Bearing Securities

1. Loans shall be valued in an amount not greater than cost with Unrealized Depreciation being recognized when value is impaired. The valuation of loans and associated interest receivables on interest-bearing securities should reflect the portfolio concern's current and projected financial condition and operating results, its payment history and its ability to generate sufficient cash flow to make payments when due.

2. When a valuation relies more heavily on asset versus earnings approaches, additional criteria should include the seniority of the debt, the nature of any pledged collateral, the extent to which the security interest is perfected, the net liquidation value of tangible business assets, and the personal integrity and overall financial standing of the owners of the business. In those instances where a loan valuation is based on an analysis of certain collateralized assets of a business or assets outside the business, the valuation should, at a minimum, consider the net liquidation value of the collateral after reasonable selling expenses. Under no circumstances, however, shall a valuation based on the underlying collateral, be considered as justification for any type of loan appreciation.

3. Appropriate unrealized depreciation on past due interest which is converted into a security (or added to an existing security) should be recognized when collection is doubtful. Collection is *presumed* to be in doubt when one or both of the following conditions occur:

(i) Interest payments are more than 120 days past due; or

(ii) The small concern is in bankruptcy, insolvent, or there is substantial doubt about its ability to continue as a going concern.

a. Licensees may rebut this presumption by providing evidence of collectibility satisfactory to SBA. Such evidence may include the existence of collateral, the value of which has been verified through an appraisal by an independent professional appraiser acceptable to SBA. Such an appraisal shall be at liquidation value (net of liquidation costs) and shall have been performed within the 12 months immediately preceding the valuation date. In considering whether collateral provides an appropriate basis for valuations, SBA will review the Licensee's operating history for evidence concerning its willingness and ability to pursue available remedies (including foreclosure) in default situations.

b. For those Licensees primarily involved in making loans, the use of a loan classification system is strongly encouraged to help manage portfolios and determine Asset Values, with loans that warrant extra attention being flagged by SBIC management. Such a "watch list" can also be used to report to the Board of Directors or General Partner(s). For each loan placed on the watch list, a reason or statement should describe the particular situation. Danger signals that should alert the SBIC to potential problems include delinquency, a lack of profitability, weak or decreasing equity, increasing debt load, a deteriorating cash position, an abnormal increase in accounts payable, inaccurate financial information, insurance cancellation, judgments and tax liens, family problems, loss of employees, collateral problems, slowdown in inventory turnover, poor maintenance of plant and equipment, and heavy reliance on short term debt.

c. Upon careful consideration of all the relevant factors, the Board of Directors or General Partners shall determine which loans require recognition of Unrealized Depreciation. It is a good rule of operation for an SBIC to perform downward valuations earlier rather than later. When the quality of a loan recovers, a higher Asset Value may subsequently be assigned.

4. The carrying value of interest bearing securities shall not be adjusted for changes in interest rates.

5. Valuation of convertible debt may be adjusted to reflect the value of the underlying equity security net of the conversion price.

a. Accepted methods for valuing convertible debentures generally involve one of two approaches. The first approach views the debenture as a debt obligation. Under this approach, the SBIC or SSBIC should utilize the loan valuation techniques described in this section above. The second approach considers the conversion of all convertible securities of the same class into their common stock equivalent, taking into account dilution, and a subsequent valuation of the SBIC's or SSBIC's proportionate equity interest. Valuation of this equity interest should follow the equity valuation techniques described in Paragraph C. of this section.

b. Normally, the reported value is the higher of these two alternatives. However, Licensees should disregard higher equity values and retain lower debt-based valuations if there are circumstances which make conversion undesirable. When equity considerations govern the Asset Value assigned, all underlying factors should be disclosed.

C. Equity Securities—Private Companies

1. Investment cost is presumed to represent value except as indicated elsewhere in these guidelines.

2. Valuation should be reduced if a company's performance and potential have significantly deteriorated. If the factors which led to the reduction in valuation are overcome, the valuation may be restored.

3. The anticipated pricing of a Small Concern's future equity financing should be considered as a basis for recognizing Unrealized Depreciation, but not for Unrealized Appreciation. If it appears likely that equity will be sold in the foreseeable future at a price below the Licensee's current valuation, then that prospective offering price should be weighed in the valuation process.

4. Valuation should be adjusted to a subsequent significant equity financing that includes a meaningful portion of the financing by a sophisticated, unrelated new investor. A subsequent significant equity financing that includes substantially the same group of investors as the prior financing

should generally not be the basis for an adjustment in valuation. A financing at a lower price by a sophisticated new investor should cause a reduction in value of prior securities.

5. If substantially all of a significant equity financing is invested by an investor whose objectives are in large part strategic, or if the financing is led by such an investor, it is generally presumed that no more than 50% of the increase in investment price compared to the prior significant equity financing is attributable to an increased valuation of the company.

6. Where a company has been self-financing and has had positive cash flow from operations for at least the past two fiscal years, Asset Value may be increased based on a very conservative financial measure regarding P/E ratios or cash flow multiples, or other appropriate financial measures of similar publicly-traded companies, discounted for illiquidity. Should the chosen valuation cease to be meaningful, the valuation may be restored to a cost basis, or in the event of significant deterioration in performance or potential, to a valuation below cost to reflect impairment.

a. Under these conditions, valuation factors that may be considered, include:

(1) The utilization of a multiple of earnings, cash flow, or revenues, which are commensurate with the multiples which the market currently accords to comparable companies in similar businesses and industries, with an appropriate discount for conditions such as illiquidity or a minority position. Care should be taken to use only comparable companies, including not only business similarities but also similarities as to size, financial condition, and earnings outlook. However, in order for comparative market prices to be meaningful, data for a representative sample or similar companies must be available.

(2) Among the more important factors to be considered in a particular case are (i) The nature of the business, (ii) the risk involved, and (iii) the growth, stability or irregularity of earnings and cash flows. A company with a positive earnings trend and a favorable outlook may command a capitalization factor (multiplier) in the marketplace that will result in a stock valuation well above book value. When the gross value of a small concern is computed by applying a capitalization rate to pre-interest, pre-tax earnings, the value of equity securities is derived by subtracting the outstanding debt of the concern from the gross value. While capitalization rates do vary, an appropriate rate can be determined by analyzing rates for comparable companies in the same industry. Investigating similar companies in the same industry or geographic area can be done directly or through published material from sources such as the Value Line, Standard and Poor's, Robert Morris and Associates, or any other of the numerous sources available for comparative industry data.

(3) Another method discounts the present value of estimated future proceeds to a Licensee including dividend income and sales of securities, using a discount rate that reflects the degree of risk of the equity interest.

(4) One may also utilize the recent sale prices of comparable blocks of the issuer's securities in arm's length transactions.

b. Equity interests or limited partnership interests without the benefit of stock certificates and which generally define a certain percentage of the profits to be allocated to each of the investors based on its relative contributions should be valued in a manner similar to the valuation methods described in this section.

7. With respect to portfolio companies that are likely to face bankruptcy or discontinue operations for some other reason, liquidating value may be employed. This value may be determined by estimating the realizable value (often through professional appraisals or firm offers to purchase) of all assets and then subtracting all liabilities and all associated liquidation costs.

a. Liquidation value will depend on the decreasing value of wasting assets, the costs experienced by the business being liquidated, the expenses borne by the Licensee in order to be able to realize any liquidating value, the elapsed time until such net proceeds can be realized, the ranking of the Licensee's claims relative to other security interests and subordination agreements, and the probability of any ultimate realization of value.

b. Incorporating this approach as a normal step in valuation can provide improved understanding of the downside of an investment.

c. Licensees should recognize unrealized appreciation or depreciation, as appropriate, on Assets Acquired in liquidation of Loans and Investments. In order to recognize Unrealized Appreciation, asset values must be verified by an appraisal which meets all the conditions specified in the preceding paragraph; provided, however, that if the assets acquired constitute a going concern, such assets may be appraised as a going concern rather than at liquidation value. Unrealized Appreciation may not be recognized if the Licensee does not benefit from such appreciation. For example, an asset acquired through foreclosure should not be carried at a value greater than the defaulted loan balance plus any expenses and penalties to which the Licensee is entitled.

8. Warrants should be valued at the excess of the value of the underlying security over the exercise price.

a. Valuation of debt with detachable warrants can be done similarly to convertible debt by treating the debt and warrants as a unit, or, alternatively, the debt can be valued on its own basis as a debt instrument, and the warrants separately. If the warrants are valued separately, the following factors must be taken into account:

(1) Current value of issued shares.

(2) The differential between the exercise price and the underlying share values if the current share values are higher than the exercise price.

(3) Time until expiration dates are reached or dates of changes in terms of exercise prices.

(4) Number of shares into which the warrants are exercisable on various dates.

(5) Restrictions on sale of the underlying stock.

(6) Restrictions on the transferability of the warrants.

(7) Registration rights for the warrants or the underlying shares.

(8) Financial ability of the Licensee to perform the exercise of its rights or to sell it warrants.

(9) The ultimate desirability, if any, of exercising the rights given by the warrants.

D. Equity Securities—Public Companies

1. Public securities should be valued as follows:

(a) For over-the-counter stocks, take the average of the bid price at the close for the valuation date and the preceding two days, and

(b) For listed stocks, take the average of the close for the valuation date and the preceding two days.

a. However, securities are not deemed to be freely marketable in those situations wherein such securities are very thinly or infrequently traded, or may be lacking in truly representative market quotations, or where the market for such securities cannot absorb the quantity of shares which the Licensee and similar investors may want to sell.

b. In such cases, Asset Value must be determined by the Board of Directors or General Partners.

2. The valuation of public securities that are restricted should be discounted appropriately until the securities may be freely traded. Such discounts typically range from 10% to 40%, but the discounts can be more or less, depending upon the resale restrictions under securities laws or contractual agreements.

3. When the number of shares held is substantial in relation to the average daily trading volume, the valuation should be discounted by at least 10%, and generally by more.

Dated: March 1, 1994.

Erskine B. Bowles,

Administrator.

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13 CFR Part 121

Small Business Size Standards: Increase Size Standard of Small Business Concerns Eligible for Assistance by Small Business Investment Companies

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is revising one of the two size standards that establish eligibility criteria for small business concerns applying for assistance from Small Business Investment Companies (SBICs). This action increases the ceilings on the primary standard used, the SBIC Standard, from $6 million net worth and $2 million after-tax net income, to $18 million net worth and $6 million after-tax net income.

This action is consistent with the current program restructuring resulting from the enactment of recent legislation, and updates the existing standard for inflation since the last adjustments in 1979.

The increased standard benefits small businesses by restoring eligibility to many concerns that lost this status solely because of the effects of inflation. The increased standard also permits the SBICs with higher levels of private capital, particularly those new licensees entering the Program as a result of the legislative changes, to provide follow-on investments and equity-oriented financing to growth-oriented small business concerns.

EFFECTIVE DATE: April 25, 1994.

FOR FURTHER INFORMATION CONTACT: Robert D. Stillman, Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., suite 6300, Washington, DC 20416.

SUPPLEMENTARY INFORMATION:

Background

In the **Federal Register** of July 29, 1993, (58 FR 40603), SBA published a Proposed Rule to revise the two-test standard that SBICs use as the primary size standard determining eligibility for small business concerns applying for financial and/or management assistance under the SBIC Program.

Concerns applying for assistance must be eligible for the Program under one of two standards: The two-test standard for net worth and after-tax net income (herein called the "SBIC Standard" or "Standard") [§ 121.802 (a)(2)(i)] or, the single-test standard, stated in number of employees or annual revenues, that is specified for the applicant's industry [§ 121.802(a)(2)(ii)].

SBA proposed to increase only the two tests in the SBIC Standard. The net worth test would be increased from $6 million to $18 million and the after-tax net income test would be increased from $2 million to $6 million. As an alternative, the applicant concern would continue to have the option of qualifying under the industry size standard.

The current action dates from a September 1990 proposal to reinstate a third test, an assets test, in the SBIC Standard. The assets test had been eliminated by a regulatory amendment in 1979. In 1990, a gross assets test of $20 million was proposed to be applied only to SBIC change of ownership financings. The purpose of this proposal was to prevent SBICs from participating in highly leveraged transactions where the concern financed appeared to be other than small. While SBIC regulations do not preclude change of ownership transactions, SBA found it necessary to have the ability to monitor and control these transactions to prevent the violation of Program integrity. Following **Federal Register** publication and evaluation of the public comments received in response, SBA withdrew this proposal, in July 1991, for further analysis.

SBA's July 29, 1993, proposal for a change in the SBIC Standard was the result of an extensive review and restructuring of the SBIC Program which occurred over the intervening two-year period. The proposal focused on an update of the net worth and net income components of the Standard to facilitate the Program changes underway, particularly the legislative changes recently enacted, and to adjust for inflation. SBA no longer proposed to reinstate an assets test to address the leveraged buyout issue as the administration of these transactions was determined to be an eligibility issue suitable for coverage in the SBIC financing regulations rather than a size issue. Consequently, SBA sought, through a separate proposed rule (58 FR 41852) which covered a number of operating regulations, to amend the SBIC regulations applicable to change of ownership transactions (§ 107.711) in order to address this issue.

The proposed SBIC Standard was a vital part of the structural changes, along with the revisions in part 107, that were initiated to strengthen and improve the SBIC Program. Overall, the Program revitalization efforts underway are designed to enhance the SBIC Program to be a more effective tool in providing small business concerns access to risk capital in a way that will result in job creation, economic growth, and other national objectives being achieved.

Discussion of Comments

In response to the July 29, 1993, proposal, SBA received 30 letters from: managers of currently licensed SBICs, investors and venture capitalists planning to form SBICs, investors who have submitted license applications for new SBICs, individual members of SBA's Investment Advisory Council, and trade associations representing SBICs. Almost all comments, except for one, supported the proposed increase in the SBIC Standard and contained one or more comments regarding the need for an increased standard and its benefits.

Typical comments in support of the increase were that the proposal: Was a long-overdue and appropriate adjustment; would increase capital available for financing; was more in line with the larger capital structures of businesses now approaching SBICs for financing, particularly since new starts have become more capital intensive in the 1990s; would allow for multiple rounds of financing for established small businesses; and would increase financing for small businesses having the potential for growth and job creation. One commentator also recommended that there be periodic, automatic adjustments in the size standard to offset inflation.

The one exception offered a counter proposal for a small increase than SBA proposed. The counter proposal maintained that, while the Proposed Rule met the expectations of the SBIC industry, only an inflation adjustment should be made to double the present Standard, to a net worth of $12 million and net income of $4 million.

Response

The Proposed Rule stated that there were two elements contributing to the increase in the Standard. About half of the increase in the Standard was attributable to the restructuring of the SBIC Program as a result of title IV of Public Law 102–366 in order to address the need for financing growth-oriented and development-stage small businesses. The remainder of the increase was an inflationary adjustment.

However, the counter proposal would limit the increase in the Standard to only an inflation adjustment thus eliminating a significant portion of the SBICs' capability to provide the type of small business financing envisioned by Public Law 102–366.

In addition, limiting the increase would restrict the formation of SBICs with higher amounts of private capital, as also envisioned by the legislation which has key provisions intended to encourage SBICs to significantly increase their levels of private capital. Under these provisions, some SBICs will continue to have private capital of less than $10 million, while some new SBICs will have as much as $50 million in private capital. The optimum size of SBICs electing to issue the new security, created by the legislation, is expected to be $15 to $20 million in private capital. These SBICs will typically invest from $200,000 to $1 million in one small business since each SBIC is able to invest up to 20% of its private capital in any one small business concern. The increased SBIC Standard will allow the SBICs with higher amounts of private capital the flexibility to invest up to 20% of their private capital in the multiple rounds of financings needed to grow a small business from its initial

founding to its take-off as a successful venture.

In essence, increasing the SBIC Standard by only an inflation adjustment would accommodate retroactive, or historical, trends and restore the purchasing power of the dollar which was eroded from 1979 to 1992. However, such an increase would ignore the current and prospective goals of the Program restructuring already underway. This restructuring is designed to strengthen and expand the capabilities of SBICs to finance small businesses so that they can increase their contribution to economic growth and job creation.

Therefore, after careful review of the public comments noted above together with other Program and economic data, SBA is adopting the rule as proposed, with both a historical inflation adjustment and an adjustment for current Program needs.

Compliance With Executive Orders 12866, 12612 and 12778, and the Regulatory Flexibility and Paperwork Reduction Acts

Executive Order 12866 and Regulatory Flexibility Act

Although this final rule is expected to have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. 601, et seq), it will not constitute a significant rule for the purpose of Executive Order 12866, since its annual economic effect is less than $100 million. An initial regulatory flexibility analysis of this proposal is as follows.

(1) Description of Entities to Which the Rule Applies

SBA estimates that 99.7% of all firms in the United States could be eligible for SBIC financing after the adoption of this final rule (estimate based on Internal Revenue Service Statistics of Income, 1988 for active corporations). By comparison, when the current standard was adopted in 1979, approximately 99.6% of all firms were eligible for SBIC assistance. In absolute terms, under the proposed standard, approximately 7,000 additional firms would gain eligibility as small businesses. Many of these concerns probably had small business status under the 1979 standard, but since then have lost eligibility because of general price increases due to inflation.

However, it should be noted that the Standard sets the ceiling on how the target population is defined and on the entire population potentially eligible for SBIC assistance. In practice, the level of private capital invested in an individual SBIC and the SBIC's investment plan actually set the limits on each small business financing.

Actual Program experience shows the enormous gap between the total population eligible for SBIC financing and the number that actually participate in the Program. The total number of business concerns that fit under the current SBIC Standard and, therefore, are potentially eligible for SBIC assistance, is approximately 3.6 million small concerns. By contrast, the number of financings annually from both Regular SBICs and Specialized SBICs averages 2,000 per year, based on Fiscal 1991 and 1992 data. Overall, from 1960 to 1991, almost 70,000 different small business concerns received financing under the SBIC Program.

Moreover, a review of the initial capitalization of SBICs indicates that based on the levels of private capital there are three types of SBICs each serving a limited segment of potentially eligible concerns for SBIC financing: the Regular SBICs with a minimum private capital of $2.5 million and having a balanced portfolio with a primary emphasis on providing debt financing to small business; the SSBICs with minimum private capital of $1.5 million and specializing in financing small businesses that are owned by persons who are socially or economically disadvantaged; and venture capital SBICs which tend to have higher levels of private capital in order to provide equity oriented financings to growth oriented small business concerns.

Since current Program changes are designed to expand the private capital of all types of SBICs, the proposed Standard will allow SBICs with higher levels of private capital to provide larger amounts of financings to small business concerns. However, the optimum size venture capital SBIC is expected to be $10 to $20 million in private capital. There will be SBICs with private capital of less than $10 million and some SBICs will have as much as $50 million in private capital. At the lower levels (e.g., from $1 million to $5 million), an SBIC will typically invest from $200,000 to $1 million in one small business since each SBIC is able to invest up to 20% of its private capital in any one small business concern.

Moreover, the SBIC Standard is a program Standard applicable only to small business concerns that apply for financing from an SBIC. As such, the change affects only potential clients of SBICs and does not alter the definition of a small business for the wide variety of business development, financial assistance and procurement assistance programs offered by SBA.

The proposed Standard does not impose a regulatory burden because it does not regulate or control business behavior.

(2) Description of Reasons Why This Action Is Being Taken and Objectives of Rule

SBA has provided above in the Supplementary Information a description of the reasons why this action is being taken and a statement of the reasons for and objectives of this proposed rule.

(3) Legal Basis for the Proposed Rule

The legal basis for this rule is sections 3(a) and 5(b) of the Small Business Act, 15 U.S.C. 632(a) and 634(b)(6).

(4) Federal Rules

There are no Federal rules which duplicate, overlap or conflict with this proposed rule. SBA has statutorily been given exclusive jurisdiction in establishing size standards for small business concerns.

(5) Significant Alternatives to Proposed Rule

This rule sets forth changes from the current size standard in order to establish the most appropriate definition of small business concerns eligible for assistance under the SBIC Program. There are no significant alternatives to defining a small business concern other than developing another alternative size standard. As discussed in the Supplementary Information above, the SBIC Program already provides two options for determining the eligibility of applicant concerns, and this proposal applies to only one of those options. A review of the SBIC portfolio indicated that almost all applicant concerns were eligible under the single size standard covering the industry in which the applicant concern was primarily engaged even though these firms chose to qualify under the SBIC Standard instead of the industry-based standards.

Executive Order 12612

SBA certifies that this rule will not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Paperwork Reduction Act

SBA certifies that this rule, promulgated as final, will not add any new reporting or recordkeeping requirements under the Paperwork

Reduction Act of 1980, 44 U.S.C., Chapter 35.

Executive Order 12778

SBA certifies that this rule is prepared, to the extent practicable, in accordance with the standards set forth in section 2 of E.O. 12778.

List of Subjects in 13 CFR Part 121

Financial assistance—small business concerns, Small Business Investment Companies, Small Business Investment Company Program.

Accordingly, part 121 of 13 CFR is amended as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c).

§ 121.802 [Amended]

2. Section 121.802(a)(2) is amended by removing the words "Small Business Investment Company,".

3. Section 121.802 is amended by redesignating paragraph (a)(3) as paragraph (a)(4) and by adding a new paragraph (a)(3) to read as follows:

§ 121.802 Establishment of the Size Standard.

(a) * * *

(3) *SBIC Standard.* For financial and/or management/technical assistance under the Small Business Investment Company Program, an applicant concern must meet one of the following standards:

(i) Together with its affiliates, it does not have net worth in excess of $18 million, and does not have average net income after Federal income taxes (excluding any carry-over losses) for the preceding 2 completed fiscal years in excess of $6 million; or

(ii) Together with its affiliates, it meets the size standard for the industry in which it is primarily engaged and, excluding its affiliates, meets the size standard for the industry in which it is primarily engaged. These size standards are set forth in § 121.601.

* * * * *

Dated: March 1, 1994.

Erskine B. Bowles,

Administrator.

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federal register

Friday
April 8, 1994

Part III

Department of Labor

Mine Safety and Health Administration

Coal Mine Respirable Dust Standard Noncompliance Determinations; Mine Shift Atmospheric Conditions; Respirable Dust Sample; Notice

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Coal Mine Respirable Dust Standard Noncompliance Determinations; Mine Shift Atmospheric Conditions; Respirable Dust Sample

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Extension of comment periods.

SUMMARY: In response to requests from the mining community for additional time in which to prepare their comments, the Mine Safety and Health Administration (MSHA) is extending the periods for public comment on two notices addressing coal mine respirable dust. The comment period will be extended for the notices addressing: (1) The use of single, full-shift respirable dust measurements to determine noncompliance under the MSHA coal mine respirable dust program; and (2) the joint finding by the Secretary of Labor and the Secretary of Health and Human Services that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be measured accurately over a single shift.

DATES: All comments and information must be submitted on or before May 20, 1994. Commenters are encouraged to send comments on a computer disk with their original comments in hard copy.

ADDRESSES: Send comments to the Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235–1910.

SUPPLEMENTARY INFORMATION: On February 18, 1994, MSHA published a notice in the **Federal Register** (59 FR 8356) announcing its intention to use single, full-shift respirable dust measurements, in addition to the average of multiple, full-shift respirable dust samples to determine noncompliance and issue citations for violations of the respirable dust standard under the MSHA coal mine respirable dust program.

Concurrently, the Secretary of Labor and the Secretary of Health and Human Services jointly published a notice in the **Federal Register** (59 FR 8357) announcing a new finding that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be accurately measured over a single shift in accordance with section 202(f)(2) of the Federal Mine Safety and Health Act of 1977. Based on this finding, the Secretaries are proposing to rescind the finding issued on July 17, 1971, and affirmed on February 23, 1972.

The comment periods for these notices were scheduled to close on April 19, 1994; but, in response to requests from the mining community for additional time in which to prepare their comments, MSHA is extending the comment period to May 20, 1994. All interested parties are encouraged to submit comments prior to that date.

Dated: April 4, 1994.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 94–8471 Filed 4–7–94; 8:45 am]

BILLING CODE 4510–43–P

federal register

Friday
April 8, 1994

Part IV

Department of Commerce

National Telecommunications and Information Administration

Advisory Council on the National Information Infrastructure, Meeting; Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Advisory Council on the National Information Infrastructure; Notice of Open Meeting

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice is hereby given of a meeting of the Advisory Council on the National Information Infrastructure, created pursuant to Executive Order 12864, as amended.

SUMMARY: The President established the Advisory Council on the National Information Infrastructure (NII) to advise the Secretary of Commerce on matters related to the development of the NII. In addition, the Council shall advise the Secretary on a national strategy for promoting the development of a NII. The NII will result from the integration of hardware, software, and skills that will make it easy and affordable to connect people, through the use of communication and information technology, with each other and with a vast array of services and information resources. Within the Department of Commerce, the National Telecommunications and Information Administration has been designated to provide secretariat services for the Council.

AUTHORITY: Executive Order 12864, signed by President Clinton on September 15, 1993, and amended on December 30, 1993.

DATES: The meeting will be held on Monday, April 25, 1994, from 8:30 a.m. until 4:30 p.m.

ADDRESSES: The meeting will take place at the offices of National Public Radio at 635 Massachusetts Avenue, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Ms. Sarah Maloney (or Ms. Alison Andrews, alternate), Designated Federal Officer for the Advisory Council on the NII and Chief, Policy Coordination Division at the National Telecommunications and Information Administration (NTIA); U.S. Department of Commerce, Room 4892; 14th Street and Constitution Avenue, NW.; Washington, DC 20230. Telephone: 202–482–1835; Fax: 202–482–0979; E-mail: nii@ntia.doc.gov.

SUPPLEMENTARY INFORMATION: Current members of the Advisory Council on the National Information Infrastructure include:

Mr. Morton Bahr, President, Communications Workers of America, AFL–CIO

Dr. Toni Carbo Bearman, Dean and Professor, School of Library and Information Science, University of Pittsburgh

Ms. Bonnie L. Bracey, Teacher, Ashlawn Elementary School, Arlington County Public Schools

Mr. John F. Cooke, President, The Disney Channel

Ms. Esther Dyson, President, EDventure Holdings, Inc.

Dr. Craig I. Fields, Chairman and Chief Executive Officer, Microelectronics and Computer Technology Corp.

Ms. Lynn Forester, President and Chief Executive Officer, FirstMark Holdings, Inc.

Honorable Carol Fukunaga, Senator, State of Hawaii

Mr. Haynes G. Griffin, President and Chief Executive Officer, Vanguard Cellular Systems, Inc.

Dr. George H. Heilmeier, President and Chief Executive Officer, Bellcore

Ms. Susan Herman, General Manager, Department of Telecommunications, City of Los Angeles

Mr. James R. Houghton, Chairman and Chief Executive Officer, Corning Incorporated

Mr. Stanley S. Hubbard, Chairman, President, and Chief Executive Officer, Hubbard Broadcasting

Mr. Robert L. Johnson, President, Black Entertainment Television

Dr. Robert E. Kahn, President, Corporation for National Research Initiatives

Ms. Deborah Kaplan, Vice President, World Institute on Disability

Mr. Mitchell Kapor, Chairman, Electronic Frontier Foundation, Inc.

Mr. Delano E. Lewis, President and Chief Executive Officer, National Public Radio

Mr. Alex J. Mandl, Executive Vice President, AT&T and Chief Executive Officer, Communications Services Group

Mr. Edward R. McCracken, President and Chief Executive Officer, Silicon Graphics, Inc.

Dr. Nathan P. Myhrvold, Senior Vice President, Advanced Technology, Microsoft Corporation

Mr. N.M. (Mac) Norton, Jr., Attorney-at-Law, Wright, Lindsey, and Jennings

Mr. Vance K. Opperman, President, West Publishing Company

Ms. Jane Smith Patterson, Advisor to the Governor of North Carolina for Policy, Budget, and Technology, State of North Carolina

Mr. Bert C. Roberts, Jr., Chairman and Chief Executive Officer, MCI Communications Corp.

Mr. John Sculley

Ms. Joan H. Smith, Chairman, Oregon Public Utility Commission.

Agenda

1. *Meetings of Three Mega Projects (separate rooms).*

Members assigned to each of the three projects will meet together. The projects are:

Vision and Goals Driven by Specific Applications

Access to the NII

Privacy, Security, and Intellectual Property.

2. *Mega Project Groups Meet with Appropriate Federal Government Representatives (separate rooms).*

3. *Press Conference.*

4. *Short Reports & Discussion from Project Groups.*

5. *Technology Application Demonstrations and/or Discussions.*

6. *Report on Privacy and Intellectual Property.*

7. *Public Discussion, Questions and Answers.*

8. *Next Meeting Date and Agenda Items.*

PUBLIC PARTICIPATION: The meeting, including the project group meetings, will be open to the public, with limited seating available on a first-come, first-served basis. Any member of the public requiring special services, such as sign language interpretation, should contact Alison Andrews at 202–481–1835.

Any member of the public may submit written comments concerning the Council's affairs at any time before or after the meeting. Comments should be submitted through electronic mail to nii@ntia.doc.gov or to the Designated Federal Officer at the address listed above.

Within thirty (30) days following the meeting, copies of the minutes of the Council meetings may be obtained through Bulletin Board Services at 202–501–1920, 202–482–1199, over the Internet at iitf.doc.gov, or from the U.S. Department of Commerce, National Telecommunications and Information Administration, room 4892, 14th Street and Constitution Avenue, NW.; Washington, DC 20230; Telephone 202–482–1835.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 94–8580 Filed 4–6–94; 1:26 pm]

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Federal Register

Vol. 59, No. 68

Friday, April 8, 1994

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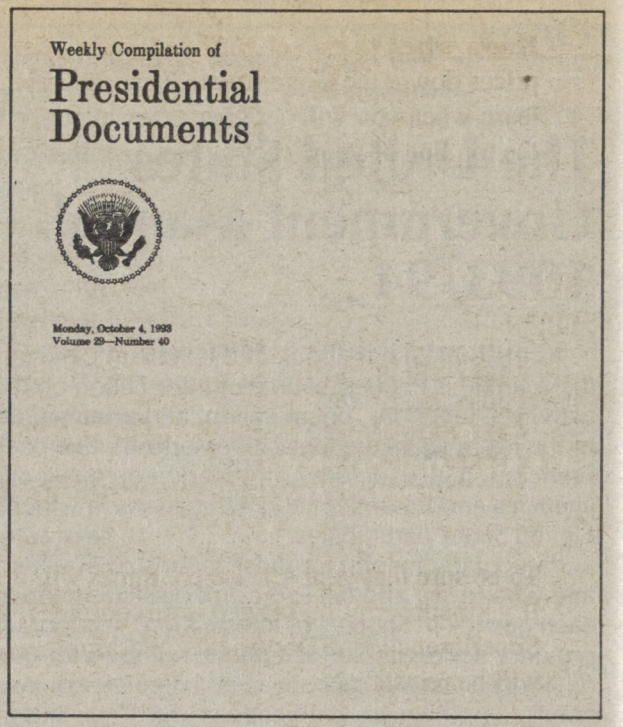

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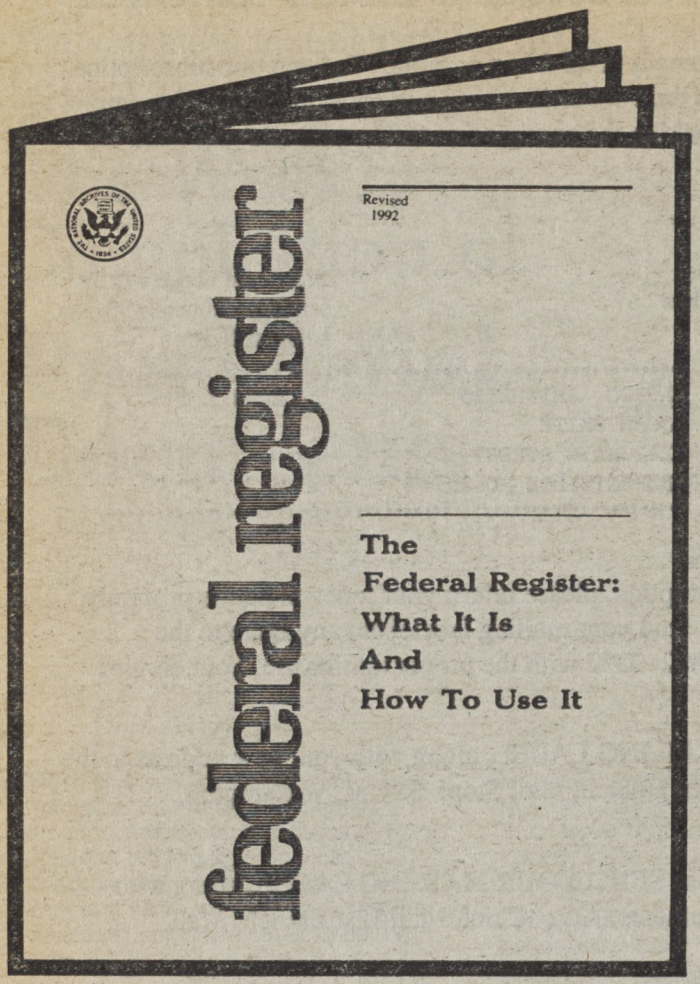

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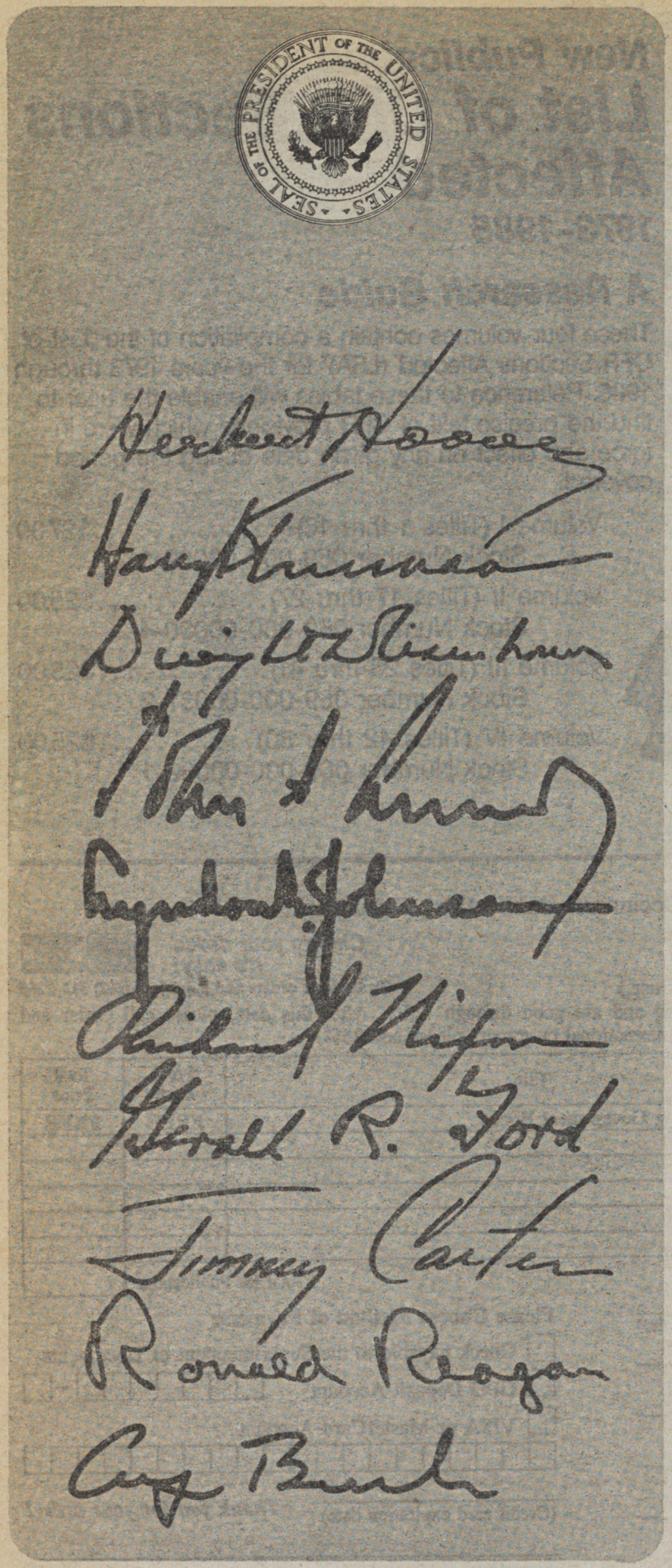

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