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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 95–5 of November 15, 1994

Drawdown of Commodities and Services from the Inventory and Resources of the Department of the Treasury to Support Sanctions Enforcement Efforts Against Serbia and Montenegro

Memorandum for the Secretary of State [and] the Secretary of the Treasury

Pursuant to the authority vested in me by section 552(c)(2) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2348a(c)(2) (the "Act"), I hereby determine that:

(1) as a result of an unforeseen emergency, the provision of assistance under Chapter 6 of Part II of the Act in amounts in excess of funds otherwise available for such assistance is important to the national interests of the United States; and

(2) such unforeseen emergency requires the immediate provision of assistance under Chapter 6 of Part II of the Act.

I therefore direct the drawdown of commodities and services from the inventory and resources of the Department of the Treasury of an aggregate value not to exceed $3 million to support the international Serbia and Montenegro sanctions program enforcement efforts.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.

William J. Clinton

[FR Doc. 94–29395
Filed 11–23–94; 3:13 pm]
Billing code 4710–10–M

Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 94–082–2]

Pink Bollworm Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the pink bollworm regulations by adding certain portions of Dyer and Lauderdale Counties in Tennessee to the list of suppressive areas for pink bollworm and by adding Tennessee to the list of States quarantined because of pink bollworm. The interim rule imposed restrictions on the interstate movement of regulated articles from those regulated areas in Dyer and Lauderdale Counties, TN, and was necessary to prevent the interstate movement of pink bollworm into noninfested areas.

EFFECTIVE DATE: December 28, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Coanne E. O'Hern, Assistant Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, room 645, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6365.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on August 30, 1994 (59 FR 44607–44608, Docket No. 94–082–1), we amended the pink bollworm regulations in 7 CFR 301.52 through 301.52–10 by adding certain portions of Dyer and Lauderdale Counties in Tennessee to the list of suppressive areas for pink bollworm and by adding Tennessee to the list of States quarantined because of pink bollworm. That action imposed restrictions on the interstate movement of regulated articles from those regulated areas in Dyer and Lauderdale Counties, TN, in order to prevent the interstate movement of pink bollworm into noninfested areas.

Comments on the interim rule were required to be received on or before October 31, 1994. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12778, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR 301.52 and 301.52–2a and that was published at 59 FR 44607–44608 on August 30, 1994.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 18th day of November 1994.

Alex B. Thiermann,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–29097 Filed 11–25–94; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Policy and Procedure for Enforcement Actions; Policy Statement, Discrimination

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement; revision.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its General Statement of Policy and Procedure for Enforcement Actions (Enforcement Policy) to address issues associated with discrimination. A change is also being made to address Commission review of certain cases involving reports of the Office of Investigations.

DATES: This revision is effective on November 28, 1994.

Comments are due on or before December 28, 1994.

ADDRESSEES: Send written comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attn: Docketing and Service Branch. Deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:45 am and 4:15 pm on Federal workdays.

Copies of comments may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower-Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301)–504–2741.

SUPPLEMENTARY INFORMATION: On July 6, 1993, the NRC's Executive Director for Operations established a review team to reassess the NRC's program for protecting allegers against retaliation. The review team report, NUREG–1499, [1] Reassessment of the NRC's Program for Protecting Allegers Against Retaliation, was published in January 1994. The team report summarizes current processes, gives an overview of current problems, and gives recommendations for each area that is discussed. The NRC is adding additional guidance in its Enforcement Policy to address Recommendations II D.2, D.5., and D.6 of the report relating to enforcement actions for violations involving discrimination.

The NRC Enforcement Policy is codified at 10 CFR Part 2, Appendix C

[1] Copies of NUREG–1499 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Mail Stop SSOP, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

to provide widespread dissemination of the Commission's Enforcement Policy. However, this is a policy statement and not a regulation.

Civil Penalty Adjustment for Corrective Action

Corrective action is a significant factor in mitigation or escalation of base civil penalties for violations involving discrimination. A paragraph is being added to B2(b) of Section VI of the Enforcement Policy to provide an explanation of the corrective action adjustment factor as applied to discrimination cases. The NRC can require broad remedial action to improve the workplace environment, but it cannot require a licensee to provide the individual with a personal remedy. The Department of Labor (DOL) has the authority to require that a personal remedy be provided. A violation involving discrimination is not completely corrected without the personal remedy, and the chilling effect may well continue if a personal remedy is not provided. Thus the Commission does not believe that any proposed penalty should be mitigated if a personal remedy is not provided. A civil penalty normally should be mitigated for corrective action only if the licensee takes prompt, comprehensive corrective action which (1) addresses the broader environment for raising concerns in the workplace; and (2) provides a remedy for the particular discrimination at issue. In the determination of whether or not a remedy has been provided, the NRC considers whether a settlement has been reached or if a remedy ordered by DOL has been implemented. Where a remedy has been accepted by DOL, NRC intends to defer to DOL on the adequacy of the remedy. Cases where a licensee offers an employee a reasonable remedy, but the employee declines, will be handled on a case by case basis.

The promptness and scope of corrective action should also be considered in applying the corrective action factor. If settlement occurs early in the administrative process, mitigation may be warranted based on corrective actions as the chilling effect may have been minimized by the promptness of the remedy and remedial action. However, if settlement occurs after the evidentiary record closes before the Administrative Law Judge, then any existing chilling effect may have existed for a substantial time, and the complainant may have had to spend substantial resources to present his or her case. Under such situations mitigation normally would not be warranted. If the licensee does not take broad corrective action until after a Secretary of Labor's decision, and the Secretary's decision upholds an Administrative Law Judge's finding of discrimination, corrective action may be untimely and escalation warranted. If the licensee chooses to litigate and eventually prevails on the merits of the case, then enforcement action will not be taken and, if already initiated, will be withdrawn. Assuming that evidence of discrimination exists, enforcement action that emphasizes the value of promptly counteracting the potential chilling effect is warranted.

Enforcement Discretion

It is recognized that there are some cases of discrimination where enforcement action may not be warranted. Paragraph B(7) is being added to Section VII to provide an explanation of the types of cases in which the NRC may refrain from taking enforcement action and those in which the NRC normally would not exercise such discretion. A licensee who, without the need for government intervention, identifies an issue of discrimination and takes corrective action to address both the particular situation and the overall work environment is helping to establish a safety-conscious workplace. Aggressive licensee follow-up also provides a message that retaliation is not acceptable within its workplace. Assuming that these actions are reasonable and effective, NRC enforcement action may not be warranted.

Another situation in which enforcement may not be warranted is where a complaint is filed with the DOL, but the licensee settles the matter before the DOL Area Office makes a finding of discrimination. Alternatively, if a finding is made against the licensee, the licensee may choose to settle before the evidentiary hearing begins. An NRC policy of not normally citing violations in such cases might encourage licensee settlements, thereby reducing the potential for chilling effect. Settlements also provide a more timely remedy for the complainant and may be used to demonstrate the licensee's commitment to a retaliation-free environment. Therefore, the NRC may exercise its discretion not to take enforcement action when the licensee has publicized (1) that a complaint of discrimination for engaging in protected activity was made to the DOL; (2) that the matter was settled to the satisfaction of the employee (the terms of the specific settlement agreement need not be posted); and (3) that if the DOL Area Office found discrimination, the licensee has taken action to positively reemphasize that discrimination will not be tolerated. This information might be publicized by posting a notice, a newsletter, a handout, or some other means, but the information should be conveyed in a manner designed to minimize the chilling effect on others. A similar approach may be taken when a person comes to the NRC without going to the DOL.

Even if no formal enforcement action is taken, the NRC would issue a letter, as is normal practice in similar cases, to emphasize the need for lasting remedial action. The licensee would also be informed that future violations may result in enforcement action. In certain cases, the NRC may also consider entering into a consent order with the licensee, as part of the settlement process, to address remedial action.

Whether the exercise of discretion is appropriate will depend on the circumstances. For example, normally enforcement discretion would not be appropriate for cases that involve: (1) Allegations of discrimination as a result of providing information directly to the NRC; (2) allegations of discrimination caused by a manager above first-line supervisor (consistent with the current Enforcement Policy classification of Severity Level I or II violations); (3) allegations of discrimination where a history of findings of discrimination (by the DOL or the NRC) or settlements suggest a programmatic rather than an isolated discrimination problem; (4) allegations of discrimination which appear particularly blatant or egregious.[2] In addition enforcement discretion normally would not be exercised for cases where the licensee does not appropriately address the overall work environment (e.g. by using training, postings, revised policies or procedures, any necessary disciplinary action, etc. to communicate corporate policy against discrimination).

Severity Levels

The existing examples of harassment and intimidation in Supplement VII of the NRC Enforcement Policy focus on the level of management involved in the discrimination. Additional examples are warranted to address other considerations associated with discrimination. Example B(9) will be added as a Severity Level II example to address violations involving a hostile work environment. Such a violation may be very significant because the failure by licensee's management to

[2] While enforcement action would normally be warranted in these four types of cases, depending on the circumstances mitigation for corrective action may be appropriate.

correct a hostile work environment can have a potentially significant adverse impact on employees raising issues. In such cases employees may not believe that they are free to raise concerns.

Supplement VII does not currently address threats of discrimination or restrictive agreements, both of which are violations under NRC regulations such as 10 CFR 50.7(f). Example C(10) is being added as a Severity Level III example to address such violations. This type of violation is being categorized at a Severity Level III because the potential impact on future protected activity may be of significant regulatory concern.

Some discrimination cases may occur which, in themselves, do not warrant a Severity Level III categorization. Example D(6) is being added as a Severity Level IV example to address these situations. An example of such a case might be a single act of discrimination involving a first-line supervisor, in which the licensee promptly investigates the matter on its own initiative, takes prompt, decisive corrective action to limit the potential chilling effect, and thereby provides a clear message to other supervisors and employees that such conduct will not be tolerated. Another example might involve a threat of adverse action against an employee for going around the supervisor to raise a concern; if the licensee took prompt, aggressive corrective action before any adverse action was taken toward the employee, such a case might be considered as having minimal potential for a widespread chilling effect. These cases would be categorized at a Severity Level IV because they are of more than minor concern and, if left uncorrected, could lead to a significant regulatory concern. Therefore, the Enforcement Policy is being changed to provide the flexibility to classify less significant discrimination violations as Severity Level IV. Such cases would normally be considered for exercising enforcement discretion if warranted under section VII B(7). However, citations would normally be made if one of the four exceptions in that section were applicable.

Miscellaneous

The Enforcement Policy is also being changed to reflect current Commission practice on consultation concerning proposed enforcement actions involving or relating to Office of Investigation (OI) reports. This change is being made to Section III.

Paperwork Reduction Act Statement

This final policy statement does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were aproved by the Office of Management and Budget, approval number 3150–0136.

List of Subjects in Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

1. The authority citation for Part 2 continues to read, in part, as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

2. Appendix C to Part 2 is amended by—

a. Revising Section III, paragraph (9);

b. Adding a paragraph directly after Section VI, B.2., paragraph (b);

c. Adding paragraph (7) to Section VII, B.; and

d. In Supplement VII, revising paragraphs B(7), B(8), C(8), C(9), D(4), and D(5) and adding paragraphs B(9), C(10), and D(6) to read as follows:

Appendix C to Part 2—General Statement of Policy and Procedure for NRC Enforcement Actions

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III. Responsibilities

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(9) Any proposed enforcement case involving an Office of Investigation (OI) report where the staff (other than the OI staff) does not arrive at the same conclusions as those in the OI report concerning issues of intent if the Director of OI concludes that Commission consultation is warranted; and

* * * * *

VI. Enforcement Actions

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B. Civil Penalty

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2. Civil Penalty Adjustment Factors

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(b) Corrective action.

A civil penalty for violations involving discrimination should normally only be mitigated if the licensee takes prompt, comprehensive corrective action that (1) addresses the broader environment for raising safety concerns in the work place, and (2) provides a remedy for the particular discrimination at issue.

* * * * *

VII. Exercise of Discretion

* * * * *

B. Mitigation of Enforcement Sanction

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(7) Enforcement discretion may be exercised for discrimination cases where a licensee who, without the need for government intervention, identifies an issue of discrimination and takes prompt, comprehensive, and effective corrective action to address both the particular situation and the overall work environment for raising safety concerns. Similarly, enforcement may not be warranted where a complaint is filed with the Department of Labor (DOL) under Section 211 of the Energy Reorganization Act of 1994, as amended, but the licensee settles the matter before the DOL makes an initial finding of discrimination and addresses the overall work environment. Alternatively, if a finding of discrimination is made, the licensee may choose to settle the case before the evidentiary hearing begins. In such cases, the NRC may exercise its discretion not to take enforcement action when the licensee has addressed the overall work environment for raising safety concerns and has publicized that a complaint of discrimination for engaging in protected activity was made to the DOL, that the matter was settled to the satisfaction of the employee (the terms of the specific settlement agreement need not be posted), and that, if the DOL Area Office found discrimination, the licensee has taken action to positively reemphasize that discrimination will not be tolerated. Similarly, the NRC may refrain from taking enforcement action if a licensee settles a matter promptly after a person comes to the NRC without going to the DOL. Such discretion would normally not be exercised in cases in which the licensee does not appropriately address the overall work environment (*e.g.*, by using training, postings, revised policies or procedures, any necessary disciplinary action, etc., to communicate its policy against discrimination) or in cases that involve: allegations of discrimination as a result of providing information directly to the NRC, allegations of discrimination caused by a manager above first-line supervisor (consistent with current Enforcement Policy classification of Severity Level I or II violations), allegations of discrimination where a history of findings of discrimination (by the DOL or the NRC) or settlements suggests a programmatic rather than an isolated discrimination problem, or allegations of discrimination which appear particularly blatant or egregious.

* * * * *

Supplement VII—Miscellaneous Matters

B. Severity Level II—Violations involving for example:

* * * * *

7. A failure to take reasonable action when observed behavior within the protected area

or credible information concerning activities within the protected area indicates possible unfitness for duty based on drug or alcohol use;

8. A deliberate failure of the licensee's Employee Assistance Program (EAP) to notify licensee's management when EAP's staff is aware that an individual's condition may adversely affect safety related activities; or

9. The failure of licensee management to take effective action in correcting a hostile work environment.

C. Severity Level III—Violations involving for example:

* * * * *

8. A failure to assure, as required, that contractors or vendors have an effective fitness-for-duty program;

9. A breakdown in the fitness for duty program involving a number of violations of the basic elements of the fitness-for-duty program that collectively reflect a significant lack of attention or carelessness towards meeting the objectives of 10 CFR 26.10; or

10. Threats of discrimination or restrictive agreements which are violations under NRC regulations such as 10 CFR 50.7(f).

D. Severity Level IV - Violations involving for example:

* * * * *

4. Isolated failures to meet basic elements of the fitness-for-duty program not involving a Severity Level I, II, or III violation;

5. A failure to report acts of licensed operators or supervisors pursuant to 10 CFR 26.73; or

6. Discrimination cases which, in themselves, do not warrant a Severity Level III categorization.

* * * * *

Dated at Rockville, MD, this 21st day of November, 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 94–29171 Filed 11–25–94; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks; Change in Discount Rate

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A on Extensions of Credit by Federal Reserve Banks to reflect its approval of an increase in the basic discount rate at each Federal Reserve Bank. The Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks.

EFFECTIVE DATE: These amendments to part 201 (Regulation A) were effective November 18, 1994. The rate changes for adjustment credit were effective on the dates specified in 12 CFR 201.51.

FOR FURTHER INFORMATION CONTACT: William W. Wiles, Secretary of the Board (202/452–3257); for the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD) (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of sections 10(b), 13, 14, 19, et al., of the Federal Reserve Act, the Board has amended its Regulation A (12 CFR part 201) to incorporate changes in discount rates on Federal Reserve Bank extensions of credit. The discount rates are the interest rates charged to depository institutions when they borrow from their district Reserve Banks.

The "basic discount rate" is a fixed rate charged by Reserve Banks for adjustment credit and, at the Reserve Bank's discretion, for extended credit. In increasing the basic discount rate, the Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks. The new rates were effective on the dates specified below. The increase was implemented to keep inflationary pressures contained, and thereby foster sustainable economic growth.

The provisions of 5 U.S.C. 553(b) relating to notice and public participation were not followed in connection with the adoption of this amendment because the Board for "good cause" finds that delaying the change in the basic discount rate in order to allow notice and public comment on the change is impracticable, unnecessary, and contrary to the public interest in keeping inflation contained, and thereby fostering sustainable economic growth.[1]

The provisions of 5 U.S.C. 553(d) that prescribe 30 days' prior notice of the effective date of a rule have not been followed because section 553(d) provides that such prior notice is not necessary whenever there is good cause for finding that such notice is contrary to the public interest. As previously stated, the Board determined that delaying the changes in the basic discount rate is contrary to the public interest.

[1] The Board's Rules of Procedure provide that advance notice and deferred effective date will ordinarily be omitted in the public interest for changes in discount rates. 12 CFR 262.2(e).

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612), the Board certifies that the change in the basic discount rate will not have a significant adverse economic impact on a substantial number of small entities. Although the change increases the rate of interest charged to borrowers from Reserve Banks, the Board believes that the higher cost of funds is outweighed by the salutary effect on the economy.

List of Subjects in 12 CFR Part 201

Banks, banking, Credit, Federal Reserve System.

For the reasons outlined in the preamble, the Board of Governors amends 12 CFR part 201 as follows:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

1. The authority citation for 12 CFR part 201 continues to read as follows:

Authority: 12 U.S.C. 343 *et seq.*, 347a, 347b, 347c, 347d, 348 *et seq.*, 357, 374, 374a and 461.

2. Section 201.51 is revised to read as follows:

§ 201.51 Adjustment credit for depository institutions.

The rates for adjustment credit provided to depository institutions under § 201.3(a) are:

Federal reserve bank	Rate	Effective
Boston	4.75	Nov. 16, 1994
New York	4.75	Nov. 15, 1994
Philadelphia	4.75	Nov. 17, 1994.
Cleveland	4.75	Nov. 16, 1994.
Richmond	4.75	Nov. 16, 1994.
Atlanta	4.75	Nov. 16, 1994.
Chicago	4.75	Nov. 17, 1994.
St. Louis	4.75	Nov. 15, 1994.
Minneapolis	4.75	Nov. 16, 1994.
Kansas City	4.75	Nov. 15, 1994.
Dallas	4.75	Nov. 16, 1994.
San Francisco	4.75	Nov. 15, 1994.

3. Section 201.52(b) is revised to read as follows:

§ 201.52 Extended credit for depository institutions.

* * * * *

(b) *Extended credit.* For extended credit to depository institutions under § 201.3(c), for credit outstanding for more than 30 days, a flexible rate will be charged that takes into account rates on market sources of funds, but in no case will the rate charged be less than the rate for adjustment credit, as set out in § 201.51, plus one-half percentage point. At the discretion of the Federal

Reserve Bank, the 30-day time period may be shortened.

By order of the Board of Governors of the Federal Reserve System, November 18, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–29174 Filed 11–25–94; 8:45 am]

BILLING CODE 6210–01–P

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12 CFR Part 204

[Regulation D; Docket No. R–0857]

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation D, Reserve Requirements of Depository Institutions, to increase the amount of transaction accounts subject to a reserve requirement ratio of three percent, as required by section 19(b)(2)(C) of the Federal Reserve Act, from $51.9 million to $54.0 million of net transaction accounts. This adjustment is known as the low reserve tranche adjustment. The Board has increased from $4.0 million to $4.2 million the amount of reservable liabilities of each depository institution that is subject to a reserve requirement of zero percent. This action is required by section 19(b)(11)(B) of the Federal Reserve Act, and the adjustment is known as the reservable liabilities exemption adjustment. The Board is also increasing the deposit cutoff levels that are used in conjunction with the reservable liabilities exemption to determine the frequency of deposit reporting from $55.0 million to $55.4 million for nonexempt depository institutions and from $44.8 million to $45.1 million for exempt institutions. (Nonexempt institutions are those with total reservable liabilities exceeding $4.2 million while exempt institutions are those with total reservable liabilities not exceeding $4.2 million.) Thus nonexempt institutions with total deposits of $55.4 million or more will be required to report weekly while nonexempt institutions with total deposits less than $55.4 million may report quarterly. Similarly, exempt institutions with total deposits of $45.1 million or more will be required to report quarterly while exempt institutions with total deposits less than $45.1 million may report annually.

DATES: *Effective date:* December 20, 1994.

Compliance dates: For depository institutions that report weekly, the low reserve tranche adjustment and the reservable liabilities exemption adjustment will apply to the reserve computation period that begins Tuesday, December 20, 1994, and on the corresponding reserve maintenance period that begins Thursday, December 22, 1994. For institutions that report quarterly, the low reserve tranche adjustment and the reservable liabilities exemption adjustment will apply to the reserve computation period that begins Tuesday, December 20, 1994, and on the corresponding reserve maintenance period that begins Thursday, January 19, 1995. For all depository institutions, the deposit cutoff level will be used to screen institutions in the second quarter of 1995 to determine the reporting frequency for the twelve month period that begins in September 1995.

FOR FURTHER INFORMATION CONTACT: J. Ericson Heyke III, Attorney (202/452–3688), Legal Division, or June O'Brien, Economist (202/452–3790), Division of Monetary Affairs; for users of the Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452–3544); Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(b)(2) of the Federal Reserve Act (12 U.S.C. 461(b)(2)) requires each depository institution to maintain reserves against its transaction accounts and nonpersonal time deposits, as prescribed by Board regulations. The initial reserve requirements imposed under section 19(b)(2) were set at three percent for net transaction accounts of $25 million or less and at 12 percent on net transaction accounts above $25 million for each depository institution. Effective April 2, 1992, the Board lowered the required reserve ratio applicable to transaction account balances exceeding the low reserve tranche from 12 percent to 10 percent. Section 19(b)(2) also provides that, before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the total dollar amount of the transaction account tranche against which reserves must be maintained at a ratio of three percent. The adjustment in the tranche is to be 80 percent of the percentage change in net transaction accounts at all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Currently, the low reserve tranche on net transaction accounts is $51.9 million. The increase in the net transaction accounts of all depository institutions from June 30, 1993, to June 30, 1994, was 5.0 percent (from $788.5 billion to $828.3 billion). In accordance with section 19(b)(2), the Board is amending Regulation D (12 CFR Part 204) to increase the low reserve tranche for transaction accounts for 1995 by $2.1 million to $54.0 million.

Section 19(b)(11)(A) of the Federal Reserve Act (12 U.S.C. 461 (b)(11)(B)) provides that $2 million of reservable liabilities[1] of each depository institution shall be subject to a zero percent reserve requirement. Section 19(b)(11)(A) permits each depository institution, in accordance with the rules and regulations of the Board, to designate the reservable liabilities to which this reserve requirement exemption is to apply. However, if net transaction accounts are designated, only those that would otherwise be subject to a three percent reserve requirement (i.e., net transaction accounts within the low reserve requirement tranche) may be so designated.

Section 19(b)(11)(B) of the Federal Reserve Act provides that, before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the dollar amount of reservable liabilities exempt from reserve requirements. Unlike the adjustment for the low reserve tranche on net transaction accounts, which adjustment can result in a decrease as well as an increase, the change in the exemption amount is to be made only if the total reservable liabilities held at all depository institutions increases from one year to the next. The percentage increase in the exemption is to be 80 percent of the increase in total reservable liabilities of all depository institutions as of the year ending June 30. Total reservable liabilities of all depository institutions from June 30, 1993, to June 30, 1994, increased by 5.0 percent (from $1,496.9 billion to $1,571.5 billion). Consequently, the reservable liabilities exemption amount for 1995 under section 19(b)(11)(B) will be increased by $0.2 million to $4.2 million.[2]

The effect of the application of section 19(b) of the Federal Reserve Act to the change in the total net transaction accounts and the change in the total reservable liabilities from June 30, 1993, to June 30, 1994, is to increase the low reserve tranche to $54.0 million, to apply a zero percent reserve

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[1] Reservable liabilities include transaction accounts, nonpersonal time deposits, and Eurocurrency liabilities as defined in section 19(b)(5) of the Federal Reserve Act. The reserve ratio on nonpersonal time deposits and Eurocurrency liabilities is zero percent.

[2] Consistent with Board practice, the tranche and exemption amounts have been rounded to the nearest $0.1 million.

requirement on the first $4.2 million of transaction accounts, and to apply a three percent reserve requirement on the remainder of the low reserve tranche.

The tranche adjustment and the reservable liabilities exemption adjustment for weekly reporting institutions will be effective on the reserve computation period beginning Tuesday, December 20, 1994, and on the corresponding reserve maintenance period beginning Thursday, December 22, 1994. For institutions that report quarterly, the tranche adjustment and the reservable liabilities exemption adjustment will be effective on the computation period beginning Tuesday, December 20, 1994, and on the reserve maintenance period beginning Thursday, January 19, 1995. In addition, all institutions currently submitting Form FR 2900 must continue to submit reports to the Federal Reserve under current reporting procedures.

In order to reduce the reporting burden for small institutions, the Board has established a deposit reporting cutoff level to determine deposit reporting frequency. Institutions are screened during the second quarter of each year to determine reporting frequency beginning the following September. In July of 1988 the Board set the cutoff level at $40 million plus an amount equal to 80 percent of the annual rate of increase of total deposits.[3] In August of 1994, the Board replaced the single deposit cutoff level that had applied to both nonexempt and exempt institutions with separate cutoff levels. The cutoff level for nonexempt institutions, which determines whether they report (on FR 2900) quarterly or weekly, was raised from the indexed level of $44.8 million to $55.0 million. The deposit cutoff level for exempt institutions, which determines whether they report annually (on FR 2910a) or quarterly (on FR 2910q), remained at the indexed level of $44.8 million.

From June 30, 1993, to June 30, 1994, total deposits increased 0.9 percent, from $3,793.3 billion to $3,828.9 billion. Accordingly, the nonexempt deposit cutoff level will increase by $0.4 million to $55.4 million and the exempt deposit cutoff level will increase by $0.3 million to $45.1 million. Based on the indexation of the reservable liabilities exemption, the cutoff level for total deposits above which reports of deposits must be filed will rise from $4.0 million to $4.2 million. Institutions with total deposits below $4.2 million are excused from reporting if their deposits can be estimated from other data sources. The $55.4 million cutoff level for weekly versus quarterly FR 2900 reporting for nonexempt institutions, the $45.1 million cutoff level for quarterly FR 2910q versus annual FR 2910a reporting for exempt institutions, and the $4.2 million level threshold for reporting will be used in the second quarter 1995 deposits report screening process, and the adjustments will be made when the new deposit reporting panels are implemented in September 1995.

All U.S. branches and agencies of foreign banks and all Edge and agreement corporations, regardless of size, are required to file weekly the Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900). All other institutions that have reservable liabilities in excess of the exemption level of $4.2 million prescribed by section 19(b)(11) of the Federal Reserve Act (known as "nonexempt institutions") and total deposits at least equal to the nonexempt deposit cutoff level ($55.4 million) are also required to file weekly the Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900). However, nonexempt institutions with total deposits less than the nonexempt deposit cutoff level ($55.4 million), may file the FR 2900 quarterly for the twelve-month period starting September 1995. Institutions that obtain funds from non-U.S. sources or that have foreign branches or international banking facilities are required to file the Report of Certain Eurocurrency Transactions (FR 2950/2951) at the same frequency as they file the FR 2900.

Institutions with reservable liabilities at or below the exemption level ($4.2 million) (known as exempt institutions) must file the Quarterly Report of Selected Deposits, Vault Cash, and Reservable Liabilities (FR 2910q) if their total deposits equal or exceed the exempt deposit cutoff level ($45.1 million). Exempt institutions with total deposits less than the exempt deposit cutoff level ($45.1 million) but at least equal to the exemption amount ($4.2 million) must file the Annual Report of Total Deposits and Reservable Liabilities (FR 2910a). Institutions that have total deposits less than the exemption amount ($4.2 million) are not required to file deposit reports if their deposits can be estimated from other data sources.

Finally, the Board may require a depository institution to report on a weekly basis, regardless of the cutoff level, if the institution manipulates its total deposits and other reservable liabilities in order to qualify for quarterly reporting. Similarly, any depository institution that reports quarterly may be required to report weekly and to maintain appropriate reserve balances with its Reserve Bank if, during its computation period, it understates its usual reservable liabilities or it overstates the deductions allowed in computing required reserve balances.

[3] "Total deposits" as used in determining the cutoff level includes not only gross transaction deposits, savings accounts, and time deposits, but also reservable obligations of affiliates, ineligible acceptance liabilities, and net Eurocurrency liabilities.

Notice and Public Participation

The provisions of 5 U.S.C. 553(b) relating to notice and public participation have not been followed in connection with the adoption of these amendments because the amendments involve adjustments prescribed by statute and by an interpretative statement reaffirming the Board's policy concerning reporting practices. The amendments also reduce regulatory burdens on depository institutions. Accordingly, the Board finds good cause for determining, and so determines, that notice and public participation are unnecessary and contrary to the public interest.

The provisions of 5 U.S.C. 553(d) relating to notice of the effective date of a rule have not been followed in connection with the adoption of these amendments because the amendments relieve a restriction on depository institutions, and for this reason there is good cause to determine, and the Board so determines, that such notice is not necessary.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board certifies that the proposed amendments will not have a significant economic impact on a substantial number of small entities. The proposed amendments reduce certain regulatory burdens for all depository institutions, reduce certain burdens for small depository institutions, and have no particular effect on other small entities.

List of Subjects in 12 CFR Part 204

Banks, banking, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board is amending 12 CFR Part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

1. The authority citation for Part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

2. In § 204.9 paragraph (a) is revised to read as follows:

§ 204.9 Reserve requirement ratios.

(a)(1) *Reserve percentages.* The following reserve ratios are prescribed for all depository institutions, Edge and agreement corporations, and United States branches and agencies of foreign banks:

Category	Reserve requirement[1]
Net transaction accounts:	
$0 to $54.0 million	3 percent of amount.
Over $54.0 million	$1,620,000 plus 10 percent of amount over $54.0 million.
Nonpersonal time deposits.	0 percent.
Eurocurrency liabilities.	0 percent.

[1] Before deducting the adjustment to be made by the next paragraph (a)(2) of this section.

(2) *Exemption from reserve requirements.* Each depository institution, Edge or agreement corporation, and U.S. branch or agency of a foreign bank is subject to a zero percent reserve requirement on an amount of its transaction accounts subject to the low reserve tranche in paragraph (a)(1) of this section not in excess of $4.2 million determined in accordance with § 204.3(a)(3).

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 21, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–29175 Filed 11–25–94; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 346

RIN 3064–AA78

Foreign Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC or Corporation).

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulations concerning the permissible activities of state-licensed insured branches of foreign banks. Section 202 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Improvement Act) provides that after December 19, 1992, a state-licensed insured branch of a foreign bank may not engage in any activity which is not permissible for a federal branch of a foreign bank unless the Board of Governors of the Federal Reserve System (Board) has determined that the activity is consistent with sound banking practice, and the FDIC has determined that the activity would pose no significant risk to the Bank Insurance Fund (BIF). The amendments cover application procedures and divestiture or cessation plans. Foreign banks are required to seek both the FDIC's and the Board's approval for an insured state branch to engage in or continue to engage in an activity which is not permissible for a federal branch of a foreign bank. In the event such an application is denied or the foreign bank elects not to continue the activity, a plan of divestiture or cessation must be submitted and such divestiture or cessation must be completed within one year, or sooner if the FDIC so directs.

EFFECTIVE DATE: The final regulation is effective January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Charles V. Collier, Assistant Director, Division of Supervision, (202) 898–6850; Jeffrey M. Kopchik, Counsel, Legal Division, (202) 898–3872; Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final rule has been reviewed and approved by the Office of Management and Budget under control no. 3064–0114 pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Comments on the accuracy of the burden estimate, and suggestions for reducing the burden, should be directed to the Office of Management and Budget, Paperwork Reduction Project (3064–0114), Washington, D.C., 20503, with copies of such comments to Steven F. Hanft, Office of the Executive Secretary, Room F–453, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. The collections of information in this regulation are found in §§ 346.101(a), (d), (e) and (f) and take the form of a requirement that foreign banks (1) file an application with the FDIC requesting permission for an insured state branch to engage in or to continue engaging in any activity which is not permissible for a federal branch of a foreign bank and (2) submit a plan of divestiture or cessation in the event that the application is not approved, the foreign bank elects not to apply to the FDIC for permission to continue the activity, or a permissible activity becomes impermissible due to a subsequent change in statute, regulation or formal order or interpretation. The information contained in the application will allow the FDIC to properly discharge its responsibilities under section 7 of the International Banking Act of 1978 (12 U.S.C. 3101 *et seq.*) (IBA), as amended by section 202 of the Improvement Act. The information in the application will be used by the FDIC as part of the process of determining whether conduct of the activity in question by the applicant will pose a significant risk to the Bank Insurance Fund. The information in the divestiture or cessation plan will be used by the FDIC to make judgments concerning the reasonableness of the institution's actions to discontinue activities deemed to pose significant risk to the insurance fund.

The estimated annual reporting burden for the collection of information from foreign banks in this proposed amendment is summarized as follows:

Number of respondents:	
Application	27
Plan to discontinue or cease	5
Total	32
Number of responses per respondent	1
Total annual responses	32
Hours per response	8
Total annual burden hours	256

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), it is certified that this final rule will not have a significant impact on a substantial number of small entities.

Discussion

Section 202 of the Improvement Act (Pub. L. 102–242, 12 U.S.C. 3105) amended section 7 of the IBA by adding new subsection (h) which provides that after December 19, 1992 a state branch or state agency of a foreign bank may not engage in any type of activity that is not permissible for a federal branch of a foreign bank unless the Board of Governors of the Federal Reserve System has determined that such activity is consistent with sound banking practice; and in the case of an insured branch, the Federal Deposit Insurance Corporation has determined that the activity would pose no significant risk to the deposit insurance fund. 12 U.S.C. 3105(h)(1).

On March 2, 1993, the FDIC proposed an amendment to part 346 of its regulations (12 CFR part 346), "Foreign Banks", in order to implement this new

statutory provision. This proposal was published for a sixty-day comment period in the **Federal Register**. (58 FR 11992, March 2, 1993).[1] The proposal sought to amend subpart A, § 346.1, to include a definition of "significant risk to the deposit insurance fund" and to add a new subpart D, "Applications Seeking Approval for Insured State Branches to Conduct Activities Not Permissible for Federal Branches".[2]

The proposed new subpart provided that a foreign bank operating an insured state branch which desires to engage in or continue an activity that is not permissible for a federal branch, pursuant to statute, regulation, official bulletin or circular, or any order or interpretation issued in writing by the Office of the Comptroller of the Currency (OCC), shall file with the FDIC a prior written application for permission to conduct or continue such activity. (Proposed § 346.101(a)). The proposal went on to provide that the application shall be filed with the FDIC Regional Director of the Division of Supervision for the region in which the insured state branch is located. (Proposed § 346.101(c)). Since section 202(a) of the Improvement Act became effective December 19, 1992, the FDIC proposed to allow existing insured state branches of foreign banks to continue activities (at existing levels) which may not be permissible for a federal branch until the regulation is promulgated in final form and the FDIC acts on their application. The proposal provided that the FDIC would expect all foreign banks engaged in an impermissible activity to file the required application no later than 60 days after the effective date of the final rule. (58 FR 11993, column three).

Section 346.101(b) of the proposed regulation provided that the application shall be in letter form and shall contain certain information, including a description of the activity in which the branch desires to engage or in which it is already engaged, the foreign bank's financial condition, the branch's assets and liabilities, the projected effect of the proposed activity on the financial condition of the foreign bank and the branch, and a statement of why the proposed activity will pose no significant risk to the deposit insurance fund.

[1] Similarly, the Board proposed an amendment to its Regulation K (12 CFR part 211), "International Banking Operations", to implement section 202 of the Improvement Act on January 6, 1993. (58 FR 513, January 6, 1993).

[2] Because § 346.101 of the FDIC's regulations is obsolete, the FDIC proposed to remove the existing § 346.101 and to add a new § 346.101 which will comprise a new subpart D.

Comment Letters

The FDIC received two comment letters concerning the proposed amendments. Both comment letters were supportive of the FDIC's efforts to coordinate its application procedures with the Board and to minimize the administrative burden on state-licensed insured branches which apply for permission to conduct or continue to conduct an activity which is not permissible for a federal branch.

The commenters raised four primary concerns with the Corporation's proposed regulation. First, the comments urged the FDIC to approve activities on an "activity by activity" basis, in addition to its approval of individual applications by specific banks requesting permission to conduct a particular activity. One commenter noted that such "activity" applications could be submitted by trade groups and state bank supervisors. Second, both commenters requested that the FDIC publish a list of "pre-approved" activities for state-licensed insured branches which the FDIC determines pose no significant risk to the BIF. They envision that once an activity is on this list, an insured state branch could engage in it without the necessity of applying to the FDIC. Third, it was suggested that the scope of the information required to be included in a branch's application (Proposed § 346.101(b)) be reduced in order to decrease even further the administrative burden on applicants. Fourth, the commenters urged the FDIC not to carry over quantitative restrictions which the OCC places on federal branches to activities permitted to state-licensed insured branches which pose no significant risk of loss to the BIF. These points are discussed below.

Approval of Activities Versus Applicants

Both commenters urged the FDIC to approve generic activities, in addition to individual applications. One commenter expanded on this recommendation by suggesting that the FDIC accept applications from industry trade groups and state bank supervisors requesting approval of a certain activity or activities on behalf of state-licensed insured branches. That same commenter also argued that the intent of Congress in enacting the statute was not to require the FDIC, as a general rule, to review and approve applications from particular institutions to engage in specific activities. Rather, the commenter argued that Congress intended the FDIC to approve generic activities on an activity by activity basis as being permissible for all state-licensed insured branches.

The Corporation is of the opinion that the regulatory scheme represented in the final regulation is consistent with the views expressed by the commenters as described immediately above. In its proposal, the FDIC explicitly requested interested parties to describe activities which, even though they are not permissible for federal branches, clearly pose no significant risk to the BIF when conducted by an insured state branch. (58 FR 11994, column two). The FDIC went on to request that commenters discuss the proposed application process as it related to such activities and whether a more limited notice procedure might be more appropriate in such cases. *Id.* After carefully considering the comments and referring to its recently enacted regulation concerning "Activities and Investments of Insured State Banks", 12 CFR part 362 (58 FR 64462, December 8, 1993), the FDIC has concluded that there are certain activities which, even though they may not be permissible for a federal branch, clearly pose no significant risk to the BIF when conducted by an insured state branch. Thus, in the event that an insured state-licensed branch is conducting or desires to conduct such an activity, no application or notice to the FDIC will be required. The precise nature of these activities is discussed below.

Joint Application Procedure

The FDIC is sensitive to the administrative burden on applicants of gathering the requested information and preparing an application. Since section 202 of the Improvement Act requires all state branches and state agencies that desire to engage in, or to continue to engage in, any activity which is not permissible for a federal branch to secure the approval of the Board, the FDIC will permit insured state branches to submit a copy of their application to the Board to the FDIC instead of preparing a completely separate submission. The FDIC and the Board will review such applications simultaneously.

The commenters urged the FDIC to reduce the scope of the information required to be submitted in a foreign bank's application in view of the fact that some of this information may already be available to the FDIC through the general examination and supervisory process. After careful consideration, the FDIC has decided to accept this recommendation. Therefore, § 346.101(b) of the proposed regulation has been revised to delete paragraphs (b)(3), (b)(4) and (b)(5). Applicants will

not be required to submit a current statement of the applicant's assets, liabilities and capital, a current statement of the branch's assets and liabilities or a copy of the applicant's most recent audited financial statements. (Final § 346.101(d)).

Permissible Activities

Section 346.101(a) of the final regulation is identical to § 346.101(a) of the proposed regulation. It provides that a state-licensed insured branch which desires to engage in or continue to engage in certain activities not permissible for a federal branch must obtain the FDIC's permission. More specifically, it refers to "any type of activity that is not permissible for a federal branch, pursuant to the National Bank Act (12 U.S.C. 21 *et seq.*) or any other federal statute, regulation, official bulletin or circular, or order or interpretation issued in writing by the Office of the Comptroller of the Currency.* * *" Written staff opinions will be considered to evidence the position of the Comptroller so long as the opinion is still considered valid, i.e., it has not been overruled by the OCC or found invalid by a court of competent jurisdiction.

This section of the final regulation is substantially similar to § 362.2(b) of the Corporation's regulation concerning the activities of state chartered banks. (12 CFR 362.2(b)). The FDIC is of the opinion that § 346.101(a) of the final regulation should parallel § 362.2(b) concerning the activities of state banks with regard to the determination of permissible activities and the commenters agreed.[3]

The commenters suggested that the FDIC should approve activities which, though not permissible for federal branches, pose no significant risk to the BIF and thus would be permissible for state-licensed insured branches assuming that the Board determines that such activities are consistent with sound banking practice and that state law as well as any other applicable federal law or regulation permits the branch to engage in such activities. In its preamble to the proposed regulation, the Corporation specifically requested commenters to describe such activities. (58 FR 11994, column two). Only one commenter put forth a specific recommendation in this regard. That comment letter urged the FDIC to issue a blanket approval for agency activities and any activity approved as an exception pursuant to § 362.4(c)(3) of the Corporation's regulations governing the activities of state banks. 12 CFR 362.4(c)(3). With regard to activities approved as exceptions pursuant to § 362.4(c)(3) of the Corporation's regulations, the Corporation agrees with the position set forth by the commenter that activities approved as exceptions for state-chartered domestic banks on the basis that they pose no significant risk to the deposit insurance funds should also be permissible for state-licensed insured branches of foreign banks, without the necessity of filing an application or notice pursuant to this part, provided the activity in question is also permissible for a state licensed branch of a foreign bank under state law and any other applicable federal law or regulation. *See* Final § 346.101(b).

Engaging in an Activity as Agent

Section 202(a) of the Improvement Act does not distinguish between activities which a foreign branch conducts as principal versus those conducted as agent, nor does it distinguish between activities which a foreign branch conducts directly versus those it conducts indirectly. The FDIC is of the opinion that the absence of such distinctions in section 202 is significant especially in light of the inclusion of such distinctions in other sections of the Improvement Act. For example, section 303 of the Improvement Act, which added section 24 to the FDI Act, provides that an insured state bank may not engage as principal in any type of activity that is not permissible for a national bank. 12 U.S.C. 1831a(a). Similarly, section 24(c) of the FDI Act, which was also added by section 303 of the Improvement Act, provides that an insured state bank may not, directly or indirectly, acquire or retain any equity investment of a type that is not permissible for a national bank. 12 U.S.C. 1831a(c). Part 362 of the Corporation's regulations, 12 CFR part 362, reflects the clear statutory intent of FDI Act section 24. The prohibition on foreign branches contained in section 7(h) of the IBA is broader than the similar prohibitions contained in sections 24(a) and (c) of the FDI Act. Thus, the FDIC interprets section 7(h) of the IBA to apply to any activity in which an insured state branch desires to engage which is not permissible for a federal branch regardless of the capacity or manner in which the branch seeks to conduct the activity.

However, the Corporation's determination that agency activities are covered by section 202 of the Improvement Act does not mean that some or all agency activities cannot be found to be permissible, provided the Board determines that the activity is consistent with sound banking practice and the FDIC determines that the activity would pose no significant risk to the BIF. After careful consideration, the FDIC is of the opinion that a state-licensed insured branch may engage in an activity as agent provided that such agency activity is permissible for a state-chartered bank headquartered in the state in which the insured branch of the foreign bank is located and is also a permissible activity for a state-licensed branch of a foreign bank. Thus, state-licensed insured branches which desire to engage in such agency activities will not be required to file an application or notice with the FDIC pursuant to the final regulation. Of course, the activity in question must also be permissible pursuant to any other applicable federal law or regulation. *See* Final § 346.101(c).

Substantive Limitations on Permissible Activities

In the preamble to the proposed regulation, the FDIC noted that it would "generally expect any conditions or restrictions set out in the OCC's regulations, bulletins, circulars, orders and interpretations to be met if the activity is to be considered permissible when conducted by an insured branch". (58 FR 11994, column two). The commenters expressed some confusion as to the precise meaning and scope of this standard. They also contrasted the FDIC's position with the Board's apparent position on this issue as briefly discussed in its proposed amendments to Regulation K. (58 FR 513, January 6, 1993).

After careful consideration, the FDIC has decided to adopt a position consistent with that of the Board. That is, an application under this section will not normally be required where an activity is permissible for a federal branch, but the OCC imposes a quantitative restriction on the conduct of such an activity. The FDIC is of the opinion that appropriate quantitative restrictions can be addressed on a case-by-case basis as part of the ongoing supervisory process.

[3] In May 1993, the FDIC published a booklet entitled "Equity Investments Permissible for National Banks and Activities Permissible for National Banks and Their Subsidiaries". This booklet, which is available from the FDIC's Office of Corporate Communications, lists activities which have been found by the OCC to be permissible for national banks. While the booklet is not necessarily comprehensive and while the FDIC has not committed to update it on any regular basis, it may prove a useful guide for state-licensed branches of foreign banks who are attempting to ascertain what activities are and are not permissible for federal branches since, generally speaking, a federal branch is empowered to do whatever a national bank can do.

Significant Risk to the Fund

In approving an application to conduct or to continue to conduct an activity which is not permissible for a federal branch, the FDIC must determine that the activity in question "would pose no significant risk to the deposit insurance fund". The phrase "significant risk to the deposit insurance fund" is defined in § 346.1(r) of the final regulation. Significant risk to the deposit insurance fund shall be understood to be present whenever there is a high probability that the BIF may suffer a loss. It is not necessary that engaging in the activity in question will result in the insolvency or threatened insolvency of the insured state branch before a significant risk of loss to the BIF is considered to be present. This definition is substantially similar to the definition that is used in § 362.2(m) of the FDIC's regulation governing the activities of state banks and the FDIC is of the opinion that the definition in the final regulation should parallel the part 362 definition. None of the commenters addressed this issue. Thus, the definition contained in the proposed regulation is being adopted without change.

Divestiture or Cessation

In the event that an insured state branch is required to cease conducting an activity, § 346.101(d) of the proposed regulation set forth the guidelines that must be followed to divest or cease the impermissible activity. Generally, this section provides that the insured state branch shall submit a written plan of divestiture or cessation within 60 days of (1) being notified by the FDIC or the Board that an application to continue to conduct the activity has been denied, (2) the effective date of the regulation in the event that the foreign bank elects not to apply for permission to continue to conduct the activity, and (3) any change in statute, regulation, official bulletin or circular, order or interpretation issued in writing by the Office of the Comptroller of the Currency, or decision of a court of competent jurisdiction that renders the activity impermissible. Divestiture or cessation shall be completed within one year, or sooner if the FDIC so directs. (§ 346.101(f)(1)). The commenters did not address this issue. Therefore, this section of the proposed regulation is being adopted without substantive change.

Delegation of Authority

Section 346.101(g) of the final regulation delegates authority to review and approve divestiture and cessation plans to the Executive Director, Compliance, Resolutions and Supervision, and the Director of the Division of Supervision, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director. The FDIC received no comment on this section of the proposed regulation and, thus, it has been adopted unchanged.

Effective Date

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, provides that amendments to regulations which impose additional reporting or other new requirements on insured depository institutions shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulation is published in final form, with certain exception which are not applicable in this case. Thus, this final amendment to Part 346 shall become effective on January 1, 1995.

List of Subjects in 12 CFR Part 346

Bank deposit insurance, Foreign banking, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 12 CFR Part 346 is amended as follows:

PART 346—FOREIGN BANKS

1. The authority citation for Part 346 is revised to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1819, 1820, 3103, 3104, 3105, 3108.

2. Section 346.1 of subpart A is amended by adding a new paragraph (r) to read as follows:

§ 346.1 Definitions.

* * * * *

(r) *Significant risk to the deposit insurance fund* shall be understood to be present whenever there is a high probability that the Bank Insurance Fund administered by the FDIC may suffer a loss.

3. Section 346.101 of subpart C is removed.

4. Part 346 is amended by adding a new subpart D to read as follows:

Subpart D—Applications Seeking Approval for Insured State Branches To Conduct Activities Not Permissible for Federal Branches

§ 346.101 Applications.

(a) *Scope.* A foreign bank operating an insured state branch which desires to engage in or continue to engage in any type of activity that is not permissible for a federal branch, pursuant to the National Bank Act (12 U.S.C. 21 *et seq.*) or any other federal statute, regulation, official bulletin or circular, or order or interpretation issued in writing by the Office of the Comptroller of the Currency, or which is rendered impermissible due to a subsequent change in statute, regulation, official bulletin or circular, written order or interpretation, or decision of a court of competent jurisdiction (each an impermissible activity), shall file a written application for permission to conduct such activity with the FDIC pursuant to this section. An applicant may submit to the FDIC a copy of its application to the Board of Governors of the Federal Reserve System (Board of Governors), provided that such application contains the information described in paragraph (d) of this section.

(b) *Exceptions.* A foreign bank operating an insured state branch which would otherwise be required to submit an application pursuant to paragraph (a) of this section will not be required to submit such an application if the activity it desires to engage in or continue to engage in has been determined by the FDIC not to present a significant risk to the affected deposit insurance fund pursuant to 12 CFR Part 362, "Activities and Investments of Insured State Banks".

(c) *Agency activities.* A foreign bank operating an insured state branch which would otherwise be required to submit an application pursuant to paragraph (a) of this section will not be required to submit such an application if it desires to engage in or continue to engage in an activity conducted as agent which would be a permissible agency activity for a state-chartered bank located in the state in which the state-licensed insured branch of the foreign bank is located and is also permissible for a state-licensed branch of a foreign bank located in that state; provided, however, that the agency activity must be permissible pursuant to any other applicable federal law or regulation.

(d) *Content of application.* An application submitted pursuant to paragraph (a) of this section shall be in letter form and shall contain the following information:

(1) A brief description of the activity, including the manner in which it will be conducted and an estimate of the expected dollar volume associated with the activity;

(2) An analysis of the impact of the proposed activity on the condition of the United States operations of the foreign bank in general and of the branch in particular, including a copy, if available, of any feasibility study,

management plan, financial projections, business plan, or similar document concerning the conduct of the activity;

(3) A resolution by the applicant's board of directors or, if a resolution is not required pursuant to the applicant's organizational documents, evidence of approval by senior management authorizing the conduct of such activity and the filing of this application;

(4) A statement by the applicant of whether or not it is in compliance with §§ 346.19 and 346.20, Pledge of Assets and Asset Maintenance, respectively;

(5) A statement by the applicant that it has complied with all requirements of the Board of Governors concerning applications to conduct the activity in question and the status of such application, including a copy of the Board of Governors' disposition of such application, if applicable;

(6) A statement of why the activity will pose no significant risk to the deposit insurance fund; and

(7) Any other information which the regional director deems appropriate.

(e) *Application procedures.* Applications pursuant to this section shall be filed with the Regional Director of the Division of Supervision for the region in which the insured state branch is located. An application shall not be deemed complete until it contains all the information requested by the Regional Director and has been accepted. Approval of such an application may be conditioned on the applicant's agreement to conduct the activity subject to specific limitations, such as but not limited to the pledging of assets in excess of the requirements of § 346.19 and/or the maintenance of eligible assets in excess of the requirements of § 346.20. In the case of an application to conduct an activity, as opposed to an application to continue to conduct an activity, the insured branch shall not commence the activity until it has been approved in writing by the FDIC pursuant to this part and the Board of Governors, and any and all conditions imposed in such approvals have been satisfied.

(f) *Divestiture or cessation.* (1) If an application for permission to continue to conduct an activity is not approved by the FDIC or the Board of Governors, the applicant shall submit a detailed written plan of divestiture or cessation of the activity to the Regional Director of the Division of Supervision for the region where the insured branch is located within 60 days of the disapproval. The divestiture or cessation plan shall describe in detail the manner in which the applicant will divest itself of or cease the activity in question and shall include a projected timetable describing how long the divestiture or cessation is expected to take. Divestitures or cessations shall be completed within one year from the date of the disapproval, or within such shorter period of time as the Corporation shall direct.

(2) A foreign bank operating an insured state branch which elects not to apply to the FDIC for permission to continue to conduct an impermissible activity shall submit a written plan of divestiture or cessation, in conformance with paragraph (f)(1) of this section, within 60 days of January 1, 1995, or of any change in statute, regulation, official bulletin or circular, written order or interpretation, or decision of a court of competent jurisdiction rendering such activity impermissible.

(g) *Delegation of authority.* Authority is hereby delegated to the Executive Director, Compliance, Resolutions and Supervision, and the Director of the Division of Supervision, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to approve plans of divestiture and cessation submitted pursuant to paragraph (f) of this section.

By order of the Board of Directors.

Dated at Washington, D.C. this 22nd day of November, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–29241 Filed 11–25–94; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–SW–13–AD; Amendment 39–9077; AD 94–24–04]

Airworthiness Directives; McDonnell Douglas Helicopter Systems and Hughes Helicopters, Inc. Model 369D, E, F, and FF Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to McDonnell Douglas Helicopter Systems and Hughes Helicopters, Inc. Model 369D, E, F, and FF series helicopters. This action requires an initial inspection of the pitch control assembly lockwasher (lockwasher) for dents at the inner tang inside radius, application of a torque stripe on the tail rotor swashplate and locknut, and repetitive inspections of the torque stripe to detect any locknut slippage. This amendment is prompted by a report that a lockwasher failed in service and allowed a locknut to loosen. The actions specified in this AD are intended to prevent failure of the inner tang of the lockwasher, loss of the locknut, disengagement of the pitch control assembly, loss of tail rotor control, and subsequent loss of control of the helicopter.

DATES: Effective December 13, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 13, 1994.

Comments for inclusion in the Rules Docket must be received on or before January 27, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–SW–13–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from McDonnell Douglas Helicopter Systems, Technical Publications, Bldg. 543/B111, 5000 E. McDowell Road, Mesa, Arizona 85205–9797. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Brent Bandley, Aerospace Engineer, Airframe Branch, ANM–123L, Northwest Mountain Region, FAA, Los Angeles Aircraft Certification Office, 3229 E. Spring Street, Long Beach, California 90806–2425, telephone (310) 988–5237, fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: This amendment adopts a new airworthiness directive (AD) that is applicable to McDonnell Douglas Helicopter Systems (MDHS) and Hughes Helicopters, Inc. (Hughes) Model 369D, E, F, and FF series helicopters. MDHS received a report that indicated a pitch control assembly lockwasher (lockwasher), part number (P/N) MS172209, had failed in service. A subsequent investigation revealed that some lockwashers appear to have dents at the inner tang inside radius. The FAA has reviewed the reports and determined that failure of this tang could allow the locknut to loosen and eventually allow the pitch control assembly to disengage from the

tail rotor assembly. Should these two tail rotor components separate, the rotorcraft crew would lose the capability of making necessary anti-torque corrections through the tail rotor to maintain adequate control of the helicopter. This condition, if not corrected, could result in failure of the inner tang of the lockwasher, loss of the locknut, disengagement of the pitch control assembly, loss of tail rotor control, and subsequent loss of control of the helicopter.

The FAA has reviewed McDonnell Douglas Helicopter Systems Service Information Notice (SIN) No. DN–185, EN–78, and FN–64, dated September 23, 1994, which describes procedures for an inspection of the lockwasher, P/N MS172209, application of a torque stripe on the tail rotor swashplate and locknut, and repetitive inspections of the pitch control assembly to detect slippage of the locknut.

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas Helicopter Systems and Hughes Helicopters, Inc. Model 369D, E, F, and FF series helicopters of the same type design, this AD is being issued to prevent failure of the inner tang of the lockwasher, loss of the locknut, disengagement of the pitch control assembly, loss of tail rotor control, and subsequent loss of control of the helicopter. This AD requires an initial inspection of the lockwasher for dents in the inner tang inside radius, application of a torque stripe on the tail rotor swashplate and locknut, and repetitive inspections of the torque stripe to detect slippage of the locknut. Due to the critical need to ensure the integrity of the lockwasher and the short time-in-service before the initial inspection is required, this rule must be issued immediately to correct an unsafe condition in the affected helicopters. The actions are required to be accomplished in accordance with the SIN described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 94–SW–13–AD." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

94–24–04 McDonnell Douglas Helicopter Systems (MDHS) and Hughes Helicopters, Inc. (Hughes): Amendment 39–9077. Docket No. 94–SW–13–AD.

Applicability: Model 369D, E, F, and FF series helicopters with pitch control assembly, part number (P/N) 369D21800 or P/N 369D21820, installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the inner tang of the pitch control assembly lockwasher (lockwasher), loss of the locknut, disengagement of the pitch control assembly, loss of tail rotor control, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 25 hours time-in-service or 90 calendar days after the effective date of this AD, whichever occurs first, remove the tail rotor (T/R) assembly and pitch control assembly from the T/R gearbox in accordance with the applicable maintenance manual.

(b) Inspect the lockwasher, P/N MS172209, for dents in either side of the inner tang inside radius as shown in Figure 1 of MDHS Service Information Notice (SIN) No. DN–185, EN–78, and FN–64, dated September 23, 1994, using a 5x or higher magnifying glass.

(c) Apply a 0.125 inch-wide torque stripe to the surface of the locknut and swashplate in accordance with paragraph B and C of Part II of MDHS SIN No. DN–185, EN–78, and FN–64, dated September 23, 1994, and reinstall the T/R assembly and pitch control assembly into the T/R gearbox in accordance with the applicable maintenance manual.

(d) Inspect the torque stripe for slippage at intervals not to exceed 100 hours time-in-service. If any slippage is detected, replace the lockwasher with an airworthy lockwasher in accordance with the applicable maintenance manual. Reapply the 0.125 inch-wide torque stripe to the surface of the locknut and swashplate.

(e) An alternative method of compliance or adjustment of the compliance time that

provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(g) The inspections shall be done in accordance with McDonnell Douglas Helicopter Systems Service Information Notice No. DN–185, EN–78, and FN–64, dated September 23, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Helicopter Systems, Technical Publications, Bldg. 543/B111, 5000 E. McDowell Road, Mesa, Arizona 85205–9797. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on December 13, 1994.

Issued in Fort Worth, Texas, on November 16, 1994.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 94–28938 Filed 11–25–94; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–45–1–6654; FRL–5114–2]

Conditional Approval and Promulgation of Section 182(f) Exemption to the Nitrogen Oxides (NO_X) Control Requirements for the Dallas-Fort Worth and El Paso Ozone Nonattainment Areas; Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, the EPA is conditionally approving two petitions from the State of Texas requesting that the Dallas-Fort Worth (DFW) and El Paso ozone nonattainment areas be exempted from NO_X control requirements of section 182(f) of the Clean Air Act (CAA) as amended in 1990. The State of Texas bases its request for DFW upon a demonstration that the DFW nonattainment area would attain the National Ambient Air Quality Standards (NAAQS) for ozone by the CAA mandated deadline without the implementation of the additional NO_X controls required under section 182(f). Similarly, the State bases its exemption request for El Paso on a demonstration that the El Paso nonattainment area would attain the ozone NAAQS by the CAA mandated deadline without implementing the additional NO_X controls required under section 182(f), but for emissions emanating from Mexico. These exemptions are being requested under authority similarly granted under section 182(f) of the CAA.

EFFECTIVE DATE: This action is effective as of November 21, 1994.

ADDRESSES: Copies of the documents relevant to these actions are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T6–A), 1445 Ross Avenue, Dallas, Texas 75202–2733.

The Air and Radiation Docket and Information Center, U. S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711–3087.

FOR FURTHER INFORMATION CONTACT: Ms. Leila Yim Surratt or Mr. Quang Nguyen, Planning Section (6T–AP), Air Programs Branch, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7214.

SUPPLEMENTARY INFORMATION:

I. Background

NO_X are precursors to ground level (tropospheric) ozone, or urban "smog." When released into the atmosphere, NO_X will react with volatile organic compounds (VOC) in the presence of sunlight to form ozone. Tropospheric ozone is an important factor in the nation's urban air pollution problem.

The 1990 Clean Air Act Amendments (CAAA) made significant changes to the air quality planning requirements for areas that do not meet the ozone NAAQS. Subparts 1 and 2 of part D, title I of the CAA as amended in 1990 contain the air quality planning requirements for ozone nonattainment areas. Title I includes new requirements to control NO_X emissions in certain ozone nonattainment areas and ozone transport regions. Section 182(f) requires States to apply the same requirements to major stationary sources of NO_X as are applied to major stationary sources of VOC. The new NO_X requirements are reasonably available control technology (RACT) and new source review (NSR). These provisions are explained more fully in the EPA's NO_X Supplement to the General Preamble published in the **Federal Register** (FR) on November 25, 1992 (see 57 FR 55620). In addition, the general and transportation conformity rules (conformity) required by section 176(c) contain new NO_X requirements (see 58 FR 63214 and 58 FR 62188), and the vehicle inspection and maintenance rules required by section 182(c)(3) also contain new NO_X requirements (see 57 FR 52989).

El Paso, Texas was designated nonattainment for ozone and classified as serious pursuant to sections 107(d)(4) and 181(a) of the CAA. The El Paso nonattainment area consists of El Paso County and shares a common airshed with Juarez, Mexico. Under section 181(a), serious areas must attain the ozone NAAQS by 1999. DFW was classified as moderate with an attainment deadline of 1996. The DFW nonattainment area consists of Dallas, Tarrant, Denton, and Collin Counties. Please reference 56 FR 56694 (November 6, 1991, codified for Texas at title 40 of the Code of Federal Regulations in § 81.344).

II. Applicable EPA Guidance

The CAA specifies in section 182(f) that if one of the conditions listed below is met, the new NO_X requirements would not apply:

1. In any area, the net air quality benefits are greater without NO_X reductions from the sources concerned;
2. In a non-transport region, additional NO_X reductions would not contribute to ozone attainment in the nonattainment area; or
3. In a transport region, additional NO_X reductions would not produce net ozone benefits in the transport region.

In addition, section 182(f)(2) states that the application of the new NO_X requirements may be limited to the extent that any portion of those reductions are demonstrated to result in "excess reductions" of NOx. The NO_X provisions of the conformity requirements would also not apply in an area that is granted a section 182(f) exemption (see 58 FR 63214 and 58 FR 62188). In addition, certain NO_X provisions of the vehicle inspection and

maintenance requirements would not apply in an area that is granted a section 182(f) exemption (57 FR 52989).

The EPA's *Guideline for Determining the Applicability of Nitrogen Oxides Requirements under Section 182(f)* (December 1993) describes how the EPA intends to interpret the NO_X exemption provisions of section 182(f). In addition, a memorandum signed by John S. Seitz, Director of the EPA Office of Air Quality Planning and Standards, dated May 27, 1994, describes certain revisions to the process the EPA currently intends to follow for granting exemptions from NO_X control requirements.

As described more fully in the Seitz memorandum, petitions submitted under section 182(f)(3) are not required to be submitted as State Implementation Plan (SIP) revisions. Consequently, the State is not required under the CAA to hold a public hearing in order to petition for an areawide NO_X exemption determination. Similarly, it is not necessary to have the Governor submit the petition.

III. International Border Area

Section 818 of the 1990 CAAA incorporates a new section 179B into the CAA which contains special provisions for nonattainment areas that are affected by emissions emanating from outside the United States. The section 818 provisions are hereinafter referred to as section 179B. Because the El Paso nonattainment area shares a common airshed with Juarez, Mexico, the section 179B provisions apply to El Paso.

Under section 179B, the EPA will approve a SIP if the area meets all other CAA requirements and establishes that implementation of the plan would achieve attainment of the ozone standard by the CAA statutory deadline "but for emissions emanating from outside the United States." Customarily, an area must demonstrate, using EPA guideline models, that it would attain the relevant NAAQS. Since El Paso and Juarez, Mexico share an airshed and data are not available for a Juarez emission inventory, modeling of the entire airshed is not possible at this time. Current EPA policy allows an area subject to section 179B, such as El Paso, to perform modeling using only U.S. air emission data. Such modeling may form an acceptable basis for demonstrating attainment for analysis purposes required under section 179B. For areas on an international border that demonstrate attainment, "but for emissions emanating from a foreign country," the provisions of section 179B will keep such areas from being subject to the "bump up" provisions of section 181(b)(2), which require reclassification to the next higher ozone nonattainment classification if the area fails to attain the relevant NAAQS by the applicable attainment date. See 57 FR 13498, 13569–13570 (April 16, 1992).

The State of Texas performed Urban Airshed Modeling (UAM) using only El Paso emissions data, and demonstrated that El Paso would attain the ozone standard by 1996 "but for emissions emanating from Mexico." The El Paso UAM ozone modeling analysis will be referred to in this notice as the "attainment demonstration" for El Paso.

Although the EPA allows an area such as El Paso to demonstrate attainment on a basis of U.S.-only modeling, it is understood that ultimately basin-wide modeling must occur in order to develop a control strategy in El Paso that will achieve the NAAQS. The United States entered into the Agreement for Environmental Cooperation along the U.S.-Mexico Border, referred to as the La Paz Agreement, with Mexico in 1983 to address environmental concerns along the border between the two countries. Annex V of the Agreement, negotiated in 1989, calls for basin-wide modeling to be accomplished for the El Paso/Juarez airshed. The EPA has been working with Mexico and with the Texas Natural Resource Conservation Commission (TNRCC) to accomplish the basin-wide modeling. Since the statutory attainment date for serious ozone nonattainment areas such as El Paso is 1999, concerned agencies intend to complete such modeling by 1999.

IV. State Submittal

On June 17, 1994, the TNRCC submitted to the EPA two petitions pursuant to section 182(f), requesting that the DFW and El Paso nonattainment areas be exempted by the EPA from the NO_X control requirements of section 182(f) of the CAA.

The State bases its petitions on a demonstration that NO_X reductions would not contribute to attainment in either area, as allowed for under the test (2) listed above, because such NO_X reductions would be in excess of the reductions necessary for attainment. Consistent with the EPA's December 1993 section 182(f) guidance, the State's excess emissions reductions demonstration is tied to the attainment demonstration SIP required under section 182(c)(2)(A) of the CAA.

The State's submission for each petition includes: (1) A letter from Anthony C. Grigsby, Executive Director of the TNRCC, to Jane N. Saginaw, Regional Administrator of the EPA Region 6, transmitting the NO_X exemption petition; (2) the petition from the TNRCC summarizing the State's UAM attainment demonstration results; and (3) technical reports documenting the State's base case UAM inputs. The State has also previously submitted to the EPA the 15 percent Reasonable Further Progress (RFP) SIPs for the DFW and El Paso areas, as required by section 182(b)(1) of the CAA. The 15 percent RFP SIPs contain regulations that are estimated to reduce VOC emissions in each area by 15 percent from 1990 levels, net of any growth that may occur. The State of Texas supplemented its petitions by submitting to the EPA in July 1994, two additional technical reports on the UAM for each area, which contained the following: base case performance evaluation, attainment year emissions report, and attainment year modeling report. These additional technical reports provided supplemental detail and documentation on the modeling information already provided to the EPA in the State's petitions.

On August 29, 1994, the EPA proposed to conditionally approve the section 182(f) petitions for the DFW and El Paso areas (see 59 FR 44386). The proposed rulemaking notice provides a detailed discussion of the EPA's rationale for proposing conditional approval of the State's petitions and should be referred to. In that notice, the EPA explained that although the State had completed its attainment demonstration SIPs for both areas, the SIPs had not yet been adopted by the State, nor submitted to the EPA. The EPA further explained that the EPA would not take final action to conditionally approve the petitions for each area unless and until the State submitted the attainment demonstration SIPs to the EPA in accordance with section 182(c)(2)(A) of the CAA.

The TNRCC adopted the attainment demonstration SIP for the DFW area on September 21, 1994, and submitted it to the EPA on October 3, 1994, in accordance with section 182(c)(2)(A) of the CAA. Similarly, the TNRCC adopted the attainment demonstration SIP for the El Paso area on September 14, 1994, and submitted it to the EPA on October 3, 1994. The EPA is therefore proceeding to take final action on the section 182(f) petitions submitted by the TNRCC for the DFW and El Paso areas.

V. Response to Comments

The EPA requested public comments on all aspects of the proposed action to conditionally approve the section 182(f) petitions for the DFW and El Paso areas. The EPA received 27 letters of support from the utility, transportation

authority, metropolitan planning organization and local governments in the DFW area. The EPA received three letters of support from the City of El Paso, a local utility, and a metropolitan planning organization in the El Paso area.

Three adverse comment letters were received from environmental groups, one of which applied only to DFW, while two of which applied to both DFW and El Paso. One of the letters was submitted by three environmental groups and contained generic comments objecting to the EPA's general policy on section 182(f) exemptions. The three environmental groups who submitted the generic letter requested that it be included in each EPA rulemaking action for each section 182(f) petition.

Comment: One group objected to the use of methyl tertiary butyl ether (MTBE) as a fuel additive in reformulated gasoline. The TNRCC included the use of reformulated gasoline in its 15 percent RFP SIP for DFW as a control strategy to reduce VOC emissions.

Response: This comment applies to the State's reformulated gasoline program, and its 15 percent RFP SIP for the DFW area that had previously been adopted by the State and submitted to the EPA. The EPA does not believe that this comment is relevant to the rulemaking action on the State's petition for a section 182(f) NO_X exemption, since in this action, the EPA is not taking action on the State's reformulated gasoline program nor its 15 percent RFP plan. The EPA will rule on those control programs in a separate rulemaking action.

Comment: One group felt that the UAM model for DFW was flawed from a scientific perspective so as to be inadequate to make sound predictions of attainment. They cited the fact that only three of the four episodes initially analyzed by the State had acceptable performance. In addition, they felt that the emissions inventories were significantly inaccurate so as to discredit the modeling results.

Response: The EPA disagrees with this comment that the UAM modeling demonstration for DFW is flawed. Due to the large number of factors that influence ozone formation, the EPA agrees that the UAM model cannot precisely predict the exact relationship between VOC, NO_X, and ozone. However, if the model performs within certain bounds of accuracy, the EPA believes that the model can and should be used to develop the attainment strategy since Congress clearly intended that photochemical grid modeling be used to form the basis of a control strategy plan. The EPA has established general criteria to evaluate the relative accuracy of a given modeling demonstration, and believes that models that meet those criteria are accurate enough to form the basis of the attainment strategy.

The EPA's "Guideline for Regulatory Application of the Urban Airshed Model" generally requires that three episodes with acceptable model performance be used in the attainment demonstration. Because Texas had three episodes which exhibited acceptable performance, Texas' attainment modeling is fully consistent with the EPA's requirements. In addition, the EPA's model performance criteria apply to each individual episode rather than across episodes. Therefore, it is inaccurate to conclude that the model was 75 percent accurate because only three of the four episodes exhibited acceptable model performance.

The EPA disagrees with the comment that the emissions inventories were too inaccurate to produce acceptable modeling results. The EPA evaluated the State's 1990 base year emissions inventories and a final approval was published in the FR on November 8, 1994.

Comment: One group stated that NO_X controls should be required because NO_X emissions cause other adverse health and environmental effects besides contributing to ozone formation.

Response: The EPA agrees that high NO_X emissions can contribute to air pollution problems independent of their role in ozone formation; however, the EPA disagrees that the NO_X controls required under section 182(f) of the CAA should be implemented in the DFW area regardless of their impact on ozone. Because ambient air monitoring shows that the DFW area is in attainment for the nitrogen dioxide NAAQS standard, the EPA does not believe that the current level of NO_X emissions pose a public health or environmental risk in the DFW area. In addition, section 182(f)(2)(B)(i) specifically provides for an exemption in cases where NO_X emission reductions would not contribute to the attainment of the NAAQS for ozone in the area. The TNRCC has demonstrated that the NO_X reductions required by section 182(f) would be in excess of the emission reductions necessary for attaining the ozone NAAQS. Finally, for the purposes of reducing acid rain deposition, certain NO_X sources will still be required to reduce NO_X emissions under Title IV of the CAA. For these reasons, the EPA does not believe that the NO_X controls required under section 182(f) of the CAA should be implemented in the DFW area regardless of their impact on ozone.

Comment: One group questioned whether the current ozone standard of 120 parts per billion provides sufficient protection of public health.

Response: The EPA does not believe that this comment is relevant to this rulemaking action on the section 182(f) petitions for DFW and El Paso. The EPA is currently reviewing the ozone primary and secondary standards and will address concerns over the current ozone standard through a separate rulemaking process. If the standard is revised, the EPA will determine at that time what action is appropriate for attainment SIPs and NO_X exemption petitions that had previously been approved.

Comment: One group felt that EPA's action to propose conditional approval of the State's exemption petitions without the attainment SIPs was premature and denied adequate public input on the issue. They commented that EPA should wait until the State actually submits the attainment SIPs before making any determination as to the feasibility of the two areas actually achieving the NAAQS for ozone.

Response: The EPA disagrees with this comment for several reasons. The EPA does not believe its action proposing approval of the petitions was premature. As explained in the FR notice which proposed approval of the petitions (see 59 FR 44386), the attainment demonstrations rely on VOC regulations contained in the 15 percent RFP SIPs which had previously gone through public comment, State adoption, and submission to the EPA. For this reason, the EPA did not anticipate that the substance of the final attainment demonstration SIPs would differ from what had already been submitted to the EPA by the TNRCC in the section 182(f) exemption petitions. In addition, the EPA further explained that the EPA would not take final action to conditionally approve the petitions for each area unless and until the State had submitted the attainment demonstration SIPs to the EPA in accordance with section 182(c)(2)(A) of the CAA. Therefore, the EPA has waited until the State submitted its attainment SIPs before making any final determination.

The EPA believes the public has had adequate opportunity for public comment. The control strategies contained in the attainment SIPs had previously gone through public comment and State adoption as part of the 15 percent RFP SIP. In addition, the State proposed the attainment SIPs on July 27, 1994. The State's public

comment period on the attainment SIPs closed September 2, 1994, while the comment period on the EPA's proposed action to conditionally approve the petitions closed on September 28, 1994. The proposed attainment SIPs were therefore available for public review for two months prior to and during the EPA's public comment period on the proposed action on the petitions.

Finally, the EPA's action to approve the petitions is conditioned upon the EPA finally approving the modeling portion of the attainment SIPs, which will provide another opportunity for comment on the adequacy of the attainment SIPs as a basis for the section 182(f) exemptions.

Comment: Three groups provided a generic comment arguing that NO_X exemptions are provided for in two separate parts of the CAA, section 182(b)(1) and section 182(f). Because the NO_X exemption tests in subsections 182(b)(1) and 182(f)(1) include language indicating that action on such requests should take place "when [EPA] approves a plan or plan revision," these commenters conclude that all NO_X exemption determinations by the EPA, including exemption actions taken under the petition process established by subsection 182(f)(3), must occur during consideration of an approvable attainment or maintenance plan, unless the area has been redesignated as attainment. These commenters also argue that even if the petition procedures of subsection 182(f)(3) may be used to relieve areas of certain NO_X requirements, exemptions from the NO_X conformity requirements must follow the process provided in subsection 182(b)(1), since this is the only provision explicitly referenced by section 176(c), the CAA's conformity provisions.

Response: The EPA disagrees with the commenters regarding the process for considering exemption requests under section 182(f), and instead believes that subsections 182(f)(1) and 182(f)(3) provide independent procedures by which the EPA may act on NO_X exemption requests. The language in subsection 182(f)(1), which indicates that the EPA should act on NO_X exemptions in conjunction with action on a plan or plan revision, does not appear in subsection 182(f)(3). And, while subsection 182(f)(3) references subsection 182(f)(1), the EPA believes that this reference encompasses only the substantive tests in paragraph (1) (and, by extension, paragraph (2)), not the procedural requirement that the EPA act on exemptions only when acting on SIPs. Additionally, paragraph (3) provides that "person[s]" (which section 302(e) of the CAA defines to include States) may petition for NO_X exemptions "at any time," and requires the EPA to make its determination within six months of the petition's submission. These key differences lead the EPA to believe that Congress intended the exemption petition process of paragraph (3) to be distinct and more expeditious than the longer plan revision process intended under paragraph (1).

The CAA requires conformity with regard to federally-supported NO_X-generating activities in relevant nonattainment and maintenance areas. However, EPA's conformity rules explicitly provide that these NO_X requirements would not apply if the EPA grants an exemption under section 182(f). In response to the comment that section 182(b)(1) should be the appropriate vehicle for dealing with exemptions from the NO_X requirements of the conformity rule, the EPA notes that this issue has previously been raised in a formal petition for reconsideration of the EPA's final transportation conformity rule and in litigation pending before the U.S. Court of Appeals for the District of Columbia Circuit on the substance of both the transportation and general conformity rules. The issue, thus, is under consideration within the EPA, but at this time remains unresolved. Additionally, subsection 182(f)(3) requires that NO_X exemption petition determinations be made by the EPA within six months. The EPA has stated in previous guidance that it intends to meet this statutory deadline as long as doing so is consistent with the public notice requirements of the Administrative Procedures Act. Absent the EPA action now, this deadline, as it applies with respect to the DFW and El Paso exemption requests, which were submitted in June 1994, would not be met. The EPA, therefore, believes that until a resolution of this issue is achieved, the applicable rules governing this issue are those that appear in the EPA's final conformity regulations, and the EPA remains bound by their existing terms.

Comment: Three groups provided a generic comment on all section 182(f) actions that the modeling required by EPA is insufficient to establish that NO_X reductions would not contribute to attainment since only one level of NO_X control, i.e., "substantial" reductions, is required to be analyzed. They further explained that an area must submit an approvable attainment plan before EPA can know whether NO_X reductions will aid or undermine attainment.

Response: The EPA does not believe that this comment is applicable to the DFW or El Paso actions because attainment plans have been submitted for both areas in conjunction with the section 182(f) petitions. The TNRCC based its petitions for DFW and El Paso on a demonstration that the NO_X reductions would be in excess of the reductions necessary for attainment. In contrast, the above comment refers to section 182(f) petitions that are based on a demonstration that NO_X reductions would not contribute to attainment. Such a demonstration requires that various emission reduction scenarios be modeled which include substantial reductions of NO_X.

As described in Chapter 6 of the EPA's December 1993 section 182(f) guidance, the excess reductions demonstration used by the TNRCC for DFW and El Paso must be tied to the areas' attainment demonstration SIPs. This test must show that the excess reductions are reductions in excess of those specified in the attainment demonstration required by section 182, and either contained in the approved SIP or as adopted by the State to meet the section 182 attainment demonstration requirement, and submitted to the EPA for approval. The EPA believes that the more precise modeling analysis contained in the State's attainment demonstration SIP is required for the excess reduction test because the demonstration must show that a specific portion of the total area-wide NO_X emissions is not beneficial under one of the three tests listed above. The tie to the attainment demonstration assures that an excess reductions petition would not arbitrarily be based on small emissions and would not undermine the State's control strategy.

In addition, the EPA's guidance specifies that photochemical grid modeling is generally needed to document cases where NO_X reductions do not contribute to attainment or include excess reductions. The UAM is an acceptable model for these purposes. The EPA guidance also states that application of UAM should be consistent with techniques specified in the EPA "Guideline on Air Quality Models (Revised)." Further, application of UAM should also be consistent with procedures contained in the EPA "Guidelines for Regulatory Application of the Urban Airshed Model" (July 1991).

Comment: Three groups provided a generic comment on all section 182(f) actions that three years of "clean" data fail to demonstrate that NO_X reductions would not contribute to attainment.

Response: The EPA does not believe that this comment is applicable to the DFW and El Paso actions because neither area has based its section 182(f) petition on "clean" air monitoring data.

Comment: Three groups provided a generic comment on all section 182(f) actions that a waiver of NO_X controls is unlawful if such waiver will impede attainment and maintenance of the ozone standard in separate downwind areas.

Response: The EPA believes that, while this generic comment may be applicable to proposed NO_X exemption actions for other areas, it is not applicable to the DFW and El Paso exemption actions because the EPA is unaware of, and the comment itself does not specify, any downwind area for which NO_X transport is of concern. This is unlike the case regarding comments received by the EPA for certain areas for which NO_X exemptions are pending such as in Ohio, for example, where the downwind areas of concern are clearly identified as areas in the Northeast Ozone Transport Region. It should also be noted that neither DFW nor El Paso is located near or within an ozone transport region.

Comment: Three groups provided a generic comment on all actions exempting areas from the NO_X requirements of the conformity rules that such exemptions waive only the requirements of section 182(b)(1) to contribute to specific annual reductions, not the requirement that conformity SIPs contain information showing the maximum amount of motor vehicle NO_X emissions allowed under the transportation conformity rules and, similarly, the maximum allowable amounts of any such NO_X emissions under the general conformity rules. The commenters admit that, in prior guidance, the EPA has acknowledged the need to amend a drafting error in the existing transportation conformity rules to ensure consistency with motor vehicle emissions budgets for NO_X. The commenters, however, want the EPA to explicitly affirm this obligation in FR actions on NO_X exemptions and to avoid granting waivers until a budget controlling future NO_X increases is in place.

Response: In its "Conformity; General Preamble for Exemption From Nitrogen Oxides Provisions," 59 FR 31238, 31241 (June 17, 1994), the EPA reiterated its view that in order to conform, nonattainment and maintenance areas must demonstrate that their transportation plans and transportation improvement plans are consistent with the motor vehicle emissions budget for NO_X even where a conformity NO_X waiver has been granted. Due to a drafting error, that view is not reflected in the current transportation conformity rules. As the commenters correctly note, the EPA states in its June 17 notice that it intends to remedy the problem by amending the conformity rule. Although that notice specifically mentions only requiring consistency with the approved maintenance plan's NO_X motor vehicle emissions budget, the EPA also intends to require consistency with the attainment demonstration's NO_X motor vehicle emissions budget. The DFW and El Paso exemptions, however, were submitted pursuant to section 182(f)(3), and the EPA does not believe it is appropriate to delay the statutory deadline for acting on these petitions until the conformity rule is amended. As noted earlier in response to a previous issue raised by these commenters, this issue has also been raised in a formal petition for reconsideration of the EPA's final transportation conformity rule and in litigation pending before the U.S. Court of Appeals for the District of Columbia Circuit on the substance of both the transportation and general conformity rules. This issue, thus, is under consideration within the EPA, but at this time remains unresolved. The EPA, therefore, believes that until a resolution of this issue is achieved, the applicable rules governing this issue are those that appear in the EPA's final conformity regulations, and the EPA remains bound by their existing terms.

Comment: Three groups provided a generic comment on all section 182(f) actions that the CAA does not authorize delaying implementation of NO_X controls if modeling is not complete.

Response: The EPA does not believe that this comment is applicable to the DFW or El Paso actions because complete attainment modeling has been submitted for both areas, as part of the attainment SIPs, in conjunction with the section 182(f) petitions.

VI. Effective Date

This rulemaking is effective as of November 21, 1994. The Administrative Procedure Act (APA) 5 U.S.C. 553(d)(1), permits the effective date of a substantive rule to be less than thirty days after publication of the rule if the rule "relieves a restriction." Since the approval of the section 182(f) exemptions for the DFW and El Paso areas, is a substantive rule that relieves the restrictions associated with the CAA title I requirements to control NO_X emissions, the NO_X exemption approval may be made effective upon signature by the EPA Administrator.

VII. Final Action

In this action, the EPA is conditionally approving [1] the 182(f) NO_X exemption petitions submitted by the State of Texas for the DFW and El Paso ozone nonattainment areas, conditioned upon the EPA approving the modeling portion of the attainment demonstration SIPs. If the EPA proposes to disapprove the modeling portion of the SIPs, the EPA will also propose disapproval of the section 182(f) NO_X exemption petitions, based on the fact that the technical basis for the exemption is no longer valid. Upon final disapproval of the modeling portion of the attainment SIPs, the EPA will issue a final disapproval of the section 182(f) NO_X exemption petitions as well.

There are several consequences if the EPA disapproves the section 182(f) NO_X exemption petitions based on the conclusion that the attainment SIPs were not approved by the EPA. The State would be required to submit NO_X RACT rules and implement the relevant NO_X conformity, NSR, and vehicle inspection and maintenance requirements for the DFW and El Paso areas. The EPA would issue a finding of nonsubmittal of the NO_X RACT rules. As provided under section 179(a) of the CAA, if the State did not make a complete submittal within 18 months after the finding of failure to submit, the EPA would be required to impose the requirement to provide two-to-one NSR offsets. If the State had not corrected its deficiency within six months after imposing the offset sanction, the EPA would impose a second sanction, on highway funding. Any sanction the EPA imposes must remain in place until the EPA determines that the State has corrected the deficiency. In addition, the finding of failure to submit would trigger the 24-month clock for the EPA to impose a Federal Implementation Plan as required by section 110(c)(1) of the CAA.

The EPA believes that all section 182(f) exemptions that are approved, should be approved only on a contingent basis. As described in the EPA's NO_X Supplement to the General Preamble (57 FR 55628, November 25, 1992), the EPA would rescind a NO_X exemption in cases where NO_X reductions were later found to be beneficial in the area's attainment plan. That is, a modeling based exemption

[1] This conditional approval is distinct from the conditional approval authority granted under section 110(k)(4), which pertains to SIP actions. As discussed in the previously cited John S. Seitz memorandum dated May 27, 1994, concerning the EPA's processing of section 182(f) petitions, these NO_X exemptions petitions are not revisions to the SIP.

would last for only as long as the area's modeling continued to demonstrate attainment without the additional NO_X reductions required by section 182(f).

If the EPA later determines that NO_X reductions are beneficial based on new photochemical grid modeling in an area initially exempted, the area would be removed from exempt status and would be required to adopt the NO_X RACT and NSR rules, except to the extent that modeling shows NO_X reductions to be "excess reductions." In the rulemaking action which removes the exempt status, the EPA would specify a schedule for States to adopt the NO_X RACT and NSR rules and for sources to comply with the NO_X RACT emission limits.

The subsequent modeling analyses mentioned above need not be limited to the purpose of demonstrating attainment in the 1994 SIP revisions without the need for NO_X controls required under section 182(f). For example, future modeling might also be initiated to resolve issues related to transport of ozone and ozone precursors into downwind nonattainment areas. An area might want to consider a strategy that phases-in NO_X reductions only after certain VOC reductions are implemented. As improved emission inventories and ambient data become available, areas may choose to remodel. In addition, alternative control strategy scenarios might be considered in subsequent modeling analyses in order to improve the cost-effectiveness of the attainment plan.

In summary, the EPA is conditionally approving the section 182(f) exemptions for the DFW and El Paso areas, conditioned upon EPA's approval of the modeling portion of the attainment demonstrations for these areas. These exemptions will remain effective for only as long as modeling in each nonattainment area continues to show that NO_X control activities would not be beneficial in the DFW or El Paso nonattainment areas.

In addition, the State of Texas and EPA have committed to data-gathering and modeling throughout the El Paso-Juarez air basin in accordance with Annex V of the La Paz Agreement for Environmental Cooperation on the U.S.-Mexico Border. Once the data are collected and basin-wide modeling is concluded, the EPA, the State of Texas, and the Republic of Mexico can develop a binational control strategy that will result in improved air quality throughout the airshed. If EPA review of modeling and air quality data confirms that NO_X control requirements on local U.S. sources would not be beneficial, the exemption would be sustained. In contrast, if the EPA determines that NO_X control requirements would be beneficial, the exemption would be rescinded.

Regulatory Process

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

Approvals of NO_X exemption petitions under section 182(f) of the CAA do not create any new requirements. Therefore, because the Federal approval of the petitions does not impose any new requirements, the EPA certifies that it does not have a significant impact on affected small entities. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2)).

If the conditional approval is converted to a disapproval based on the State's failure to meet the condition upon which the approval is granted, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, the EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, the EPA certifies that this disapproval action would not have a significant impact on a substantial number of small entities because such disapproval would not remove existing State requirements, nor does it substitute a new Federal requirement.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the U.S. Court of Appeals for the appropriate circuit by January 27, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the EPA must determine whether the regulatory action is "significant", and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866, and is therefore not subject to OMB review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: November 21, 1994.

Carol M. Browner,

Administrator.

40 CFR part 52 is amended as follows:

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

Authority: 42 U.S.C. 7401–7671q.

Subpart SS—Texas

2. Section 52.2308 is added to read as follows:

§ 52.2308 Area-wide nitrogen oxides (NO_X) exemptions.

(a) The Texas Natural Resource Conservation Commission (TNRCC) submitted to the EPA on June 17, 1994, a petition requesting that the Dallas ozone nonattainment area be exempted from the NO_X control requirements of section 182(f) of the Clean Air Act (CAA) as amended in 1990. The Dallas nonattainment area consists of Dallas, Tarrant, Denton, and Collin counties. The exemption request was based on a photochemical grid modeling which shows that the Dallas nonattainment area would attain the National Ambient Air Quality Standards (NAAQS) for ozone by the CAA mandated deadline without the implementation of the additional NO_X controls required under section 182(f). On November 21, 1994, the EPA conditionally approved this exemption request, conditioned upon the EPA approving the modeling portion of the Dallas attainment demonstration SIP.

(b) The TNRCC submitted to the EPA on June 17, 1994, a petition requesting that the El Paso ozone nonattainment area be exempted from the NO_X control requirements of section 182(f) of the Clean Air Act (CAA) as amended in

1990. The El Paso nonattainment area consists of El Paso county, and shares a common airshed with Juarez, Mexico. The exemption request was based on a photochemical grid modeling which shows that the El Paso nonattainment area would attain the NAAQS for ozone by the CAA mandated deadline without the implementation of the additional NO_X controls required under section 182(f), but for emissions emanating from Mexico. On November 21, 1994, the EPA conditionally approved this exemption request, conditioned upon the EPA approving the modeling portion of the El Paso attainment demonstration SIP.

[FR Doc. 94–29195 Filed 11–25–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 80

[AMS–FRL–5113–5]

RIN 2060–AE60

Regulation of Fuels and Fuel Additives: Renewable Oxygenate Requirements for Reformulated Gasoline

AGENCY: Environmental Protection Agency.

ACTION: Notice of judicial stay

SUMMARY: In the 1990 amendments to the Clean Air Act (the Act), Congress required that the Environmental Protection Agency (EPA) promulgate regulations requiring the sale of reformulated gasoline (RFG) in certain ozone nonattainment areas and restricting the sale of non-reformulated, or conventional, gasoline. EPA issued a final rule for reformulated and conventional gasoline on December 15, 1993. On June 30, 1994, EPA revised these regulations to require that a certain minimum amount of the oxygenates used in reformulated gasoline be from renewable sources.

A petition to review the renewable oxygenate requirements was filed with the Court of Appeals for the District of Columbia Circuit, and petitioners sought a stay of the renewable oxygenate requirements pending judicial review. On September 13, 1994, the court granted petitioners' request and stayed these requirements pending review.

DATES: Effective September 13, 1994, the amendments to 40 CFR part 80 published on August 2, 1994 (59 FR 39258) are stayed.

ADDRESSES: Materials relevant to the renewable oxygenate final rule are contained in Public Docket A–93–49, located at Room M 1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Information relevant to this rulemaking may also be found in dockets A–91–02 and A–92–12, which are hereby incorporated by reference into docket A–93–49 for the purposes of this rulemaking. The docket may be inspected from 8 a.m. until 4 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Ann Marie Cooney, Office of Mobile Sources, Field Operations and Support Division, Code 6406J, U.S.EPA, 401 M Street, S.W., Washington D.C., 20460, tel. (202) 233–9013.

SUPPLEMENTARY INFORMATION: On June 30, 1994, EPA issued a final rule revising the regulations for the reformulated gasoline program.[1] That final rule establishes a performance standard for each refiner and importer of reformulated gasoline, requiring that a specified percentage of the oxygen content of their reformulated gasoline be from renewable oxygenates. The renewable oxygenate requirement is to be phased-in such that 15 percent of the oxygen content of the reformulated gasoline would have to be from renewable oxygenates in 1995, increasing to 30 percent in 1996. The requirement was set as an annual average requirement, with provisions for credit generation and transfer between refiners and importers.

On July 13, 1994 the American Petroleum Institute (API) and the National Petroleum Refiners Association (NPRA) filed a petition for review of these requirements in the United States Court of Appeals for the District of Columbia, under section 307(b) of the Clean Air Act. *API and NPRA v. EPA*, No. 94–1502. Petitioners subsequently filed a motion for a stay pending judicial review, and a motion for summary reversal or in the alternative for expedited consideration of the petition for review.

On September 13, 1994 the court granted petitioners' motion for a stay pending judicial review. At the same time, the court denied petitioners' motion for summary reversal and expedited the schedule for judicial review. The court set a briefing schedule requiring completion of all briefing by January 12, 1995, and directed that the clerk set oral argument on the first available time after that date.

Given the expedited schedule for judicial review, EPA believes that the court might issue a decision as early as the spring of 1995, although it could be later. In light of this schedule, and the upcoming beginning of the reformulated gasoline program, EPA believes it would be useful to provide certain basic information for all interested parties.

First, it is important to note that the judicial stay only affects that part of the reformulated gasoline program relating to the required use of renewable oxygenates. It does not affect any other aspect of either the reformulated gasoline or conventional gasoline programs. The reformulated gasoline regulations will go into effect December 1, 1994, and the conventional gasoline regulations on January 1, 1995. The judicial stay only affects the regulations issued on June 30, 1994—all other regulations for reformulated and conventional gasoline will go into effect as previously announced.

Second, if EPA's renewable oxygenate regulations are upheld on judicial review, EPA would expect to implement the renewable oxygenate program as expeditiously as practical. EPA would try to implement the program in a way that maximizes its benefits, taking into consideration various factors such as the benefits that would have been achieved absent a stay, the amount of renewable oxygenates voluntarily used in reformulated gasoline during the pendency of the stay, and other issues relevant to implementation of the program.

EPA cannot, at this time, decide exactly how it will implement the renewable oxygenate program if it prevails on judicial review. The limits on EPA's discretion and the implementation options reasonably available will depend in large part on the facts and circumstances then in existence, as well as the timing and actual terms of the court's decision, to the extent it addresses implementation issues. However, to the extent feasible, EPA will at that time evaluate various options and will seriously consider providing credits to refiners and importers who voluntarily use renewable oxygenates during the term of the judicial stay.

Dated: November 14, 1994.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 94–29152 Filed 11–25–94; 8:45 am]

BILLING CODE 6560–50–P

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[1] 59 FR 39258 (August 2, 1994).

40 CFR Parts 712 and 716

[OPPTS-82044; FRL-4914-5]

Preliminary Assessment Information and Health and Safety Data Reporting; Addition of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Interagency Testing Committee (ITC) in its 34th Report to EPA revised the Toxic Substances Control Act (TSCA) Section 4(e) Priority List by recommending for health effects testing ethyl tert-butyl ether (ETBE) (CAS No. 637–92–3) and tert-amyl methyl ether (TAME) (CAS No. 994–05–8). The ITC recommendations must be given priority consideration by EPA in promulgating test rules. EPA is adding these two chemical substances to two model information-gathering rules: the TSCA Section 8(a) Preliminary Assessment Information Rule (PAIR) and the TSCA Section 8(d) Health and Safety Data Reporting Rule. These model rules will require: Manufacturers and importers of the substances identified herein to report certain production, use, and exposure-related information, and manufacturers, importers, and processors of the listed substances to report unpublished health and safety data to EPA.

EFFECTIVE DATE: This rule will become effective on December 28, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. E–543, Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: This rule adds ETBE and TAME to the PAIR and the section 8(d) Health and Safety Data Reporting Rule. Manufacturers, importers, and processors of these chemicals will be required to report unpublished health and safety data, and manufacturers and importers will be required to report end use, exposure, and production volume data to EPA. Because the ITC has expressed no need for ecological effects information for the substances being added to the section 8(d) rule via this action, EPA is not requiring the reporting of these data for the subject substances under the section 8(d) rule.

I. Background

Section 4(e) of TSCA established the ITC and authorized it to recommend to EPA chemical substances and mixtures (chemicals) to be given priority consideration in proposing test rules under section 4. For some of these chemicals, the ITC may designate that EPA must respond to its recommendations within 12 months. In this time, EPA must either initiate a rulemaking to test the chemical or publish in the **Federal Register** its reasons for not doing so.

On May 17, 1994, EPA announced the receipt of the 34th Report of the ITC, and it was then published in the **Federal Register** of July 13, 1994 (59 FR 35720). The 34th Report revises the Committee's priority list of chemicals by recommending ETBE and TAME to the section 4(e) priority list.

This rule adds ETBE and TAME to the PAIR and the section 8(d) Health and Safety Data Reporting Rule. These two rules are model information gathering rules which assist the ITC in making testing recommendations and aid EPA in responding to the ITC recommendations.

EPA issued the PAIR under section 8(a) of TSCA (15 U.S.C. 2607(a)), and it is codified at 40 CFR part 712. This model section 8(a) rule establishes standard reporting requirements for manufacturers and importers of the chemicals listed in the rule at 40 CFR 712.30. These manufacturers and importers are required to submit a one-time report on general volume, end use, and exposure-related information using the Preliminary Assessment Information Manufacturer's Report (EPA Form 7710–35).

EPA uses this model section 8(a) rule to gather current information on chemicals of concern quickly. EPA issued the model Health and Safety Data Reporting Rule under section 8(d) of TSCA (15 U.S.C. 2607(d)), and it is codified at 40 CFR part 716. The section 8(d) model rule requires past, current, and prospective manufacturers, importers, and processors of listed chemicals to submit to EPA copies and lists of unpublished health and safety studies on the listed chemicals that they manufacture, import, or process. These studies provide EPA with useful information and have provided significant support for EPA's decisionmaking under TSCA sections 4, 5, 6, 8, and 9.

These model rules provide for the automatic addition of ITC priority list chemicals. Whenever EPA announces the receipt of an ITC report, EPA may, at the same time without further notice and comment, amend the two model information-gathering rules by adding the recommended chemicals. The amendment adding these chemicals to the PAIR and the Health and Safety Data Reporting Rule becomes effective 30 days after publication in the **Federal Register.**

The reporting of ecological effects data will not be required for ETBE and TAME under the section 8(d) rule. Because no member of the ITC has expressed a need for these data, EPA believes there is no need to collect this information at this time.

II. Chemicals To Be Added

In its 34th Report to EPA, the ITC recommended ETBE and TAME for health effects testing. EPA is adding these two chemical substances to the PAIR and the section 8(d) Health and Safety Data Reporting Rule. The use of ETBE and TAME to augment or substitute for methyl tert-butyl ether (MTBE) (CAS No. 1634–04–4) as fuel oxygenates and the need for health effects data for ETBE and TAME are of concern to EPA and the ITC. For these reasons, EPA is adding ETBE and TAME to the section 8(d) rule to obtain data to support EPA's ongoing assessments of the potential hazards/risks posed by these two substances.

Manufacturers, importers, and processors of the two substances being listed on the 8(d) rule by this action will not be required to report ecological effects data under the 8(d) rule for those substances.

III. Reporting Requirements

A. Preliminary Assessment Information Rule

All persons who manufactured or imported the chemical substances named in this rule during their latest complete corporate fiscal year must submit a Preliminary Assessment Information Manufacturer's Report (EPA Form No. 7710–35) for each manufacturing or importing site at which they manufactured or imported a named substance. A separate form must be completed for each substance and submitted to the Agency no later than February 27, 1995. Persons who have previously and voluntarily submitted a Manufacturer's Report to the ITC or EPA may be able to submit a copy of the original Report to EPA or to notify EPA by letter of their desire to have this voluntary submission accepted in lieu of a current data submission. See § 712.30(a)(3).

Details of the reporting requirements, the basis for exemptions, and a facsimile of the reporting form, are provided in 40 CFR part 712. Copies of the form are available from the TSCA Environmental Assistance Division at the address listed under **FOR FURTHER INFORMATION CONTACT.**

B. Health and Safety Data Reporting Rule

Listed below are the general reporting requirements of the section 8(d) model rule.

1. Persons who, in the 10 years preceding the date a substance is listed, either have proposed to manufacture, import, or process, or have manufactured, imported, or processed, the listed substance must submit to EPA: A copy of each health and safety study which is in their possession at the time the substance is listed.

2. Persons who, at the time the substance is listed, propose to manufacture, import, or process; or are manufacturing, importing, or processing the listed substance must submit to EPA:

a. A copy of each health and safety study which is in their possession at the time the substance is listed.

b. A list of health and safety studies known to them but not in their possession at the time the substance is listed.

c. A list of health and safety studies that are ongoing at the time the substance is listed and are being conducted by or for them.

d. A list of each health and safety study that is initiated after the date the substance is listed and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete—regardless of completion date.

3. Persons who, after the time the substance is listed, propose to manufacture, import, or process the listed substance must submit to EPA:

a. A copy of each health and safety study which is in their possession at the time they propose to manufacture, import, or process the listed substance.

b. A list of health and safety studies known to them but not in their possession at the time they propose to manufacture, import, or process the listed substance.

c. A list of health and safety studies that are ongoing at the time they propose to manufacture, import, or process the listed substance, and are being conducted by or for them.

d. A list of each health and safety study that is initiated after the time they propose to manufacture, import, or process the listed substance, and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete—regardless of the completion date.

The bulk of reporting is required at the time the substance is listed. Persons described in categories 1 and 2 do all or most of their health and safety data reporting at the start of the reporting period. The remaining reporting requirements, specifically categories 2(d), 2(e), and 3, continue prospectively.

Detailed guidance for reporting unpublished health and safety data is provided in the **Federal Register** of September 15, 1986 (51 FR 32720). Also found there are explanations of the reporting exemptions.

C. Submission of PAIR Reports and Section 8(d) Studies

PAIR reports and section 8(d) health and safety studies must be sent to:

TSCA Document Processing Center (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, ATTN: (insert either PAIR or 8(d) Reporting).

D. Removal of Chemical Substances from the Rules

Any person who believes that section 8(a) or 8(d) reporting required by this rule is unwarranted, should promptly submit to EPA in detail the reasons for that belief. EPA, in its discretion, may remove the substance from this rule for good cause (40 CFR 712.30 and 716.105). When withdrawing a substance from the rule, EPA will issue a rule amendment for publication in the **Federal Register**.

IV. Release of Aggregate Data

EPA will follow procedures for the release of aggregate statistics as prescribed in the **Federal Register** notice of June 13, 1983 (48 FR 27041). Included in the notice are procedures for requesting exemptions from the release of aggregate data. Exemption requests concerning the release of aggregate data on any chemical substance must be received by EPA no later than February 27, 1995.

V. Economic Analysis

A. Preliminary Assessment Information Rule

EPA estimates the PAIR reporting cost of this rule is $14,072. To calculate this figure, EPA used information from a variety of published sources as well as information from OPPTS's Risk Management 1 (RM1) reports on similar chemicals to generate a list of five firms that manufacture and/or import the two chemicals at a total of eight sites. The published sources used include: SRI International's *Directory of Chemical Producers, Chemical Economics Handbook*, and *Specialty Chemicals*; other multi-client studies; the U.S. International Trade Commission's *Synthetic Organic Chemicals*; and company product literature. An unknown number of the businesses affected by the addition of the chemicals to the Priority List may qualify as a small business as defined in 40 CFR 712.25(c). However, for this analysis it is assumed that all firms identified will report. Therefore, EPA expects five firms to generate a total of eight reports (some sites produce both of the chemicals).

Reporting Costs (dollars)

(a) 8 reports estimated at $924 per report = $7,392
(b) 8 sites at $835 per site = $6,680
Total Cost = $14,072
Mean cost per site = $14,072/8 sites = $1,759
Mean cost per firm = $14,072/5 firms = $2,814
Mean cost per report = $14,072/8 reports = $1,759

Reporting Burden (hours)

(a) Rule familiarization: 18 hours/site x 8 sites = 144
(b) Reporting: 16 hours/report x 8 reports = 128
Total burden hours = 272
Average burden per site = 272 hours/8 sites = 34
Average burden per firm = 272 hours/5 firms = 55
Average burden per firm = 272 hours/8 reports = 34

EPA Costs (dollars)

Processing cost = 8 reports x $95/report = $760

B. Health and Safety Data Reporting Rule

EPA estimates the total reporting costs for establishing section 8(d) reporting requirements for the two chemicals will be $10,353. This cost estimate is high because the Agency is uncertain about the likely number of respondents to the rule. Although EPA has used the best available data to make its economic projections, much of the information is based upon the 1986 TSCA Inventory Update and secondary information from industry sources. Therefore, EPA tends to overestimate rather than underestimate reporting burden.

The estimated reporting costs are broken down as follows:

Initial corporate review	$ 2,080
Site identification	1,248
File searches at site	2,829
Photocopying existing studies	428
Title listing	129
Managerial review for CBI	2,565
Reporting on newly-initiated studies	54.52

Submissions after initial reporting period	970.80
Total	$ 10,353

Reporting Burden (hours)

(a) Initial review: 2 hours/firm x 15 firms = 30 hrs
(b) Reporting: 10.26 hours/firm x 15 firms = 154 hrs
Total reporting burden hours = 184 hrs

VI. Rulemaking Record

The following documents constitute the record for this rule (docket control number OPPTS–82044). All of these documents are available to the public in the TSCA Nonconfidential Information Center (NCIC), formerly the TSCA Public Docket Office, from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The NCIC is located at EPA Headquarters, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

1. This final rule.
2. The economic analysis for this rule.
3. The Thirty-fourth Report of the ITC.

VII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments of communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, it has been determined that this rule is not "significant" and is therefore not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control numbers 2070–0054 for PAIR reporting and 2070–0004 for TSCA section 8(d) reporting.

Public reporting burden for this collection of information is estimated to average 34 hours for PAIR per response and 8.2 hours for section 8(d), including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, 2131, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Parts 712 and 716

Environmental protection, Chemicals, Hazardous substances, Health and safety data, Reporting and recordkeeping requirements.

Dated: November 8, 1994.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR Chapter I is amended as follows:

PART 712—[AMENDED]

1. In part 712:

a. The authority citation for part 712 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

b. Section 712.30(w) is amended by adding in CAS number sequence two chemicals to the list to read as follows:

§ 712.30 Chemical lists and reporting periods.

* * * * *

(w) * * *

CAS No.	Substance	Effective date	Reporting date
*	* * * *	*	*
637-92-3	Ethyl tert-butyl ether	12/28/94	2/27/95
*	* * * *	*	*
994-05-8	Tert-amyl methyl ether	12/28/94	2/27/95
*	* * * *	*	*

* * * * *

PART 716—[AMENDED]

2. In part 716:

a. The authority citation for part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

b. Section 716.120(a) is amended by adding in CAS number sequence two chemicals to the list to read as follows:

§ 716.120 Substances and listed mixtures to which this subpart applies.

* * * * *

(a) * * *

CAS No.	Substance	Special exemptions	Effective date	Sunset date
* *	* *	*	*	*
637-92-3	Ethyl-tert-butyl ether	§ 716.20(b)(3) applies	12/28/94	12/28/04
* *	* *	*	*	*
994-05-8	Tert-amyl methyl ether	§ 716.20(b)(3) applies	12/28/94	12/28/04
* *	* *	*	*	*

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[FR Doc. 94–29148 Filed 11–25–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7117]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director, Mitigation Directorate, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW, Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base (100-year) flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alaska: Unorganized borough.	Municipality of Anchorage.	July 11, 1994, July 18, 1994, *Alaska Journal of Commerce.*	Hon. Tom Fink, Mayor, Municipality of Anchorage, P.O. Box 196650, Anchorage, AK 99519–6650.	June 17, 1994	020005
California: Contra Costa.	City of Antioch	Sept. 22, 1994, Sept. 29, 1994, *Ledger-Post Dispatch.*	Hon. Joel Keller, Mayor, City of Antioch, P.O. Box 130, Antioch, CA 94509.	Sept. 9, 1994	060026
Colorado: El Paso	City of Colorado Springs.	Aug. 4, 1994, Aug. 11, 1994, *Gazette Telegraph.*	Hon. Robert Isaac, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, CO 80901–1575.	July 1, 1994	080060
Colorado: El Paso	City of Colorado Springs.	Sept. 8, 1994, Sept. 15, 1994 *Gazette Telegraph.*	Hon. Robert Isaac, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, CO 80901–1575.	Aug. 24, 1994	080060
Colorado: Douglas	Unincorporated areas	Sept. 14, 1994, Sept. 21, 1994 *Daily News-Press.*	Ms. M. Michael Cooke, Chairperson, Douglas County Board of Commissioners, 101 Third Street, Castle Rock, CO 80104.	Aug. 29, 1994	080049
Colorado: El Paso	Unincorporated areas	Sept. 8, 1994, Sept. 15, 1994, *Gazette Telegraph.*	Hon. Jeri Howells, Chairperson, El Paso County Board of Commissioners, 27 East Vermijo, Colorado Springs, CO 80903.	Aug. 24, 1994	080059
Colorado: Boulder	City of Longmont	Oct. 6, 1994, Oct. 13, 1994, *Longmont Times Call.*	Hon. Leona Stoecker, Mayor, City of Longmont, 829 Panorama Circle, CO 80501.	Sept. 1, 1994	080027
Colorado: Douglas	Town of Parker	Sept. 14, 1994, Sept. 21, 1994, *Daily News-Press.*	Hon. Greg Lopez, Mayor, Town of Parker, 20120 East Main Street, Parker, CO 80134.	Aug. 29, 1994	080310
Hawaii: Maui	Unincorporated areas	Sept. 13, 1994, Sept. 20, 1994, Maui News.	Hon. Linda Crockett Lingle, Mayor, County of Maui, 200 South High Street, Wailuku, Maui, HI 96793.	Aug. 22, 1994	150003
Idaho: Ada	Unincorporated areas	Sept. 22, 1994, Sept. 29, 1994, *Valley News.*	Hon. Vern Bisterfeldt, Chairman, Ada County Board of Commissioners, 650 Main Street, Boise, ID 83702.	Sept. 15, 1994	160001
Idaho: Ada	City of Meridian	Sept. 22, 1994, Sept. 29, 1994, *Valley News.*	Hon. Grant P. Kingsford, Mayor, City of Meridian, 33 East Idaho Avenue, Meridian, ID 83642.	Sept. 15, 1994	160180
Nevada: Washoe	City of Reno	Sept. 6, 1994, Sept. 13, 1994, *Reno Gazette Journal.*	Hon. Pete Sferrazza, Mayor, City of Reno, P.O. Box 1900, Reno, NV 89505.	Aug. 16, 1994	320020
Nevada: Washoe	Unincorporated areas	Sept. 6, 1994, Sept. 13, 1994, *Reno Gazette Journal.*	Hon. Diane Cornwall, Chairperson, Washoe County Board of Commissioners, P.O. Box 11130, Reno, NV 89520.	Aug. 16, 1994	320019
Oklahoma: Muskogee	City of Muskogee	Sept. 9, 1994, Sept. 16, 1994, *Muskogee Daily Phoenix.*	Hon. Kathy Hewitt, Mayor, City of Muskogee, P.O. Box 1927, Muskogee, OK 74402.	Aug. 15, 1994	400125
Oklahoma: Muskogee	Unincorporated areas	Sept. 9, 1994, Sept. 16, 1994, *Muskogee Daily Phoenix.*	Hon. Gene Bullard, Chairman, Muskogee County Board of Commissioners, P.O. Box 2307, Muskogee, OK 74401.	Aug. 15, 1994	400491
Texas: Tarrant	City of Colleyville	Sept. 8, 1994, Sept. 15, 1994, *Colleyville News and Times.*	Hon. Cheryl Feigel, Mayor, City of Colleyville, P.O. Box 185, Colleyville, TX 76034.	Aug. 18, 1994	480590
Texas: Montgomery	City of Conroe	Sept. 23, 1994, Sept. 30, 1994, *Conroe Courier.*	Hon. Carter Moore, Mayor, City of Conroe, P.O. Box 3066, Conroe, TX 77305.	Sept. 6, 1994	480484
Texas: El Paso	City of El Paso	Aug. 5, 1994, Aug. 12, 1994, *Gazette Telegraph.*	Hon. Larry Francis, Mayor, City of El Paso, Two Civic Center Plaza, El Paso, TX 79901–1196.	June 23, 1994	480214
Texas: Tarrant	City of Fort Worth	Sept. 23, 1994, Sept. 30, 1994, *Fort Worth Star Telegram.*	Hon. Kay Granger, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102–6311.	Sept. 6, 1994	480596

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Texas: Harris	Unincorporated areas	Sept. 1, 1994, Sept. 8, 1994, *Houston Chronicle.*	Hon. Jon Lindsay, Harris County Judge, Ninth Floor Courtroom, 1001 Preston, Suite 911, Houston TX 77002.	Aug. 15, 1994	480287
Texas: Collin	City of Plano	Sept. 7, 1994, Sept. 14, 1994, *Dallas Morning News.*	Hon. James N. Muns, Mayor, City of Plano, P.O. Box 860358, Plano, TX 75086.	Aug. 5, 1994	480856

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: November 21, 1994.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 94–29221 Filed 11–25–94; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below. The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NEIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW, Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
CALIFORNIA	
West Sacramento (City), Yolo County (FEMA Docket No. 7063)	
Sacramento River:	
Approximately 36,000 feet downstream of Tower Bridge	*28
Approximately 26,000 feet downstream of Tower Bridge	*29
Approximately 13,500 feet downstream of Tower Bridge	*30
Approximately 4,000 feet upstream of Tower Bridge	*31
Approximately 1,500 feet downstream of Interstate 80	*31
Deep Ponding: Approximately 1,500 feet north of the intersection of Enterprise Boulevard and Lake Road	*27
Yolo Bypas (Toe Drain): Approximately 3,500 feet downstream of Interstate Highway 80/Interstate Highway 40	*27

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
Maps are available for inspection at the Department of Public Works, Community Development Department, 1951 South River Road, West Sacramento, California.	
WASHINGTON	
Normandy Park (City), King County (FEMA Docket No. 7088)	
Miller Creek:	
At the private drive located approximately 260 feet above mouth	*9
At SW 175th Place	*16
Approximately 120 feet downstream of the Sewage Plant North Access Road	*44
Maps are available for inspection at the Department of Planning, 801 Southwest 174th Street, Normandy Park, Washington.	
Seatac (City), King County (FEMA Docket No. 7088)	
Miller Creek:	
At the culvert inlet just upstream of Des Moines Way	*204
Just upstream of South 106th Street	*247
At 12th Avenue South extended, at Lake Reba Detention Pond Outlet	*266
At Lake Reba Detention Pond	*274
Maps are available for inspection at the Department of Public Works, 19215 28th Avenue South, Seatac, Washington.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: November 21, 1994.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 94–29219 Filed 11–25–94; 8:45 am]

BILLING CODE 6718–03–P–M

Proposed Rules

Federal Register
Vol. 59, No. 227
Monday, November 28, 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.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 130

Small Business Development Centers

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) is proposing regulations governing the Small Business Development Center (SBDC) Program. Since the enactment of Pub. L. 96–302 and the establishment of the program in 1980, the program has been operating under direct statutory authority, without regulations. The SBA is proposing these regulations to establish a framework for effective and efficient operation of the program.

DATES: Written comments should be submitted on or before December 28, 1994.

ADDRESSES: Comments should be submitted to: Johnnie L. Albertson, Associate Administrator for Small Business Development Centers (AA/SBDCs), U.S. Small Business Administration, 409 Third Street, SW, Fifth Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Hardy Patten, Program Manager, (202) 205–6766.

SUPPLEMENTARY INFORMATION: The SBDC Program, originally established in 1980, is administered pursuant to Section 21 of the Small Business Act, 15 U.S.C. 648. The SBDC program creates a partnership between the SBA and organizations operating the SBDC networks. Together they provide business development and technical assistance to small businesses in order to promote growth, expansion, innovation, increased productivity, and management improvement. The SBDC program has been operating under direct statutory authority without regulations. The SBA is proposing these regulations to establish a framework for effective and efficient operation of the program. Many of the provisions set forth in this proposed rule have arisen from legislation. Others codify current procedures utilized since the inception of the program.

Section-by-Section Analysis

Proposed § 130.100 would serve as the introduction, establishing the overall objective of the SBDC program to create a broader-based system of assistance for the small business community, and defining the relationship between the SBA and the organizations operating the SBDC networks, known as recipient organizations. The program operates under the general management and oversight of the SBA, with recognition that a partnership exists between the SBA and the recipient organization for the provision of assistance to the small business community. That assistance is delivered to the small business community pursuant to a Cooperative Agreement negotiated between the SBA and the organization operating the SBDC network.

Proposed § 130.110 would provide definitions of terms relevant to the SBDC program.

Proposed § 130.200 would set forth those entities which, by statute, are eligible to enter into a Cooperative Agreement with the SBA for the purpose of establishing or continuing the operation of an SBDC network.

Proposed § 130.310 would provide that the area of service for any SBDC network is the state or portion of a state in which it is located. When more than one SBDC network is to be located in a given state, the AA/SBDCs shall determine the general geographic areas to be served by each SBDC network in that state.

Proposed § 130.320 would discuss the location of participants in the SBDC network, and proposed § 130.330 would set forth the operating requirements for the SBDC network.

Proposed § 130.340 would provide for the establishment of State and National Advisory Boards to advise, counsel, and confer with SBDC directors and the AA/SBDCs on matters pertaining to the operation of SBDC networks and the national SBDC program.

Proposed § 130.350 would describe the services to be provided by SBDC networks to ensure convenient access and effective service to small businesses, including specialized services such as international trade assistance, rural development, procurement assistance, capital formation and technical assistance. It would also place certain restrictions on SBDC assistance. SBDCs would be prohibited from making loans, servicing loans or making credit decisions. SBDCs would also be prohibited from making credit recommendations, unless authorized to do so by the Administrator, or his or her designee.

Proposed § 130.360 would set forth policy development responsibilities of the SBA and performance implementation responsibilities of the SBDC Director.

Proposed § 130.400 would describe the application process for both new and continuing applicants. Pursuant to § 130.410, a new applicant organization would be required to submit an original and two copies of its application to the SBA District Office covering the geographic area in which the applicant organization proposes to provide services.

Additionally, in order to insure consistency with the current state plan approved by SBA, an application for initial funding would be required to include a letter from the Governor, or his or her designee, of the State in which the applicant organization will operate, or other evidence that it is not inconsistent with such plan. No such requirement would be imposed on subsequent applications from current operating SBDC organizations.

The section would further set forth the information to be contained in the application.

Proposed § 130.420 would set forth annual application procedures for applicants continuing in the program. These would be set forth in the annual Program Announcement, along with the due date for submission of continuing applications.

Section 130.430 would set forth the three possible decisions in the application process, approval, conditional approval or rejection. The section would further describe the right of the SBA, in the event of a conditional approval, to conditionally fund a recipient organization for one or more specified periods not exceeding one Budget period.

Proposed § 130.440 would set forth the manner by which the maximum amount of a grant is determined, as well as the significant factors to be considered in the allocation of national SBDC funds.

Proposed § 130.450 would delineate the requirements concerning Matching Funds. This section would explain that a recipient organization must provide total Matching Funds equal to the total amount of the SBDC grant and all amendments or modifications thereto. The section would further detail responsibilities for identification of all sources of Matching Funds, including cash and cash accounts, and set forth types of sources which may not be used as sources of Matching Funds. The section would finally describe the ways that overmatched amounts (Matching Funds which exceed the required equal match) may be utilized by the SBDC.

Proposed § 130.460 would delineate the information to be included in the proposal and in the budget justification portion of an application. The section would include descriptions of important concepts and principles required to be addressed by the applicant in the proposed budget, including the percentage of federal dollars which must be allocated to Direct costs of program delivery, the inclusion of separate budgets and Indirect cost base and rate agreements for the Lead Center and all SBDC service providers, principles for determining allowable costs and expenses, limitations on the use of federal dollars for lobbying activities, salary guidelines for SBDC Directors, subcenter Directors and staff members and guidelines for transportation and travel expenses. With respect to Indirect cost base rates, the section would provide that the service provider's predetermined rate from prior federal activity would be used, and, in the event a service provider does not already have a predetermined rate as a result of dealings with another federal agency, the manner in which the rate shall be negotiated.

Proposed § 130.470 would describe the activities and services for which an SBDC may charge a fee.

Proposed § 130.480 would provide that program income must be utilized to accomplish program objectives and would include directions concerning reporting requirements and limitations on the use of program income for Matching Funds contributions.

Section 130.500 would provide that federal dollars are transferred to the SBDC through the SBA internal "Letter of Credit Replacement System", and would set forth the standard forms to be utilized to draw down funds and to report drawdowns and cash transactions to the SBA.

Proposed § 130.600 would describe the Cooperative Agreement entered into between the recipient organization and the SBA, as well as the procedures established to resolve Disputes and Conflicts.

Section 130.610 would describe the general terms to be included in the Cooperative Agreement.

Section 130.620 would provide the procedure for amending or revising a Cooperative Agreement due to changes in the scope, work or funding of an SBDC during the budget year, and would set forth those changes which require an amendment. The section would further set forth those revisions or changes which do not require an amendment to the Cooperative Agreement, such as budget revisions or reallocations of funds in accordance with applicable OMB circulars.

Proposed §§ 130.630, 130.640 and 130.650 would respectively set forth Dispute resolution procedures, Conflict resolution procedures and the non-renewal procedure to be utilized by SBA in the event of non-performance or poor performance on the part of an SBDC.

Proposed § 130.700 would explain the grounds and procedures for suspending or terminating a recipient organization. After the SBA has entered into a Cooperative Agreement with a recipient organization, the SBA would not suspend or terminate any such agreement unless the SBA provides the recipient organization with written notification setting forth the reasons for the proposed action and affording the recipient organization an opportunity for a hearing, appeal, or other administrative proceeding under the provisions of the Administrative Procedure Act, 5 U.S.C. 553 *et seq.*

The general procedures that would be applicable are contained in 13 CFR 143.43 and 143.44, Enforcement and Termination for Convenience, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, and in OMB Circular A–110, Attachment L, Suspension and Termination Procedures for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations, Uniform Administrative Requirements.

Proposed § 130.800 would explain that the SBA would have the authority to review and oversee the Cooperative Agreement and ongoing operations of the SBDC network. In addition, the SBA would have the authority to make programmatic and financial review visits to Lead Centers and SBDC service providers to analyze and assess training, counseling and any other SBDC related activities. Furthermore, an on-site evaluation of an SBDC network would be conducted by the SBA, with SBDC participation, as required by law.

Additionally, this section would provide that the recordkeeping requirements of the SBDC network shall be as set forth in OMB Circulars A–128 and A–133.

Proposed § 130.830 would also state that all audits are to be conducted in accordance with provisions governing audits contained in applicable OMB Circulars.

Compliance With Executive Orders 12612, 12778 and 12866; Regulatory Flexibility Act, 5 U.S.C. 601 et seq.; and the Paperwork Reduction Act, 44 U.S.C. ch. 35

The SBA certifies that this proposed rule, if promulgated in final, would not be considered a significant rule within the meaning of Executive Order 12866 because it would not have an annual economic effect in excess of $100 million, result in a major increase in costs for individuals or governments, or have a significant adverse effect on competition. The SBA has made this determination based upon the fact that this proposed rule would establish regulations which conform to the existing parameters under which the program is already functioning. Further pursuant to Public Law 103–121, the Departments of Commerce, Justice, and State, the Judiciary, and the Related Agencies Appropriations Act of 1994, the total amount of funds designated for the SBDC Program is $71,266,000.

For purposes of Executive Order 12612, the SBA certifies that this proposed rule would have federalism implications. As such, the SBA offers the following Federalism Assessment.

This proposed rule would implement Section 21 of the Small Business Act, 15 U.S.C. 648, and is designed to allow the States participating in the SBDC Program maximum policymaking and administrative discretion within the requirements of the law and sound program management. In formulating and implementing the policies governing the SBDC Program set forth in this proposed rule, the SBA has encouraged the State participants to develop their own methods of achieving program objectives and has refrained, to the maximum extent practicable, from establishing uniform national requirements for the program.

For purposes of Executive Order 12778, the SBA certifies that this proposed rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

For purposes of the Regulatory Flexibility Act, the SBA certifies that this proposed rule, if promulgated in final, would not have a significant

economic effect on a substantial number of small entities for the same reason that it is not a significant rule.

For purposes of the Paperwork Reduction Act, the SBA certifies that this proposed rule, if promulgated in final, would impose no new reporting or recordkeeping requirements. This proposed rule does, however, codify, at §§ 130.800 through 130.830, paperwork requirements previously cleared by the Office of Management and Budget under OMB control numbers 3245–0075 (SBA Form 20, National Training Participant Evaluation Questionnaire); 3245–0090 (SBA Project Officer's Checklist utilized in monitoring the SBDC); 3245–0091 (SBA Form 641, Request for Counselling Services); 3245–0108 (SBA Form 1062, Management Assistance Control Record utilized by the counsellor for each client as a running record of counselling activity); 3245–0123 (SBA Form 888, Management Training Form completed as a summary of a training event); 3245–0169 (Standard Forms 269 and 272, financial reporting forms completed by the SBDC); 3245–0183 (SBA Form 1419, counselling evaluation form completed by the client); and 3245–0221 (SBA Form 1496, utilized in the SBDC on-site review process).

List of Subjects in 13 CFR Part 130

Business development, Small businesses, Small Business Development Center (SBDC), Technical assistance.

For the reasons set out above, Title 13 of Code of Federal Regulations, Chapter 1 is proposed to be amended by adding a new Part 130 as follows:

PART 130—SMALL BUSINESS DEVELOPMENT CENTERS

Sec.

130.100 Introduction.
130.110 Definitions.
130.200 Entities eligible to establish an SBDC network.
130.300 Small Business Development Centers (SBDCs). [Reserved]
130.310 Area of service.
130.320 Location of lead center and SBDC service providers.
130.330 Operating requirements.
130.340 SBDC Advisory Boards.
130.350 SBDC services and restrictions on service.
130.360 Specific program responsibilities.
130.400 Application procedure. [Reserved]
130.410 New applications.
130.420 Continuing applications.
130.430 Application decisions.
130.440 Maximum amount of grant.
130.450 Matching funds.
130.460 Proposal preparation—Budget justification.
130.470 Fees.
130.480 Program income.
130.500 Funding. [Reserved]
130.510 Transfer of funds.
130.600 Cooperative agreement. [Reserved]
130.610 General terms.
130.620 Amendments and revisions to cooperative agreement.
130.630 Dispute resolution procedures.
130.640 Conflict resolution procedures.
130.650 Non-renewal procedures for non-performance.
130.700 Suspension and termination causes and procedures.
130.800 Oversight of the SBDC program. [Reserved]
130.810 SBA review authority.
130.820 Recordkeeping requirements.
130.830 Audits and investigations.

Authority: Sections 5(b) (6) and (21) of the Small Business Act, as amended, 15 U.S.C. 634(b)(6) and 648; Pub. L. 101–515, 101 Stat. 2101; Pub. L. 101–574, 104 Stat. 2814; Pub. L. 102–366, 106 Stat. 986; and Pub. L. 102–395, 106 Stat. 1828.

§ 130.100 Introduction.

(a) *Objectives.* (1) The overall objective of the SBDC program is to create a broad-based system of assistance for the small business community. To accomplish these objectives, SBDCs link resources of the Federal, State and local governments with the resources of the educational community and the private sector to meet the specialized and complex needs of the small business community.

(2) SBDCs are intended to be responsive to local needs in providing assistance to the small business community as mutually identified by the SBA Project Officer and the SBDC Director.

(b) *Overview.* The SBDC program shall be under the general management and oversight of the SBA. However, in keeping with the legislative authority for the SBDC program, the SBA recognizes that a partnership exists between the SBA and the recipient organization for the delivery of assistance to the small business community. Services shall be provided pursuant to a Cooperative Agreement. The SBA shall also consult with SBDC Directors and recognized organizations representing SBDCs in the formulation of the annual Program Announcement and the development of other program guidelines.

(c) *Incorporation of amended references.* All references in these regulations to OMB Circulars, Standard Operating Procedures, other SBA regulations, and other sources of SBA policy guidance are intended to incorporate all ensuing changes or amendments to such sources.

§ 130.110 Definitions.

(a) *Applicant organization:* The eligible entity under § 130.200 which applies for Federal funding to operate an SBDC network.

(b) *Budget period:* The 12-month period in which expenditure obligations are incurred by a SBDC. This period must coincide with either the calendar year or the Federal fiscal year.

(c) *Cash match:* Non-Federal funds allocated specifically to the operation of the SBDC network equaling no less than fifty percent of the Federal contribution. Cash Match includes Direct costs committed by the applicant or recipient organization and SBDC service providers, to the extent that such costs are committed as part of the specific line item Direct costs verified by their certifying representative prior to funding. As an example, Cash Match would include non-Federal salaries and fringe benefits paid to employees of the SBDC. Cash Match does not include:

(1) Funds contributed from other Federal sources;

(2) Program income or fees collected from small businesses receiving assistance; or

(3) Indirect costs, overhead costs or in-kind contributions.

(d) *Cognizant agency:* The Federal agency, other than the SBA, which has established an indirect cost rate for budgetary and funding purposes for a recipient organization or sponsoring SBDC organization. Normally, this is the agency from which the organization has its largest grant or receives its greatest amount of Federal funding. Once established for an organization, its Indirect cost rate is universal throughout the Federal government.

(e) *Conflict:* For purposes of this part, Conflict means all programmatic disagreements, whether pre or post award, between an applicant or recipient organization and the SBA.

(f) *Cooperative agreement:* The legal instrument pursuant to the terms of which the SBA awards Federal funds to recipient organizations and recipient organizations provide services to the small business community. Cooperative agreements are used because there is substantial involvement between the funding agency and the recipient organizations. It is also known at times as a Notice of Award.

(g) *Cosponsorship:* A "Cosponsorship" as defined in and governed by § 8(b)(1)(A) of the Small Business Act, 15 U.S.C. 637(b)(1)(A), and SBA's Standard Operating Procedures.

(h) *Counseling:* Individual advice, guidance or instruction given to a person or entity concerning the formation, management, financing and operation of small business enterprises. Counseling may be provided by

different modes of transmission, including face-to-face, electronic media, publications and video.

(i) *Direct costs:* "Direct costs" as defined in Office of Management and Budget (OMB) Circular A–21, A–87 or A–122, as appropriate. Under these Circulars, SBDC recipient organizations are required to allocate at least 80 percent of the Federal funds provided through the Cooperative Agreement to the Direct costs of program delivery.

(j) *Dispute:* For purposes of this part, Dispute means any financial disagreement arising between a recipient organization and the SBA.

(k) *Full-time employee:* An employee of the recipient organization who is assigned to the SBDC and who performs work for it during the full customary work week of the recipient organization.

(l) *Grants/cooperative agreement appeals committee:* The SBA committee responsible for, among other things, resolving appeals arising from disputes between an applicant or recipient organization and the SBA. The membership of the Committee and its Chairperson are designated by the SBA Administrator.

(m) *Grants management specialist:* An individual in the SBA's Central Office designated by the SBA Administrator to be responsible for the financial review, negotiation, award, and administration of one or more SBDC Cooperative Agreements.

(n) *Host:* See "Recipient Organization".

(o) *Indirect costs:* "Indirect costs" as defined in Office of Management and Budget (OMB) Circular A–21, A–87, or A–122, as appropriate.

(p) *In-kind contributions:* Property, facilities, services or other non-monetary contributions from non-Federal sources. Some examples of in-kind contributions are donated printing, supplies, or the value of volunteer services (except that SCORE services cannot be used as in-kind match). *See* OMB Circular A–87, A–102, or A–110, as appropriate.

(q) *Key SBDC employee:* Any employee in the SBDC network having managerial or budgetary control over the activities of the Lead Center or its SBDC service providers.

(r) *Lead Center:* The entity of the SBDC network which administers and operates the SBDC network. The Lead Center may also provide assistance directly to the small business community.

(s) *Lobbying:* As applied to the recipient organization of a Federal grant, loan, or cooperative agreement, "lobbying" shall have the meaning given in OMB Circulars A–21, A–87 and A–122, and Pub. L. 101–121, section 319.

(t) *Matching funds:* The statutorily required amount of non-Federal contribution to SBDC project costs. In the SBDC program, this required amount is equal to the Federal contribution. At least 50% of the statutorily required matching funds must be provided in the form of Cash Match. The remaining 50% of the statutorily required matching funds may be provided through any allowable combination of additional cash, in-kind contributions, or indirect costs. Any non-Federal contributions in excess of the statutorily required amount are considered Overmatched Amounts. No portion of the matching funds may be from Federal sources or be program income or fees collected from clients or attendees.

(u) *Notice of award:* See "Cooperative agreement".

(v) *Overmatched amount:* That amount of indirect, in-kind or cash contributions by the recipient organization or by a third party to the recipient organization which exceeds the statutorily required non-Federal contribution.

(w) *Part-time employee:* An employee of the recipient organization who is assigned to and who performs work for the SBDC for less than the full customary work week of the recipient organization.

(x) *Program announcement:* The SBA's annual publication of items which an applicant organization must address in its application in order to be considered for SBDC funding by the SBA.

(y) *Program income:* Income earned or received by the SBDC recipient organization or SBDC subrecipient from any SBDC supported activity as defined in Attachment D of OMB Circular A–100 and Attachment E of OMB Circular A–102.

(z) *Program manager:* An individual in the SBA's Central Office designated by the AA/SBDC to oversee the operations of one or more SBDCs.

(aa) *Project officer:* An individual designated by the AA/SBDCs who negotiates the annual Cooperative Agreement and monitors the ongoing operations of an SBDC.

(bb) *Project period:* The period of time in which an SBDC actively participates with the SBA in providing assistance to the small business community served by the SBDC. A project period begins on the day of award and normally continues over a number of budget periods, in twelve (12) month increments.

(cc) *Proposal:* The written submission by a proposed or existing SBDC explaining its projected SBDC activities for an upcoming budget period and requesting that the Small Business Administration provide funding for use in its operations.

(dd) *Recipient organization:* After funding is approved and the applicant enters into a Cooperative Agreement with the SBA, the applicant organization becomes the recipient organization. The recipient organization receives the Federal funds and is responsible for establishing the Lead Center. The recipient organization is also at times referred to as the Host.

(ee) *SBDC:* An abbreviated name for a Small Business Development Center network, created pursuant to § 21 of the Small Business Act, 15 U.S.C. 648.

(ff) *SBDC Director:* The full-time senior manager designated by each recipient organization and approved by the SBA.

(gg) *SBDC network:* The combination of the Lead Center or recipient organization, extension offices, satellite locations, subcenters, and any other directly affiliated entity officially authorized to perform SBDC services. An SBDC network may be statewide or, in states having more than one recipient organization, may be regional.

(hh) *SBDC service providers:* The term used to describe all SBDC network participants. This term would include extension offices, satellite locations, subcenters, and any other directly affiliated entity officially authorized to perform SBDC services as part of the SBDC network.

(ii) *Sponsoring SBDC organizations:* Organizations or entities which sponsor SBDC service providers as part of the SBDC network under a contract or agreement with the recipient organization.

(jj) *Training:* The process of teaching individuals or entities in group sessions concerning the formation, management, financing and operation of small business enterprises. Training methods may include in-person group sessions or other communication modes including teleconferences, videos, publications and electronic media.

(kk) *Working days:* All days except Saturdays, Sundays and those holidays designated in a Cooperative Agreement.

§ 130.200 Entities eligible to establish an SBDC network.

(a) The following entities are eligible to enter into a Cooperative Agreement with the Small Business Administration for the purpose of establishing the operation of an SBDC network:

(1) Any public or private institution of higher education;

(2) Any land-grant college or university;

(3) Any college or school of business, engineering, commerce or agriculture;

(4) Any community or junior college; or

(5) Any entity formed by two or more of the above entities.

(b) In addition to the entities shown in subparagraph (a) of this section, any entity which was operating as a recipient organization as of December 31, 1990, is eligible to continue to serve as a recipient organization.

(c) Other SBDC service providers are not required to meet the eligibility requirements of a recipient organization. However, the recipient organization shall primarily utilize institutions of higher education to provide services to the small business community.

§ 130.300 Small Business Development Centers (SBDCs). [Reserved]

§ 130.310 Area of service.

(a) Generally, the area of service for any recipient organization shall be the State in which it is located. In exceptional circumstances, more than one recipient organization may be located in any State in which the AA/SBDCs determines it is necessary or beneficial to effectively implement the program and to provide services to all interested small businesses.

(b) Where more than one recipient organization is to be located in a given State, the AA/SBDCs shall determine in writing the general geographic areas to be served by each recipient organization in that State. Such determination shall be consistent with the State plan. Each recipient organization shall provide assistance and services to those small businesses of the State located in the general area to which it is assigned.

§ 130.320 Location of Lead Centers and SBDC service providers.

(a) The facilities and staff of each Lead Center and SBDC service provider shall be located so as to provide maximum accessibility and benefits to the small businesses which the SBDC network is intended to serve.

(b) Lead Centers and SBDC service providers should be organized and located to serve the needs of the small business community of the service area.

(c) The locations of the Lead Center and the SBDC service providers will be reviewed as a part of the application review process for each budget period. Addresses and telephone numbers of existing or new locations shall be noted in the annual application proposal.

(d) A request for approval of any SBDC service provider not in the application proposal which is to be funded in whole or in part by Federal funds must be submitted as an amendment to the Cooperative Agreement to the appropriate SBA district office, and shall be processed according to the procedures used for approving amendments to applications.

§ 130.330 Operating Requirements.

(a) The Lead Center shall operate as an independent entity within the state or regional sponsoring organization.

(b) The Lead Center shall have a full-time staff, including a full-time SBDC Director.

(c) The Lead Center and other SBDC service providers shall have a conflict of interest policy applicable to their SBDC consultants, employees, instructors and volunteers.

(d) One-to-One counseling shall be provided to small businesses without charge.

(e) Training courses that respond to the needs of the small business community shall be provided throughout the geographical area serviced by the SBDC network.

(f) The Lead Center is responsible for the overall management and coordination of the SBDC network. The administrative services the Lead Centers are required to provide include, but are not limited to: program development, program management, financial management, reports management, promotion and public relations, program assessment and evaluation, and internal quality control.

(g) The SBDC network shall extend its service to the public on a nondiscriminatory basis in accordance with 13 CFR parts 112, 113 and 117 of the Regulations issued by the SBA. 13 CFR parts 112, 113 and 117 require that no person shall be excluded on the grounds of age, color, handicap, marital status, national origin, race, religion or sex from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity for which the recipient organization received Federal financial assistance from the SBA.

(h) The Lead Center shall be open to the public twelve months each year, operating on a 40 hour week basis or during the normal business hours of the recipient organization. Anticipated closures for holidays and other organizational shutdowns shall be included in the annual application submitted by the SBDC. Emergency closures shall be reported to the SBA Project Officer as soon as is feasible. Other SBDC service providers shall operate during the normal business hours of their sponsoring SBDC organizations.

§ 130.340 SBDC Advisory Boards.

(a) *State/Regional Advisory Boards.* (1) The Lead Center shall establish an advisory board to advise, counsel, and confer with the SBDC Director on matters pertaining to the operation of the SBDC network.

(2) The advisory board shall be referred to as a State SBDC Advisory Board in a State having only one recipient organization.

(3) The advisory board shall be referred to as a Regional SBDC Advisory Board in a State having more than one recipient organization.

(b) These boards shall represent the entire service area and shall include, among others, small business owners.

(c) New Lead Centers are required to establish a State or Regional SBDC Advisory Board no later than the second budget period.

(d) A State or Regional SBDC Advisory Board member may also be a member of the National SBDC Advisory Board.

(e) *Travel of Advisory Board Members.* Travel of any Board member for official Board activities may be paid for out of the SBDC's budgeted funds.

(f) *National SBDC Advisory Board.* (1) The SBA shall establish a National SBDC Advisory Board consisting of nine members who are not part of the Federal workforce, appointed by the SBA Administrator. Three members of the National SBDC Board shall be from universities or their affiliates and six shall be from small businesses or associations representing small businesses. All Board members serve three year terms. Terms are staggered with three Board members appointed each year. The Administrator may also appoint successors to fill unexpired terms.

(2) The National SBDC Advisory Board shall elect a Chairman and shall advise, counsel, and confer with the SBA's AA/SBDCs on policy matters pertaining to the operation of the SBDC program. The Board shall meet, with the AA/SBDCs, at least semiannually at the call of the Chairman.

§ 130.350 SBDC Services and Restrictions on Service.

(a) *General.* The SBDC network shall maximize accessibility to small businesses by providing extension services and utilizing satellite locations when necessary. To the extent possible, the SBDC shall make full use of other Federal, State, and local government programs that are concerned with aiding

small business. Under the direction and administration of the SBDC Director, the SBDC network shall provide:

(1) Access to business analysts to counsel, assist and inform small business clients;

(2) Access to technology transfer agents to provide state-of-the-art technology to small businesses;

(3) Access to information specialists to assist in providing information searches and referrals to small business;

(4) Access to part-time professional specialists to conduct research or to provide counseling assistance whenever the need arises;

(5) Access to laboratory and adaptive engineering facilities;

(6) Access to international trade assistance; and

(7) Access to procurement assistance.

(b) *Services.* (1) The assistance provided through the SBDC network shall reflect local small business needs. Services should be periodically assessed and improved to keep pace with changing small business needs. The SBDC network shall provide prospective and existing small business owners and managers with comprehensive small business assistance. These services may include, but are not limited to, help with financing, marketing, production, organization, engineering and technical problems, research and feasibility studies. Special SBDC programs and economic development activities may include, but are not limited to advocacy, technology assessment, transfer and commercialization, international trade centers and programs to encourage exporting, business law information and guidance, procurement assistance, rural development, agribusiness, convention, tourism and small business incubators. SBDCs shall provide free one-on-one counseling. SBDCs may also sponsor or cosponsor training for individuals interested in going into a small business or improving or expanding an existing small business.

(2) SBDCs are encouraged to provide financial counseling services that increase a small business concern's access to capital. For example, SBDCs are encouraged to assist small business concerns in areas such as business plan development, financial statement preparation and analysis, and cash flow preparation and analysis. These services are considered "counseling" and shall be provided to clients free of charge.

(c) *Restrictions on SBDC assistance.*

(1) SBDCs are not authorized to make loans, service loans or make credit decisions regarding the award of loans. SBDCs are also prohibited from making credit recommendations unless specifically authorized to do so by the Administrator, or his or her designee.

(2) In assisting small businesses with the preparation of financial packages, SBDCs must ensure that their clients are sufficiently involved in the process to gain the knowledge to represent themselves to the lending institution. While the SBDCs may attend meetings with lenders for the purpose of assisting the client in the preparation of the financial package, the SBDCs may not take a direct role in representing clients in loan negotiations.

(3) SBDCs must ensure that their clients know that any financial packaging assistance provided does not in any way guarantee receipt of a loan.

(4) In terms of SBA financial assistance, SBDCs may assist in completing forms for submitting loan applications and may assist a client in formulating a business plan and preparing financial statements. A representative of an SBDC may appear before the SBA with an applicant for SBA financial assistance. Unless authorized by the Administrator with respect to a specific program, an SBDC may not advocate, recommend approval or otherwise attempt in any manner to influence the SBA to provide financial assistance to any of its clients. In addition, an SBDC cannot collect fees for assisting a client in preparing an application for SBA financial assistance.

(d) *Special emphasis groups.* From time to time, the SBA shall identify special groups to be targeted for assistance by SBA grantees. Support of SBA special emphasis groups should be negotiated each year as part of the application proposal process and included in the Cooperative Agreement when appropriate. SBDCs shall endeavor to serve small business owners from all populations represented in the geographic area served by the SBDC.

§ 130.360 Specific program responsibilities.

(a) *Policy development.* The SBA shall be responsible for the development of policies relating to the management of the national SBDC program and for the development of practices to ensure compliance with applicable laws, regulations, OMB Circulars and Executive Orders. For those policies and practices directly affecting the operation of an SBDC, the SBA should consult, to the extent practicable, with recognized organizations representing SBDCs to ensure that the policies or practices promote the effective and efficient delivery of services to the small business community by the SBDC.

(b) *Responsibilities of the SBDC Directors.* Subject to SBA's oversight responsibilities, performance of the Cooperative Agreement is the responsibility of the SBDC Director. The SBDC Director shall direct and monitor the activities of the SBDC network to ensure compliance with the law, regulations, OMB Circulars, Executive Orders and the terms and conditions of the Cooperative Agreement. The SBDC Director shall direct the programmatic activities and financial affairs of the SBDC network to deliver effective services to the small business community in the geographic region included in the Cooperative Agreement. The SBDC Director shall serve as the recipient organization official responsible for program implementation, evaluation, and program adjustments necessary to meet the needs of the small business community. The SBDC Director shall have authority to make expenditures under the Lead Center's budget. SBDC Directors may manage other programs in addition to the SBDC Program as long as these programs serve small businesses and do not unnecessarily duplicate the services provided through the Cooperative Agreement with the SBA. However, SBDC Directors may not receive additional compensation from these other programs for managing them. The SBDC Director shall serve as the principal contact point for all matters involving the SBDC network.

§ 130.400 Application procedure. [Reserved]

§ 130.410 New applications.

(a) When the SBA declines to renew an existing recipient organization or the recipient organization declines to reapply, the SBA may accept applications from other organizations interested in becoming a recipient organization. An eligible entity may apply to participate in the Small Business Development Center Program by submitting an original and two copies of an application to the SBA district office covering the state or portion of a state (when there is more than one SBDC located or authorized in a state) in which the applicant proposes to provide services. The application shall meet the requirements set forth in Executive Order 12372. The application shall indicate which officials are authorized to amend the application with regard to all or particular parts of such application.

(b) An application for the initial funding of a new SBDC network must include a letter by the Governor, or his or her designee, of the State in which the SBDC will operate, or other evidence, confirming that the

applicant's designation as an SBDC would be consistent with the plan adopted by the State government and approved by the SBA. No such requirement is imposed on subsequent applications from existing recipient organizations.

(c) The application shall set forth the eligible entity or entities operating or proposing to operate in the SBDC network; a list of the Lead Center and SBDC service providers by name and address; the geographic areas to be serviced; the resources to be used; the services that will be provided; the method for delivering the services, including a description of how and to what extent academic, private and public resources will be used; a budget; a listing of the proposed members of the State or Regional Advisory Board and other relevant information set forth in the Program Announcement.

(d) The applicant should make every effort to ensure an application is complete when filed. Authorized SBA officials may request that the applicant amend an application. At any time, an applicant or recipient organization may file an amendment for the SBA's review and approval. An amendment shall be signed by the official of the applicant or recipient organization authorized to do so on the original application.

(e) Upon written recommendation for approval by the SBA District Director, the proposal shall be submitted through appropriate SBA channels to the AA/SBDCs for review.

§ 130.420 Continuing applications.

(a) The SBA shall announce the due date for submission of all continuing applications in an annual Program Announcement. This Program Announcement shall include a due date for SBDCs funded on a Federal fiscal year basis and a due date for SBDCs funded on a calendar year basis. SBDCs shall meet these due dates to receive consideration of their application. However, an extension may be granted by the SBA Project Officer with the concurrence of the Program Manager.

(b) Eligible entities shall submit an original and two (2) copies of a proposal to the appropriate SBA district office covering the state or portion of a state (when there is more than one SBDC located in a state) in which the applicant proposes to continue to provide service.

(c) The proposal format shall correspond to the annual SBDC Program Announcement.

(d) The applicant should make every effort to ensure an application is complete when filed. Authorized SBA officials may request that the applicant amend an application.

(e) A timetable for appropriate SBA review will be included as a part of the annual Program Announcement.

(f) A proposal shall be reviewed by the SBA Project Officer in the SBA district office.

(g) Upon written recommendation for approval by the SBA District Director, the proposal shall be submitted through appropriate SBA channels to the AA/SBDCs for review. Project Officers may request further information to ensure the proposal conforms to all administrative, budgetary and programmatic requirements of the Program Announcement.

(h) The Office of SBDCs Grants Management Specialist shall negotiate and determine that all dollars committed are reasonable, allowable and allocable, to assure conformity of the application with applicable statutory, financial, and regulatory requirements, and OMB Circulars. The Grants Management Specialist may request additional information or amendments to the application prior to issuing the Cooperative Agreement.

(i) At any time, an applicant or recipient organization may file an amendment for the SBA's review and approval. An amendment shall be signed by the official of the applicant or recipient organization authorized to do so on the original application. Amendments must be reviewed and incorporated into the Cooperative Agreement by the Central Office Grants Management Specialist before they may take effect.

§ 130.430 Application decisions.

(a) The AA/SBDCs or his or her designee may approve, conditionally approve, or reject any application or amendment to an application. If the application or amendment is rejected, the AA/SBDCs shall communicate the reasons for rejection simultaneously to the applicant and any appropriate SBA field office. If the approval is conditional, the conditions shall be set forth in the Cooperative Agreement. Upon approval or conditional approval, a Cooperative Agreement may be issued by the Grants Management Specialist.

(b) In considering the application, significant factors shall include:

(1) The ability of the applicant to contribute Matching Funds; and

(2) For applicants who have been previously funded, the quality of their performance in the previous Budget period.

(c) In the event of a conditional approval, SBA reserves the right to conditionally fund a recipient organization for one or more specified periods of time up to a maximum of one Budget period in order to provide the recipient organization with time to resolve the conditions set forth in the conditional approval. When the SBA conditionally funds a recipient organization, the specific conditions and applicable remedies which must be addressed will be set forth as special terms and conditions in the Cooperative Agreement. In the event the recipient organization fails to resolve such conditions to SBA's satisfaction within the time period provided by SBA, SBA has the right to determine not to continue to fund the SBDC, subject to the provisions of § 130.700(a).

§ 130.440 Maximum amount of grant.

No recipient of funds shall receive an SBDC grant which would exceed the greater of:

(a) The minimum statutory amount, or

(b) Its pro rata share of all SBDC grants as determined by the statutory formula set forth in section 21(a)(4) of the Small Business Act.

§ 130.450 Matching Funds.

(a) As a condition of any Cooperative Agreement or amendment or modification thereof, the recipient organization must provide total Matching Funds equal to the total amount of the SBA funding and all amendments or modifications thereof.

(b) All sources of Matching Funds must be identified as specifically as possible. In the case of cash, sources shall be identified by name and account number in the budget proposal and shall be certified by an authorized official of the recipient organization or by any sponsoring SBDC organization providing a Cash Match through a sub-contract agreement. The account containing such cash must be under the direct management of the SBDC Director, or, if provided by a sponsoring SBDC organization, by its SBDC employee. If the State is providing such cash, and if the State appropriation cycle permits, the recipient organization must verify that sufficient funds will be available prior to the use of Federal dollars.

(c) The Grants Management Specialist is responsible for determining Matching Funds or Cash Match meet the requirements of the statute and appropriate OMB circulars.

(d) *Overmatched amounts.* (1) SBDCs are encouraged to furnish Overmatched Amounts.

(2) Once approved as part of the budget, any Overmatched Amount can be applied to any additional Matching Funds requirements that would be

necessary in the case of a supplemental funding increase received by the SBDC during the budget period, as long as the total Cash Match being provided by the SBDC remains at 50% or more of the total SBA funds provided during the budget period.

(3) If used in the manner described in paragraph (d)(2) of this section, such Overmatched Amount is reclassified as committed Matching Funds.

(4) Allowable Overmatched Amounts which have not been used in the manner described in paragraph (d)(2) of this section may, with the approval of the AA/SBDCs, be used as a credit to offset any confirmed audit disallowances applicable to the Budget period in which the Overmatched Amount exists. Offsetting funds shall be considered to be used as Matching Funds and are not again allowable as Matching Funds for past or future Budget periods.

(5) Overmatched Amounts applicable to one Budget period cannot be used as Matching Funds for a different Budget period, except that Overmatched Amounts applicable to one Budget period may be used as a credit to offset audit disallowances of the previous two Budget periods only.

(6) Impermissible sources of Matching Funds. Under no circumstances may the following be used as sources of the Matching Funds of the recipient organization:

(i) Uncompensated student labor;

(ii) SCORE, ACE, or SBI volunteers;

(iii) Program income;

(iv) Funds or indirect or in-kind contributions from any other Federal program.

§ 130.460 Proposal preparation—Budget justification.

(a) *General requirements.* The proposal must include all items required by the Program Announcement. The AA/SBDCs shall send the Program Announcement to each SBDC immediately after issuance.

(b) *Submission of budget justification.* The budget justification for the upcoming Budget period must be prepared and submitted (as a part of the proposal package) to the SBA Project Officer in the SBA district office by the SBDC Director on behalf of the recipient organization, or by the applicant organization's authorized representative in the case of a first time SBDC application. The budget shall be reviewed annually upon submission of a renewal proposal and shall be considered during the course of negotiation of the renewal Cooperative Agreement. All budgets are subject to appropriation of the necessary funds by Congress.

(1) *Direct costs.* Unless otherwise provided for in applicable OMB circulars, at least eighty percent (80%) of any funding provided by SBA must be allocated to Direct costs of program delivery. In the event that all Indirect costs are waived by the applicant organization in order to meet the Matching Funds requirement, one hundred percent (100%) of the SBA funding provided must be allocated to program delivery. If some, but not all, Indirect costs are waived to meet the Matching Funds requirement, the lesser of the following may be allocated as Indirect costs of the program and charged against SBDC funding provided by SBA:

(i) Twenty percent (20%) of SBDC funding provided to the recipient organization by SBA, or

(ii) The amount remaining after the waived portion of Indirect costs is subtracted from the total indirect costs.

(2) *SBDC service provider costs.* (i) As a separate attachment to the budget, the applicant organization shall include separate budgets for all sub-contracted SBDC service providers in conformity with OMB financial requirements. Applicable Indirect cost base and rate agreements shall be included for the Lead Center and all SBDC service providers. The rate used shall be equal to or less than the negotiated predetermined rate. If no such rate exists, then one shall be negotiated between the sponsoring SBDC organization or SBDC service provider and its Cognizant Agency. In the event the sponsoring SBDC organization or SBDC service provider does not have a Cognizant Agency, the rate shall be negotiated with the SBA Project Officer. The rate shall be negotiated and agreed upon in accordance with OMB Circular A–21.

(ii) The amount of cash, in-kind contributions and indirect costs for the Lead Center and all sub-contracted SBDC service providers shall be indicated in accordance with OMB financial requirements.

(iii) Expenses. (A) *Cost principles.* Principles for determining allowable costs are contained in OMB Circulars A–21 (cost principles for grants, contracts, and other agreements with educational institutions), A–87, (cost principles for programs administered by State and local governments), and A–122 (cost principles for nonprofit organizations).

(B) *Costs associated with lobbying.* No portion of the Federal dollars received by an SBDC may be used for lobbying activities, either directly by the SBDC or indirectly through outside organizations, except those activities permitted by the provisions of OMB Circular A–122. Restrictions on and reports of lobbying activities by the SBDC recipient of a Federal grant, loan or cooperative agreement shall be in accordance with OMB Circulars A–21, A–87, and A–122, Section 319 of Public Law No. 101–121, and the annual Program Announcement.

(C) *Salaries.* (*1*) If an SBDC is based in a university or college, the SBDC Director's salary should approximate the average annualized salary of a full professor in the school or department in which the SBDC is located organizationally (e.g., School of Business, School of Engineering). The salary of the subcenter Director should approximate the average annualized salary of an assistant professor in such school or department.

(*2*) If an SBDC is based in an entity other than a university or college, the annualized salaries of the SBDC Director and the subcenter Director should approximate the average salaries of parallel positions within the recipient organization. Salaries for all other positions within the SBDC shall be established based upon the level of responsibility, and shall be comparable to salaries for similar positions in the area served by the SBDC.

(*3*) Recruitment and salary increases for SBDC Directors, subcenter Directors and staff members shall conform to the administrative policy of the recipient organization.

(D) *Travel.* Transportation costs shall be at coach class; per diem rates, including lodging, shall not exceed those authorized by the written travel policies of the Host. All travel must be separately identified in the proposed budget as planned in-State, planned out-of-State, unplanned in-State or unplanned out-of-State. In order for any travel to be approved by the SBA, it must be in accordance with the written travel policies of the recipient organization or the sponsoring SBDC organization and directly attributable to specific work of the SBDC or incurred in the normal course of administration of the program. All proposed travel by the SBDC Director and the SBDC staff must be reasonable, justified in writing, and included in the SBDC's proposed annual budget. Such justification must indicate the estimated cost, number of persons traveling, and the benefit to be derived by the small business community from the proposed travel. A specific projected amount, based on past experience where appropriate, must also be included in the budget for any unplanned travel. A justification in

greater detail shall be required for unplanned out-of-State travel. Any proposed unplanned out-of-State travel that exceeds the approved budgeted amount for travel must be submitted to the Project Officer for approval on a case-by-case basis. Any such submission must contain a written budget revision and written narrative explaining the need for such travel and the relation of such travel to the efficient operation of the SBDC. Travel outside the United States must have prior approval by the AA/SBDCs on a case-by-case basis.

(E) *Dues.* Costs of membership in business, technical, and professional organizations shall be allowable expenses. The use of Federal dollars in payment of such dues shall be permitted, provided that all such payments are anticipated in the budget proposal, approved by the SBA as reasonable and comply with § 130.460(b)(2)(iii)(B).

§ 130.470 Fees.

SBDC clients may be charged a reasonable fee to cover program costs in connection with training activities sponsored or cosponsored by the SBDC, or costs associated with approved specialized services. Fees may not be imposed for counseling, as defined in § 130.110(h).

§ 130.480 Program income.

(a) Treatment of program income for recipient organizations or SBDC service providers based in universities or nonprofit organizations shall be subject to the provisions of Attachment D of OMB Circular A–110. Treatment of program income for recipient organizations or SBDC service providers based in State or local governments shall be subject to the provisions of § 7.e and Attachment E of OMB Circular A–102 and 13 CFR 143.25.

(b) Program income, including any interest earned on program income, must be used to accomplish program objectives. It cannot be used to satisfy the requirements for Matching Funds. Each SBDC must report in detail, on Financial Reporting Form SF 269, receipts and expenditures of program income, including any income received through co-sponsored activities. A narrative description of how program income was used to accomplish program objectives shall be included or attached to the SF Form 269.

(c) The phrase "to accomplish program objectives" means expanding the quantity or quality of services, resources or outreach provided by the SBDC network. The Project Officer is responsible for monitoring financial expenditures to ensure that program objectives are being met. Any unused program income will be carried over to be utilized to further program objectives in a subsequent Budget period.

§ 130.500 Funding. [Reserved]

§ 130.510 Transfer of funds.

(a) All SBDC Cooperative Agreements will be funded through the SBA internal "Letter of Credit Replacement System" (LORS), formerly administered under the Department of Treasury's Letter of Credit (LOC) system. The Standard Forms 1193A and 1194 will be used to establish and modify letters of credit.

(b) SBDCs shall utilize the Standard Form 5805 in order to draw down funds. It is critical that recipients "draw down" only those funds required to meet their estimated or actual expenses. The frequency of drawdowns and the amount of the cash-on-hand balance are monitored by examining the Standard Form 272 (Federal Cash Transactions Report), submitted quarterly by the recipient. Repeated drawdowns in excess of immediate cash needs may result in the cancellation of the LOC. In the event any interest results from the deposit of any drawdowns in an interest-bearing account, SBDCs, other than state government sponsored SBDCs, must report and return such interest annually to the SBA.

§ 130.600 Cooperative Agreement. [Reserved]

§ 130.610 General Terms.

(a) Upon approval of the initial or renewal application, the recipient organization and the SBA shall enter into a Cooperative Agreement. The Cooperative Agreement shall set forth the programmatic and fiscal responsibilities of the recipient organization and the SBA, and describe the scope of the project to be funded as well as the budget of the program year covered by the Cooperative Agreement.

(b) Principles for determining applicable administrative requirements are contained in the following OMB Circulars and are applicable to the Cooperative Agreement: A–110 (for programs administered by educational institutions and nonprofit organizations) and A–102 (for programs administered by State and local governments).

§ 130.620 Revisions and amendments to Cooperative Agreement.

(a) *Requested revisions.* A revision to the Cooperative Agreement may be requested in writing by the recipient organization at any time during the Agreement period. These revisions will normally relate to changes in the scope, work or funding during the specified budget year. Any request for revision must be submitted on an SF–424 "Application for Federal Assistance," signed by the recipient organization's "authorized representative," and include a revised budget and budget narrative, if applicable. Any revision to the Cooperative Agreement must be mutually agreed upon by the recipient organization and the responsible SBA district office and be approved by the AA/SBDCs. All procedures for revisions must conform to the requirements of the applicable OMB Circular (*See* § 130.620 (b) and (c)).

(b) *Revisions which require amendment to Cooperative Agreement.* The Cooperative Agreement under the section entitled "Prior Approval" shall list the proposed actions which require Project Officer concurrence, approval of the AA/SBDCs and amendment of the Cooperative Agreement. No application for an amendment submitted after the Cooperative Agreement has been issued shall be effective until it is approved and incorporated into the Cooperative Agreement. Revisions which require amendments shall include:

(1) Any change in project scope or objectives;

(2) The addition or deletion of any subgrants or contracts;

(3) The addition of any new budget line items;

(4) Budget revisions and fund reallocations which exceed the limitations established by applicable administrative regulations or OMB Circulars, either individually or in the aggregate with other such revisions or allocations;

(5) Any proposed sole-source or one-bid contracts exceeding the limits established by applicable regulations or OMB Circulars; and

(6) The carryover from one Budget period to the next Budget period of unobligated, unexpended SBA funds allocable under the Cooperative Agreement to nonrecurring, nonservable bona fide needs of the SBDC network as provided in the applicable OMB Circular and the Annual Program announcement.

(c) *Revisions which do not require amendments to Cooperative Agreement*—(1) *Budget revisions.* Revision may be requested by the recipient organization at any time and requires approval of the SBA Project Officer in the SBA district office and the AA/SBDCs as prescribed by OMB Circular A–110, Attachment J, or 13 CFR 143.30.

(2) *Reallocation of funds.* Reallocation of fund shall be conducted in accordance with OMB Circular A–110, Attachment J, or 13 CFR 143.30.

Additional guidance on this matter may be included in the annual Program Announcement.

§ 130.630 Dispute Resolution Procedures.

(a) Any recipient organization that wishes to resolve a Dispute concerning one or more elements of its Cooperative Agreement must submit a written statement describing the subject of the Dispute, together with any relevant documents or other evidence bearing on such Dispute, to the Grants Management Specialist, with a copy of such statement and accompanying evidence being sent to the Project Officer. The Grants Management Specialist shall respond in writing to the recipient organization concerning such Dispute within 30 calendar days of receipt of the descriptive statement.

(b) The procedures thereafter shall be as follows:

(1) If the recipient organization receives an unfavorable decision regarding the Dispute from the Grants Management Specialist, the recipient organization will have 30 calendar days during which to file an appeal with the AA/SBDCs. The AA/SBDCs shall respond in writing to the recipient organization concerning such Dispute within 15 calendar days of receipt of the appeal.

(2) If the recipient organization receives an unfavorable decision regarding the appeal from the AA/SBDCs, the recipient organization may make a final appeal to the SBA Grants and Cooperative Agreements Appeals Committee (the "Committee"). The appeal must be received by the Chairman of the Committee within 30 calendar days of the date of issuance of the AA/SBDCs' written decision. All appeals shall be sent to the following address: SBA Grants and Cooperative Agreements Appeals Committee, 409 3rd Street, S.W., Washington, D.C. 20416. Copies of the appeal shall also be sent to the Grants Management Specialist and the Project Officer.

(3) There shall not be any prescribed form for submission of an appeal. Formal briefs and other technical forms of pleading shall not be required. However, all appeals must be in writing and should be concise and logically arranged. Appeals are required to contain at least the following:

(i) Name and address of the recipient organization;

(ii) Identify of the SBA office/program and the Cooperative Agreement/Grant;

(iii) A statement of the grounds for appeal, with reasons why the appeal should be sustained;

(iv) A request for the specific relief desired on appeal; and

(v) A statement as to whether or not a hearing is requested, and if requested, the reasons why a hearing would materially assist in resolving the Dispute. Requests for hearing will not usually be granted unless significant material facts are substantially in dispute.

(4) The AA/SBDCs or the Committee shall have the right to request from the SBDC or the district office additional information or documentation not previously furnished to the Grants Management Specialist.

(5) In connection with an appeal proceeding under this section, the recipient organization will be afforded an opportunity to explain its position directly to the Committee, either in person or in writing.

(6) If a request for a hearing is made, the Committee may solicit additional information or material before reaching its decision to grant or deny a hearing.

(7) If a request for a hearing is granted, the Committee will issue appropriate written instructions to the recipient organization pertaining to the hearing.

(8) The Committee will reach a decision on the merits of the appeal as soon as practicable. The Committee may solicit additional information or material before reaching its final decision.

(9) The Chairperson, with advice from the Office of General Counsel, will prepare a written final decision to be transmitted to the recipient organization with copies to the Grants Management Specialist and the Project Officer. This will be the final decision of the Agency on the Dispute.

(c) Expedited dispute appeal process. When a Dispute which may affect refunding arises within 120 days of the end of the Budget period, the Committee, in consultation with the AA/SBDCs, shall meet, with at least a majority of the members in attendance. By an affirmative vote constituting a majority of its total membership, the Committee shall have discretion to shorten all response times as necessary to attain final resolution of the Dispute before the date on which a new Cooperative Agreement would be due to be issued. At any time during the appeal process within 120 days of the end of the Budget period, the recipient organization may submit a written request to use an expedited process.

§ 130.640 Conflict resolution procedures.

(a) Any Conflict that is not resolved at the SBA district office level within 15 calendar days shall be referred by the SBA Project Officer to the next SBA administrative level having authority to review such Conflict. The SBA Project Officer shall make the referral in writing and shall include the comments of the SBDC Director.

(b) If such Conflict is not resolved at any intermediate SBA administrative level within 15 calendar days, it shall be forwarded, in writing, to the AA/SBDCs for final resolution. All comments of the SBDC Director must be included in any package forwarded to the AA/SBDCs.

(c) The AA/SBDCs shall transmit a final decision in writing to the recipient organization, the SBDC Director, the SBA Project Officer and other appropriate SBA field office personnel within 30 calendar days of receipt of such documentation, unless an extension of time is mutually agreed upon by the recipient organization and the AA/SBDCs.

§ 130.650 Non-renewal procedure for non-performance.

(a) In situations where the SBS District Director believes there is sufficient evidence of an SBDC's nonperformance or poor performance under the terms of the Cooperative Agreement or these regulations, and subject to the provisions of § 130.700(a), the SBA District Director shall notify the SBDC Director any other appropriate official of the recipient organization of an intention not to renew the SBDC.

(b) This notification can be forwarded to the recipient organization at any time during the budget year, but normally should be sent no later than 3 months prior to the deadline for receipt of an application by the SBA Project Officer. When there is sufficient evidence of an SBDC's violation of these regulations, or of any other causes which may lead to the initiation of suspension or termination procedures as set forth in § 130.700 of this part, the SBA District Director may waive the notification period with the concurrence of the AA/SBDCs.

(c) This notification shall specifically cite the reasons for the intention not to renew the SBDC. It shall allow the recipient organization a 60-day period within which to change and adjust its operations in order to correct any problems cited in the notice, and to report to the SBA district office, in writing on the results of such changes or adjustments.

(d) If the recipient organization is unwilling or unable to resolve the specific problem areas to the satisfaction of the SBA district office within the 60-day period, the SBA Project Officer shall have ten (10) calendar days after expiration of such period to submit to the AA/SBDCs, through appropriate SBA channels, a written description of any unresolved issues, a summary of the

positions of the District office on the issues, and any supportive documentation.

(e) The AA/SBDCs shall transmit a final decision in writing to the recipient organization, the SBDC Director, the SBA Project Officer and other appropriate SBA field office personnel within 30 calendar days of receipt of such documentation, unless an extension of time is mutually agreed upon by the recipient organization and the AA/SBDCs.

(f) To reach a final decision, the AA/SBDCs shall consider written documentation of the issues to be resolved, including all relevant correspondence between the Project Officer, District Director and any other SBS personnel and the affected recipient organization. At a minimum, such documentation shall commence with the first written notice of issues resulting in the invocation of the non-renewal procedure. In addition to the written documentation, the AA/SBDCs shall also communicate in person, in writing or by E-Mail with both the recipient organization and appropriate SBA personnel.

(g) If the AA/SBDCs determines that the evidence submitted establishes nonperformance, ineffective performance or an unwillingness to implement suggested changes to improve performance, the AA/SBDCs shall have full discretion to order termination of the SBDC. The SBA district officer shall then pursue proposals from other organizations interested in applying for SBDC designation. The incumbent SBDC shall have 60 days to conclude operations and to submit close-out documents to the appropriate SBA district office. Close-out procedures shall be in conformance with OMB Circular A–133.

(h) The Agency may employ an abbreviated process for refusing to provide continued funding to an SBDC for actions other than an SBDC's poor performance. If a District Director has reason to believe an SBDC or its key personnel is engaged in any of the conduct referred to in § 130.700(b) (1) through (9) or any other serious and flagrant violation of these regulations or the terms and conditions of a prior agreement, the AA/SBDCs, upon approval from the General Counsel, may shorten response times in the best interests of the Agency and the public.

(i) Effect of action on subcenter. If competing applications are being accepted, nothing shall preclude a subcenter of the previously funded recipient organization from applying for designation as the recipient organization, as long as the subcenter is not involved in the conduct leading to non-renewal of the former recipient organization.

§ 130.700 Suspension and Termination Causes and Procedures.

(a) *General.* After the SBA has entered into a Cooperative Agreement with a recipient organization, it shall not suspend, terminate or fail to renew any such agreement unless the SBA provides the recipient organization with written notification setting forth the reasons therefor and affording the recipient organization an opportunity for a hearing, appeal or other administrative proceeding under the provisions of the Administrative Procedure Act, 5 U.S.C. 553 *et seq.* Subject to this requirement, and except as provided in this paragraph and the provisions of §§ 130.630, 130.640 and 130.650 regarding Dispute resolution, Conflict resolution and non-renewal procedures, the applicable general procedures for suspension and termination are contained in 13 CFR 143.43 and 143.44, Enforcement and Termination for Convenience, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and in OMB Circular A–110, Attachment L, Suspension and Termination Procedures for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations, Uniform Administrative Requirements.

(b) *Causes.* Causes which may lead to the initiation of suspension, termination, or failure to renew procedures include disregard or material violation of these regulations, or any of the following reasons:

(1) A willful or material failure to perform under the Cooperative Agreement or under this part;

(2) Conduct reflecting a lack of business integrity or honesty;

(3) A conflict of interest causing real or apparent detriment to any small business concern, any contractor, the SBDC or the SBA;

(4) Improper use of Federal funds;

(5) Failure of a Lead Center or its subcenters to consent to audits or investigation or to maintain required documents or records;

(6) Failure of the SBDC Director to work at the SBDC Lead Center on a full-time basis;

(7) Failure to promptly suspend or terminate the employment of an SBDC Director, subcenter Director or key SBDC employee upon notice that such individual has a criminal conviction for a felony; a criminal conviction for a misdemeanor involving fraud, bribery, embezzlement, false claims, false statements, falsification or destruction of records, forgery, obstruction of justice, receiving stolen property, or theft; or a civil judgment resulting from any conduct which reflects adversely upon his or her business integrity.

(8) Violation of the SBDC's standards of conduct as specified in these rules and as established by the SBDC pursuant to this part; or

(9) Any other cause not otherwise specified which seriously and adversely affects the operation or integrity of an SBDC or the SBDC program.

§ 130.800 Oversight of the SBDC Program. [Reserved]

§ 130.810 SBA review authority.

(a) The SBA shall monitor and oversee the Cooperative Agreement and ongoing operations of the SBDC network to ensure the effective and efficient use of SBA funds for the benefit of the small business community.

(b) Required on-site reviews. A periodic on-site evaluation of the SBDC network shall be conducted by the SBA with SBDC participation, as required by law. This evaluation will include a thorough analysis of the records, procedures, organizational structure, management, and services of the SBDC. The evaluation shall be both qualitative and quantitative, shall measure the effectiveness of the program and shall include an assessment of the benefits accruing to the areas served. The resulting on-site report by the SBA will review the strengths and weaknesses of the SBDC network and contain recommendations for improving the management and operation of the SBDC. SBDC Directors shall work with their SBA Project Officer and other appropriate SBA personnel to develop responses in writing within 30 working days to the recommendations contained in the On-site Review Report, with timeliness for any remedial action to be taken.

(c) Site visits. The AA/SBDCs, or a representative, is authorized to make programmatic and financial review visits to Lead Centers and SBDC service providers to inspect SBDC records and client files, and to analyze and assess training, counseling and any other SBDC related activities. These visits shall be coordinated, in advance, with the SBDC Director.

(d) SBA examiners reviews. (1) From time to time, SBA examiners shall perform limited scope reviews of SBDC operations. Reviews may be financially related, programmatically related or a combination of both, and shall consider ways to improve the efficiency of the

program as well as to monitor compliance with laws, regulations and other general guidance, and shall be conducted according to published guidelines.

(2) The reviews by the SBA examiners shall not substitute for audits required of Federal grantees under the Single Audit Act of 1984 or Office of Management and Budget (OMB) Circular A–110, A–128 or A–133. Nor shall such internal review substitute for audits to be conducted by the SBA Office of Inspector General under authority of the Inspector General Act of 1978, as amended.

§ 130.820 Recordkeeping requirements.

(a) In order to comply with OMB circulars which require recordkeeping, as well as to monitor the SBDC Program properly, the SBDC network shall keep records, as set forth in paragraph (c) of this section, and shall submit quarterly, semiannual and annual performance and financial reports as outlined in this section. Those reports and the clients' evaluations of services provided shall be reviewed by SBA to:

(1) Determine the quality of services provided by the SBDC network;

(2) Determine the completeness and accuracy of SBDC records; and

(3) Compare the actual SBDC network accomplishments with the SBDC network performance objectives, such as the Planned Milestone Accomplishment Chart submitted with the proposal for initial or subsequent funding which is listed in the Cooperative Agreement.

(b) Client control records. The recipient organization shall maintain control records, as necessary, for a thorough Lead Center audit and shall provide required SBA reports. SBDC service providers and Lead Centers which provide services to small business shall maintain detailed, complete and accurate client activity files, specifying counseling, training and other assistance provided.

(c) Performance reports. For those recipient organizations in the SBDC program for more than three years, interim reports shall be due 30 days after completion of six months of operation; for those recipient organizations in the program three years or less, reports shall be due 30 days after completion of each of the first three quarters. The annual report shall include the second semiannual or the fourth quarter report and shall be due 90 days after the applicable period (December 30 for Fiscal Year and March 30 for Calendar Year SBDCs). These reports shall reflect accurately the activities, accomplishments and deficiencies of the SBDC network.

(d) Financial reports. The recipient organization shall provide three quarterly and one annual financial report to the appropriate SBA Project Officer. The required financial reports will be set forth in the Program Announcement and the Cooperative Agreement, in compliance with the OMB Circulars governing such reports.

(e) Availability of records. As required by OMB Circular A–133, all Lead Center and subcenter records shall be made available to the SBA for review upon request.

§ 130.830 Audits and Investigations.

(a) *Access to records.* OMB Circulars A–128 and A–133 set forth the requirements concerning record access and retention.

(b) *Audits*—(1) *Pre-award audit.* All applicant organizations that propose to enter the SBDC Program for the first time may be subject to a pre-award audit. The purpose of a pre-award audit is to verify the adequacy of the accounting system, the suitability of proposed costs and the nature and source of proposed Matching Funds.

(2) Audits of the SBDC network may be conducted by the recipient organization or by the SBA. All audits will be conducted in accordance with *Government Auditing Standards* (Yellow Book), promulgated by the Comptroller General of the United States.

(3) Audits by the recipient organization will be conducted as a single audit of a recipient organization pursuant to OMB Circular A–102, A–110, A–128, and A–133, as applicable.

(4) Audits by the SBA will be conducted, supervised, or coordinated by the SBA Office of Inspector General or its agents. At SBA's discretion, audits of the SBDC network may have been performed even though single audits may have been performed. In such instances, the Agency will conduct such audits in compliance with *Government Auditing Standards* and all applicable OMB Circulars.

(c) *Investigations.* The SBA may conduct such investigations as it deems necessary to determine whether any person has engaged in any acts or practices which may constitute a violation of the Small Business Act, as amended (15 U.S.C. 631, *et seq.*) any rule or regulation under that Act, any order issued under that Act, or any other applicable Federal law. If any such violation is about to occur, the SBA may conduct such investigation as it deems necessary.

Dated: November 15, 1994.

Cassandra M. Pulley,

Acting Administrator.

[FR Doc. 94–28651 Filed 11–25–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 20, 310, 312, 314, and 600

[Docket No. 93N–0181]

Adverse Experience Reporting Requirements for Human Drug and Licensed Biological Products; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposal that appeared in the Federal Register of October 27, 1994 (59 FR 54046). That document proposed to amend FDA's current adverse experience reporting regulations for human drugs and biological products. The document was published with two errors. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Howard P. Muller, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1049.

SUPPLEMENTARY INFORMATION: In FR Doc. 94–26483 appearing on page 54046 in the Federal Register of October 27, 1994, the following corrections are made:

1. On page 54059, in the third column, under amendment 15, in the ninth line the words "the second sentence in paragraph (d)(1)" are corrected to read "the third sentence in paragraph (d)(1)".

§ 314.80 [Corrected]

2. On page 54061, in the third column, in § 314.80 *Postmarketing reporting of adverse drug experiences*, in paragraph (d)(1), in line 8, the words "either as case reports or as the result of a formal clinical trial" are corrected to read "either as the result of a formal clinical trial, or from epidemiological studies or analyses of experience in a monitored series of patients."

Dated: November 18, 1994.
William K. Hubbard,
Interim Deputy Commissioner for Policy.
[FR Doc. 94–29114 Filed 11–25–94; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–019A]

RIN 1218–AA51

Permit Required Confined Spaces

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: OSHA issued a general industry standard on Permit-Required Confined Spaces (permit spaces) on January 14, 1993 (58 FR 4462). The standard became effective on April 15, 1993.

On March 15, 1993 the United Steelworkers of America, AFL–CIO/CLC (USWA) petitioned the United States Court of Appeals for the 11th Circuit for judicial review of the final permit space standard under section 6(f) of the Occupational Safety and Health Act. In particular, the USWA contended that § 1910.146(k)(2), which addresses the rescue of permit space entrants by outside (off-site) rescue services, was vague and ineffective. The USWA also noted that the permit space standard lacks a provision which would provide employees or their designated representative the opportunity to observe any monitoring or testing required by the standard.

The language of § 1910.146(k)(3)(i), which specifies the point of attachment of a retrieval line to a permit space entrant, may be unnecessarily restrictive. The ADS Environmental Services Company, a contractor which performs work in sewers, has petitioned OSHA for a variance to paragraph (k)(3)(i). ADS has demonstrated that, for their operations, a point of attachment in front of the entrant at about mid-shoulder level is adequate to meet OSHA's objective that an entrant present the smallest possible profile during removal.

Based upon these concerns, OSHA is now proposing to revise paragraph (k) of § 1910.146, to state more clearly the employer's duty to ensure effective rescue capability for employees who enter permit spaces and to allow more flexibility in the point of attachment of a retrieval line to an entrant. OSHA is also raising the issue of whether to add provisions to § 1910.146 to provide affected employees, or their designated representatives, with the opportunity to observe the evaluation of confined spaces, including atmospheric testing or monitoring, and to have access to the results of such evaluations and monitoring.

DATES: Written comments and information on this proposed revision must be postmarked by February 27, 1995.

Requests for public hearings on this proposal must be postmarked by February 27, 1995.

ADDRESSES: Written comments and information on this proposed rule are to be submitted in quadruplicate to the Docket Office, Docket No. S–019A, United States Department of Labor, Occupational Safety and Health Administration, Room N2634, 200 Constitution Avenue N.W., Washington, D.C. 20210, telephone (202) 219–7894. Written comments limited to 10 pages or less in length also may be transmitted by facsimile to (202) 219–5046, provided that the original and 3 copies are sent to the Docket Office thereafter. Comments, requests for hearings and information received may be inspected and copied in the Docket Office.

Requests for a public hearing on this proposal are to be sent in quadruplicate to Mr. Thomas Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, Room N3649, 200 Constitution Avenue N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Office of Information, Division of Consumer Affairs, U.S. Department of Labor, Room N3647, 200 Constitution Avenue, N.W., Washington, D.C. 20210, (202) 219–8151.

SUPPLEMENTARY INFORMATION:

I. Background

Many employees enter and work in spaces which, because of their configuration, difficulty of entry or other factors, pose increased risk of exposure to serious hazards. In January, 1993, OSHA promulgated a standard (§ 1910.146, 58 FR 4462, January 14, 1993) that requires employers to protect employees assigned to enter Permit-Required Confined Spaces (permit spaces) from these hazards. On June 29, 1993 (58 FR 34844), OSHA published a notice which corrected typographical errors in the regulatory text and clarified several provisions of the permit space final rule and appendices. On May 19, 1994 (59 FR 26114), OSHA published a technical amendment to § 1910.146 which added a metric equivalent to paragraph (k)(3)(ii) and further revised the "Atmospheric Monitoring" section of non-mandatory Appendix E, "Sewer System Entry."

The permit space standard provides a comprehensive regulatory framework within which employers can effectively protect employees who enter permit spaces. The standard provides for the establishment of written permit space programs, authorization of entry through written permits, and the implementation of measures (e.g., testing and monitoring of spaces, control of hazards, stationing of an attendant to monitor entry, employee training, and availability of rescue and emergency medical personnel) necessary for safe entry operations.

On March 15, 1993 the United Steelworkers of America (USWA) filed a petition for judicial review of the final PRCS standard in the United States Court of Appeals for the 11th Circuit. On June 22, 1993, the USWA sent OSHA a letter (Ex. 1), which detailed their objections to the final PRCS standard. The USWA objections dealt, in part, with the provisions of existing § 1910.146(k)(2), regarding the use of off-site personnel to perform permit space rescues. These concerns are discussed more fully below.

II. Events and Considerations Leading to This Proposed Rule

A. Rescue and Emergency Services

While compliance with the permit space standard will generally enable authorized entrants to enter and exit permit spaces safely, OSHA recognizes that there may be circumstances where hazards arise so quickly or unexpectedly that entrants need assistance in exiting a permit space. Paragraphs (d)(9) and (k) of the standard set requirements for the rescue and emergency services needed in such circumstances. Also, paragraph (h)(5) of the standard requires authorized entrants to initiate self-rescue where appropriate, and paragraphs (i)(6), (i)(7) and (i)(9) require attendants, where appropriate, to order evacuation of the permit space, to summon rescue and emergency services and to perform non-entry rescue. In promulgating the final rule (58 FR 4524), OSHA anticipated that compliance with these provisions would maximize the likelihood that authorized permit space entrants would be protected from death or serious injury should an emergency arise during entry operations.

OSHA and the National Institute for Occupational Safety and Health have

documented (58 FR 4465) that a majority of permit space fatalities have been would-be rescuers who entered permit spaces without the necessary training or equipment. The Agency believes that this information demonstrates the need for employers to implement rescue measures which protect rescuers from death or serious injury (58 FR 4526). OSHA concluded, based on its review of the rulemaking record of the permit-space standard, that non-entry rescue involves the least danger for rescuers and that a retrieval system (body harness attached to a lifeline extending outside the permit space) will generally be the appropriate form of non-entry rescue.

Accordingly, the Agency required, in paragraph (k)(3) of the permit space standard, that each authorized entrant wear a body harness with attached lifeline and that the lifeline be attached to a secure anchorage point outside the permit space, except where the employer can establish that the use of a retrieval system would increase the overall risk of entry or would not contribute to the rescue of the entrant. OSHA anticipated that the retrieval system, where used, would enable a rescuer (either the permit space attendant or personnel summoned by the attendant) to extricate an entrant without being exposed to permit space hazards.

OSHA recognized that the use of a retrieval system will be infeasible in some instances. Accordingly, § 1910.146 also contains requirements pertaining to rescuers who enter permit spaces to perform rescues, in paragraphs (k)(1) and (k)(2) of the final rule. These requirements were included to ensure that designated rescuers were adequately trained and equipped to safely (for both authorized entrants and the rescuers themselves) perform effective rescues.

Paragraph (k)(1) applies to employers, such as fire departments and contract rescue services, whose employees will perform rescue at other employers' workplaces, as well as to employers who have their own employees perform rescues. OSHA recognizes that many employees who perform rescue are not employees of the host employer. In addition, fire department and other public sector rescue service employees are only covered by OSHA standards in State Plan States. Section 3(5) of the OSH Act (29 U.S.C. 652) provides that the term "employer" does not include the United States or any State or political subdivision of a State. For States which administer approved OSHA state plans, section 18(c)(6) of the OSH Act provides that State and local government employees in State Plan States are covered by the State OSHA standard equivalents to the Federal OSHA standards. OSHA believes, based on the number of informal inquiries received, that many State and local governmental entities whose employees provide rescue services for permit spaces are already voluntarily complying with the provisions of § 1910.146(k)(1) even where there is no legal requirement to do so.

The ability of rescue and emergency services to provide timely and effective assistance to authorized entrants is a critical element of compliance with paragraphs (d)(9) and (k) of the standard. Under the permit space standard, affected employers can set up their own employee-staffed rescue services or arrange to have persons other than their own employees provide rescue services. As discussed in the preamble to the final rule (58 FR 4524), OSHA anticipates that a rescue and emergency service composed of an employer's own employees will usually have a faster response to a rescue summons than a rescue service composed of persons other than the employer's own employees because the employer's own rescuers are far more likely to be "on-site." Accordingly, the Agency believes that it is appropriate to use a rescue service composed of persons other than on-site employees only when there is reasonable assurance that the designated rescuers can effectively respond to a rescue summons in a timely fashion.

OSHA notes that it also may be feasible for an employer to select a mix of on-site and off-site (or a mix of employee and non-employee) rescue capabilities for that employer's particular circumstances. The provisions of existing § 1910.146(k) do not preclude such arrangements. The standard requires simply that employers plan ahead for rescue and ensure that an adequate rescue capability is in place for permit space entries.

Paragraph (k)(2) of the standard applies to employers who arrange to have persons other than their own employees provide permit space rescue and emergency services. Paragraph (k)(2) requires affected employers to inform the rescue service of the hazards they may confront when called upon to perform rescue at the host employer's facility and to provide the rescue service with access, for planning and practice rescue purposes, to all permit spaces from which rescue may be necessary.

Paragraph (d)(9) of the standard requires employers to "Develop and implement procedures for summoning rescue and emergency services, *for rescuing entrants from permit spaces* (emphasis added), for providing necessary emergency services to rescued employees, and for preventing unauthorized personnel from attempting a rescue." OSHA believes that the requirements of paragraph (d)(9), in conjunction with the requirements of paragraph (k), place a responsibility on employers to take whatever actions are necessary to provide for the effective rescue of authorized entrants from permit spaces. Further, OSHA believes that any host employer who fails to consider such factors as the response time, equipment and state of training of rescue services not composed of the host employer's own employees, when an employer chooses to arrange for such services, is not complying with paragraphs (d)(9) and (k).

In their June 22, 1993 letter to OSHA, the USWA contended that existing § 1910.146(k)(2) does not specifically address the timeliness with which a rescue service must respond to a rescue summons. The USWA believes that such an omission permits the host employer to arrange for the use of a rescue service without any consideration of the rescue service's capability to respond in a timely manner. According to the USWA, this situation would very likely result in the death or serious injury of authorized entrants, because there would be no assurance that the rescue service could arrive in time to perform an effective rescue.

In addition, the USWA stated that the standard fails to include any meaningful provisions dealing with accountability for the adequacy of a non-host employer rescue service. Thus, they believe, an employer could avoid responsibility for the adequacy (e.g., the equipping and training) of rescue and emergency services. Further, the USWA contends that existing § 1910.146(k)(2) discourages employers from providing an employee-staffed on-site rescue service and encourages the disbanding of any such existing rescue services.

The USWA concluded, based upon the above stated concerns, that the permit space standard should require that all host employers establish and use rescue services composed only of their own employees.

As has been discussed, OSHA believes that the final rule does address the need for the host employer to consider timeliness of rescue and accountability in its selection of outside rescue services. However, the Agency recognizes that these areas of the standard may not have been set forth with sufficient clarity or specificity in the regulatory text. Therefore, OSHA is

proposing to revise paragraph (k)(2) so that the standard more clearly states what an employer must do when it arranges to have persons other than its own employees provide permit space rescue and emergency services. (See Section III., Summary and Explanation of the Proposed Revision.)

B. Retrieval Systems

Paragraph (k)(3)(i) of the final standard contains a provision requiring that retrieval systems employ a retrieval line which is attached at the center of the entrant's back near shoulder level or above the entrant's head. In the final standard's preamble (58 FR 4531) the reason given for specifying the attachment point for the retrieval line is "so that the entrant will present the smallest possible profile during removal, in case a rescue becomes necessary." It has come to OSHA's attention that the language of paragraph (k)(3)(i) may be unnecessarily restrictive. The ADS Environmental Services Company, a contractor which provides flow monitoring services in sewers, has requested that OSHA grant a variance (Ex. 2) from the requirement that the point of attachment either be centered near the entrant's back near shoulder level or overhead. For operational purposes, the ADS Company attaches the retrieval line in front of the entrant at about mid-shoulder level. ADS has satisfactorily demonstrated that their method of retrieval line attachment is equally as effective as the two methods specified in the existing OSHA standard in meeting the stated objective of presenting the smallest possible entrant profile during removal. Accordingly, and in keeping with the Agency's goal of stating standards in performance-oriented language to the extent reasonable, OSHA believes it is appropriate to amend § 1910.146(k)(3)(i) to permit any point of attachment of a retrieval line to a chest or full body harness which meets the goal of presenting the smallest possible entrant profile during removal from a permit space.

C. Employee Participation in Exposure Monitoring

In addition to suggesting changes to the rescue provisions, the USWA also stated, in its June 22, 1993 letter, (Ex. 1) that the Permit Space standard should contain a provision which requires that affected employees, or their designated representatives, be permitted to observe any exposure monitoring required by the standard. The USWA contends that the inclusion of such a provision is required by section 8(c)(3) of the Act, and that such a provision is routinely placed in all of OSHA's chemical-specific standards.

In response to a comment from the United Auto Workers (UAW) (Ex. 19–38), Issue 3 of the Hearing Notice (54 FR 41462) requested input regarding worker participation in the design and implementation of a Permit Space program. As discussed in the final rule (58 FR 4484–85) most of the comments and testimony received expressed general support for the concept of employee participation, but did not provide specific suggestions as to how that participation should be implemented. In responding to Issue 3, the UAW testimony at the public hearings repeated their NPRM recommendation that the permit space standard require active employee participation in the design and implementation of permit space programs, while adding a suggestion that employers provide employees with an opportunity to observe the monitoring of permit spaces (Chicago Tr. 347). In its post hearing brief (Ex. 142), the UAW repeated the suggestion for observation of monitoring without elaboration.

OSHA did not include specific requirements for employee participation in the final rule because the Agency believed it would be very difficult to mandate labor-management collaboration and to determine how disagreements would be resolved. In addition, OSHA stated that employees would have input to the Permit Space program through §§ 1910.146(d)(13) (review of permit space program) and (g)(2)(iv) (retraining when there are deviations from the permit space procedures).

In response to the submission by the USWA, the Agency has agreed to raise an issue for comment regarding employee observation of monitoring. OSHA does not believe that section 8(c)(3) of the Act mandates the inclusion of a requirement for employee observation of monitoring in safety standards. However, the Agency is considering whether such a provision should be added to the permit space standard based on the concerns expressed and on the record developed as a result of this notice.

Accordingly, OSHA requests comment from interested parties as to whether the Agency should revise § 1910.146 by adding a requirement that affected employees, or their designated representatives, be permitted to observe the evaluation of confined space conditions, including any testing or monitoring conducted under the permit space standard. The Agency requests that commenters provide the reasons for their views, and requests the submission of any data or information which would be useful to OSHA in making an informed decision regarding this issue.

The USWA also believes that the Permit Space standard should contain a provision which requires that the results of any evaluation of a permit space, including the results of any atmospheric monitoring conducted, be made available to employees or their designated representative. OSHA agrees that it is important that this information be made available to permit space entrants and believes that the existing permit space standard already includes provisions to assure that this objective is achieved. Existing § 1910.146(f)(10) requires that the results of initial and periodic tests performed under existing § 1910.146(d)(5) be entered on the entry permit, and existing § 1910.146(e)(3) requires that the permit be made available to all authorized entrants at the time of entry.

Accordingly, OSHA solicits comments regarding the issue of whether the existing standard provides adequate employee access to the results of testing and monitoring in permit spaces. The Agency also encourages interested parties who believe that the existing provisions are inadequate to provide suggestions regarding how OSHA can correct any such inadequacies. OSHA may decide, based upon the comments received concerning this issue, to add a provision or provisions to the permit space rule replacing or strengthening the current provisions.

III. Summary and Explanation of the Proposed Revision

OSHA proposes to make several changes to paragraph (k)(2) of § 1910.146 so that the standard will more clearly state the duties and responsibilities of employers (host employers) who arrange for persons other than their own employees to perform permit space rescue in their workplace. OSHA believes that the proposed changes will make it clearer that such employers must select rescue services which are capable of responding in a timely manner and which are properly trained, equipped and capable of functioning appropriately to perform permit space rescues at the host employer's facility.

First, OSHA proposes to add the parenthetical "(outside rescuers)" between "employees" and "perform" in the introductory text of paragraph (k)(2), and to add the words "ensure that" to the end of the introductory text to

paragraph (k)(2). That introductory text would then read:

> When an employer (host employer) arranges to have persons other than the host employer's employees (outside rescuers) perform permit space rescue, the host employer shall ensure that:

The parenthetical "(outside rescuers)" is proposed to be added to clarify and simplify what is meant by the phrase "persons other than the host employer's employees". The words "ensure that" at the end of the introductory text are proposed to be added to clarify and strengthen the requirements in paragraph (k)(2).

Second, OSHA proposes to add new paragraphs (k)(2)(i) and (k)(2)(ii). Proposed new paragraph (k)(2)(i) specifically requires host employers to ensure that arranged-for rescue services can effectively respond in a timely manner to a rescue summons. The proposed paragraph clearly indicates that a host employer must take into account a rescue service's capability in terms of response time and may only select a rescue service which satisfies the pertinent criteria.

Proposed new paragraph (k)(2)(ii) specifically requires host employers to ensure that arranged-for rescue services are equipped, trained and capable of functioning appropriately to perform permit space rescues at the host employer's facility. The proposed provision clearly indicates that host employers must evaluate a prospective rescue service's capabilities and verify that the needed capabilities are present before selecting that rescue service to perform permit space rescues. The host employer would be clearly prohibited from selecting any rescue service which does not meet the criteria of proposed (k)(2)(i) and (k)(2)(ii).

Third, OSHA proposes to redesignate existing paragraphs (k)(2)(i) and (k)(2)(ii) as paragraphs (k)(2)(iii) and (k)(2)(iv), respectively. The language of these two provisions has been modified slightly to fit the revised introductory text of paragraph (k)(2), but no changes to the existing requirements have been made.

OSHA emphasizes that the intent of proposed paragraphs (k)(2)(i) and (k)(2)(ii) is to clarify the existing requirements in paragraphs (d)(9) and (k)(2) of § 1910.146, as these requirements have been interpreted by the Agency. As discussed earlier, OSHA believes that, even under the current rule, an employer must take timeliness and accountability into account if that employer is to have a truly effective rescue capability. The Agency acknowledges, as discussed in the preamble to the permit space standard (58 FR 4527), that the rescue provisions of the standard will not ensure that all incapacitated entrants will be successfully rescued from permit spaces. The fact that a host employer has done all that it can, before any arrangements for using an outside rescue service are finalized, to ensure that a rescue service is fully capable of performing a timely rescue at its workplace does not guarantee that an actual rescue attempt by that rescue service will be successful. Thus, OSHA's measurement of a host employer's compliance with proposed paragraphs (k)(2)(i) and (k)(2)(ii) will not be based solely upon a rescue service's actual performance during any single instance, but instead upon the host employer's total effort prior to arranging for an outside rescue service to ensure that the prospective rescue service is indeed capable, in terms of overall timeliness, training and equipment, of performing an effective rescue at the host employer's workplace.

OSHA is also proposing to amend paragraph (k)(3)(i) so that the provision dealing with the point of attachment of a retrieval line becomes more performance-oriented. The existing provision requires that the point of attachment be either at the center of the entrant's back near shoulder level or above the entrant's head. OSHA specified those points of attachment because the Agency believed that their use would enable the entrant to present the smallest possible profile during retrieval. However, OSHA acknowledges that there may be circumstances under which alternate body harness attachment points may be at least as safe and effective as either of the specified locations. Accordingly, The Agency proposes to allow any other point of attachment which enables the entrant's body to present the smallest possible profile during retrieval. As amended, the first sentence of paragraph (k)(3)(i) would read as follows:

> Each authorized entrant shall use a chest or full body harness, with a retrieval line attached at the center of the entrant's back near shoulder level, above the entrant's head or other point which assures that the entrant will present the smallest possible profile during retrieval.

IV. Regulatory Impact Assessment

As explained elsewhere, the Agency considers the new language a clarification of the existing standard, and not a new burden on employers. Therefore, the Agency believes no new costs are implied by this modification.

V. Federalism

This proposed amendment has been reviewed in accordance with Executive Order 12612 (52 FR 31685, October 30, 1987) regarding Federalism. This order requires that agencies, to the extent possible, refrain from limiting State policy options and consult with States prior to taking any action. Agencies may act only when there is clear constitutional authority and the presence of a problem of national scope. The order provides for preemption of State law only if there is a clear congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act of 1970 expresses Congress' clear intent to preempt State laws relating to issues on which Federal OSHA has promulgated occupational safety and health standards. Under the OSHA Act, a State can avoid preemption only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan-States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as Federal Standards. Where such standards are applicable to products distributed or used in interstate commerce, they may not unduly burden commerce and must be justified by compelling local conditions (See Section 18(c)(2) of the OSHA Act).

This proposed rule is drafted so that employees in every State will be protected by general, performance-oriented standards. To the extent that there are State or regional peculiarities caused by the terrain, the climate or other factors, States would be able, under the OSHA Act, to develop their own State standards to deal with any special problems. And, under the Act, if a State develops an approved State program, it could make additional requirements in its standards. Moreover, the performance nature of this standard, of and by itself, allows for flexibility by States and employers to provide as much safety as possible using varying methods consonant with conditions in each State.

In short, there is a clear national problem related to occupational safety and health concerning entry into permit-required confined spaces. Those States which elect to participate under the statute would not be preempted by this regulation and would be able to address special, local conditions within the framework provided by this performance-oriented standard.

VI. Public Participation

Written Comments: Interested persons are invited to submit written data, views and arguments with respect to this proposal. These comments must be postmarked by (February 27, 1995, in the **Federal Register**) and submitted to the Docket Office, Docket S–019A, room N2634, U.S. Department of Labor, Washington, DC 20210. Written submissions must clearly identify the issues or specific provisions of the proposal which are addressed and the position taken with respect to each issue or provision.

The data, views and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions received will be made a part of the record of this proceeding.

Hearing Requests: Additionally, under section 6(b)(3) of the OSHA Act and 29 CFR 1911.11, interested persons may file objections to the proposed amendment and request an informal hearing. The objections and hearing request should be submitted to the Docket Office at the above address and must comply with the following conditions:

1. The objections and hearing requests must include the name and address of the objector;
2. The objections and hearing requests must be postmarked on or before February 27, 1995;
3. The objections and hearing requests must specify with particularity the provisions of the proposed amendment to which objection is taken and must state the grounds therefore;
4. Each objection and hearing request must be separately stated and numbered, and;
5. The objections and hearing requests must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

VII. State Plan States

The 25 States and territories with their own OSHA-approved occupational safety and health plans must adopt a comparable amended standard within six months of the publication date of a final standard. These 25 States and territories are: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for state and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington and Wyoming. Until such time as a State standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in these states.

VIII. List of Subjects in 29 CFR Part 1910

Confined spaces, Monitoring, Occupational safety and health, Personal protective equipment, Rescue equipment, Retrieval lines, Safety.

IX. Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Accordingly, pursuant to sections 4, 6(b) and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 1–90 (55 FR 9033) and 29 CFR part 1911, OSHA proposes to amend § 1910.146 of 29 CFR as set forth below.

Signed at Washington, D.C. this 21st day of November 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for subpart J of part 1910 continues to read as follows:

Authority: Secs. 4, 6, and 8, Occupational Safety and Health Act of 1970, 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable. Sections 1910.141, 1910.142, 1910.145, 1910.146, and 1910.147 also issued under 29 CFR part 1911.

2. Paragraphs (k)(2) and (k)(3)(i) of 29 CFR 1910.146 would be revised to read as follows:

§ 1910.146 Permit required confined spaces.

* * * * *

(k) *Rescue and emergency services.*

* * *

(2) When an employer (host employer) arranges to have persons other than the host employer's employees (outside rescuer) perform permit space rescue, the host employer shall ensure that:

(i) The outside rescuer can effectively respond in a timely manner to a rescue summons.

(ii) The outside rescuer is equipped, trained and capable of functioning appropriately to perform permit space rescues at the host employer's facility.

(iii) The outside rescuer is aware of the hazards they may confront when called on to perform rescue at the host employer's facility.

(iv) The outside rescuer is provided with access to all permit spaces from which rescue may be necessary so that the outside rescuer can develop appropriate rescue plans and practice rescue operations.

(3) * * *

(i) Each authorized entrant shall use a chest or full body harness, with a retrieval line attached at the center of the entrant's back near shoulder level, above the entrant's head or other point which the employer can establish will ensure that the entrant will present the smallest possible profile during removal.

* * * * *

[FR Doc. 94–29117 Filed 11–25–94; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 247

RIN 1510–AA44

Regulations Governing FedSelect Checks

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking; extension of time for comments.

SUMMARY: On October 21, 1994, the Financial Management Service issued a notice of proposed rulemaking proposing new regulatory text for 31 CFR Part 247 to govern the use of FedSelect checks, a new payment instrument for use by Federal agencies in paying Federal obligations. 59 FR 53125. This rulemaking sets forth procedural instructions for using FedSelect checks, and defines the rights and liabilities of the Federal Government, Federal Reserve Banks, and depositary institutions in connection with FedSelect checks. The date for filing comments is being extended at the request of various interested commenters.

DATES: The date for filing comments is extended to and including December 21, 1994.

ADDRESSES: All comments on this proposed rule should be addressed to Mr. John Galligan, Director, Cash Management Policy and Planning Division, Financial Management Service, 401 14th Street, SW., room 420, Washington, DC 20227. Please note the new room number.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Garner, Financial Program

Specialist, 202–874–6751; Mr. John Galligan, Director, Cash Management Policy and Planning Division 202–874–6657; or Mr. Brad Ipema, Principal Attorney, 202–874–6680. Please note the new phone number and point of contact.

Dated: November 22, 1994.

Russell D. Morris,

Commissioner.

[FR Doc. 94–29191 Filed 11–25–94; 8:45 am]

BILLING CODE 4810–35–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[AH–FRL–5107–1; Docket No. A–92–65]

Requirements for Preparation, Adoption, and Submittal of Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is issuing this proposal to augment the final rule that was published on July 20, 1993. Today's notice proposes to make several additions and changes as supplement C to the "Guideline on Air Quality Models (Revised)". Supplement C does the following: incorporates improved algorithms for treatment of area sources and dry deposition in the Industrial Source Complex (ISC2) model, adopts a solar radiation/delta-T (SRDT) method for estimating atmospheric stability categories, adopts a new screening approach for assessing annual NO_2 impacts, and adds SLAB and HGSYSTEM as alternative models. The Guideline sets forth air quality models and guidance for estimating the air quality impacts of sources and for specifying emission limits for them. The purpose of the proposed changes is to enhance the guidance in response to a substantial number of public comments urging the Agency to do so. For the purposes of this document, EPA is soliciting public comments only on the four proposed changes associated with supplement C and will not respond to any comments that are outside the scope of this document. This limiting of EPA's responses to comments within the scope of this document allows the Agency to focus on the issues, data, and information relevant to this rulemaking.

DATES: The period for comment on these proposed changes closes January 12, 1995.

ADDRESSES: Comments: Written comments should be submitted (in duplicate if possible) to: Air Docket (6102), Room M–1500, Waterside Mall, Attention: Docket A–92–65, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Copies of supplement C (draft) to the "Guideline on Air Quality Models (Revised)" may be obtained by writing or calling Joseph A. Tikvart, Source Receptor Analysis Branch, MD–14, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, phone (919) 541–5561. Supplement C (draft) is also available to registered users of the Support Center for Regulatory Air Models Bulletin Board System (SCRAM BBS) by downloading the appropriate file. To register or access this electronic bulletin board, users with a personal computer should dial (919) 541–5742.

Docket: Copies of reports referenced herein (unless otherwise noted) and public comments made on this Notice of Proposed Rulemaking (NPR) are maintained in Docket A–92–65. The docket is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the address above.

FOR FURTHER INFORMATION CONTACT: Joseph A. Tikvart, Chief, Source Receptor Analysis Branch, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541–5561 or C. Thomas Coulter, telephone (919) 541–0832.

SUPPLEMENTARY INFORMATION:

Background [1]

The purpose of the Guideline [2] is to promote consistency in the use of modeling within the air management process. The Guideline provides model users with a common basis for estimating pollution concentrations, assessing control strategies and specifying emission limits; these activities are regulated at 40 CFR 51.46, 51.63, 51.112, 51.117, 51.150, 51,160, 51.166, and 51.21. The Guideline was originally published in April 1978. It was incorporated by reference in the regulations for the Prevention of Significant Deterioration of Air Quality in June 1978 (43 FR 26380). The Guideline was subsequently revised in 1986 (51 FR 32176), and later updated with the addition of supplement A in 1987 (53 FR 393). The last such revision was supplement B, issued on July 20, 1993 (58 FR 38816). The revisions in supplement B included techniques and guidance for situations where specific procedures had not previously been available, and also improved several previously adopted techniques.

During the public comment period for supplement B, EPA received requests to consider several additional new modeling techniques and suggestions for enhanced technical guidance.[3] However, because there was not sufficient time for the public to review the new techniques and technical guidance before promulgation of supplement B, the new models and enhanced technical guidance could not be included in the supplement B rulemaking. Thus, in this subsequent regulatory proposal, EPA is proposing to revise the Guideline and is seeking public comment on the four items described below. Once promulgated, these four items will be included in supplement C to the Guideline. A copy of supplement C (draft) is available for public review (Docket Item III–B–1).

Proposed Action

Appendix W of 40 CFR part 51 will be appropriately amended to effect the following revisions, proposed as supplement C to the Guideline. EPA solicits comment on each of the following revisions.

1. Enhancements [4] to the Industrial Source Complex Model (ISC2)

A. Area Source Algorithm

Today's action proposes to replace the area source algorithm in the Industrial Source Complex model (ISC2) with a new one based on a double integration of the Gaussian plume kernel for area sources.

(1) *Short-term algorithm: ISCST2.* A previous EPA study [5] indicated that the currently implemented ISCST2 area

[1] In reviewing this preamble, note the distinction between the terms "supplement" and "appendix". Supplements A, B and C contain the replacement pages to effect Guideline revisions; appendix A to the Guideline is the repository for preferred models, while appendix B is the repository for alternate models justified for use on a case-by-case basis.

[2] "Guideline on Air Quality Models (Revised)" (1986) [EPA–450/2–78–027R], with supplement A (1987) and supplement B (1993), hereinafter, the "Guideline". The Guideline is published as appendix W of 40 CFR Part 51. The text of appendix W will be appropriately modified to effect the revisions proposed for supplement C.

[3] The official public hearing for EPA's proposal to adopt supplement B was the Fifth Conference on Air Quality Modeling, March 1991 (56 FR 7694). Full transcripts filed in Docket No. A–88–04; IV–F–1 (see ADDRESSES). See also "Summary of Public Comments and EPA Responses on the Fifth Conference on Air Quality Modeling: March 1991", February 1993. (Docket No. A–88–04; V–C–1)

[4] For clarification, these enhancements are discussed separately. EPA intends to integrate these enhancements into one model for actual use.

[5] Environmental Protection Agency, 1989. Review and Evaluation of Area Source Dispersion Algorithms for Emission Sources at Superfund Sites. EPA Publication No. EPA–450/4–89–020. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 90–142753)

source algorithm, based on a finite line segment approximation, estimates concentration distributions with limited accuracy, especially for receptors located close to the area source. An independent but later evaluation confirmed these findings.[6,7] These studies suggested that the integrated line source algorithm for modeling impacts from area sources provides a better treatment of near-source geometry than that currently recommended in ISCST2, and a reasonable far-field behavior. Based on these performance evaluations and limited field data, the integrated line source algorithm is a candidate to substitute for the current ISCST2 area source algorithm. Responding to public comments received at the time supplement B was proposed, steps were taken to develop and test this algorithm. In the new algorithm,[8] the ground-level concentration at a receptor downwind of all or a portion of the area source is given by a double integral in the upwind and crosswind directions. The integral in the lateral direction is solved analytically. The integral in the longitudinal direction (i.e., the summation of the contributions from the line sources in the upwind direction) is approximated with a Romberg integration technique.[9] The new algorithm, essentially equivalent to PAL[10] and the convergent mode of the FDM[11] integrated line source algorithm, has been shown to perform very well in terms of efficiency and of the reasonableness of the results.[12]

Existing field studies of impacts within and nearby area sources being scarce and limited in scope, EPA compared model predictions to measured results using a wind tunnel simulation at the Fluid Modeling Facility, Atmospheric Research and Exposure Assessment Laboratory.[13] Both qualitative physical and quantitative statistical analyses were performed. The analysis results[12] show that the new algorithm predicts the concentration distribution with relatively good accuracy (i.e., ± ~10%), especially for the ground-level receptors located near the downwind edge of the area source, a situation of concern to regulatory modeling applications. For receptors near ground level and within or near the area ± source, the normalized modeled concentrations generally matched the wind tunnel measured concentrations to within ± 20%. EPA considers this to be an acceptable correspondence.

To examine the sensitivity of the design concentrations across a range of source characteristics, scenarios considering source size, elevation, and downwind distance were simulated.[14] For each scenario, the high-second high (HSH) 1-hour, 3-hour, 24-hour averages and high annual averages were determined using a full year of meteorological data; both rural and urban mode dispersion options were used. Generally, the concentration ratio[15] averaged ~1.2 (1-hour) to ~1.0 (annual). However, for receptors located within and nearby the area source, the ratio averaged ~2 (1-hour) to ~3 (annual). Thus, for receptors inside the area source, the ratio is higher than for receptors outside the source, where the effect is a function of averaging time and proximity to the source in question.

The proposed algorithm is equivalent to that in PAL and FDM and is more efficient than either of these algorithms. Based on comparisons with wind tunnel data, the proposed algorithm provides a more realistic characterization of the magnitude of impacts at receptors located within and nearby the area than that currently in ISC2, and gives comparable results to the FDM convergent algorithm when modeled based on the same assumptions for release height, mixing height, and dispersion parameters. Furthermore, these findings confirm that the currently used area source algorithm in ISC2 is an approximation that routinely underestimates (and underrepresents) the actual ambient impact, especially for receptor locations within and near an area source.

(2) Long-term algorithm: ISCLT2. The studies previously cited in footnotes 5, 6, and 7 have also indicated the deficiencies of the virtual point source algorithm used in ISCLT2. While it is computationally efficient, the virtual point source algorithm used in the original ISCLT2 yields estimates of limited accuracy for receptors located near the edges and corners of the area, a problem also seen with the original ISCST2. The algorithm cannot predict the area source impact for receptors located inside the source itself, and does not adequately handle effects of complex source-receptor geometry.

Thus, a new area source algorithm for the ISCLT2, based on the numerical integration algorithm described above, was developed and evaluated.[16] Detailed performance tests, statistical analyses and sensitivity analyses were completed to assure the reliability and reasonableness of the modeling results. Using idealized meteorological conditions, the new algorithm yields very good comparison results when compared with the newly developed ISCST2 area source algorithm. For realistic meteorological data, the differences between ground level concentration values simulated with the new ISCLT2 algorithm and with the new ISCST2 counterpart are within about 10% for a typical source. The differences between the long-term and short-term algorithms using actual meteorological data are because ISCLT2 uses a meteorological frequency distribution to represent the meteorological conditions, and does not contain precise hour-to-hour information on specific combinations of wind speed, wind direction, stability class and mixing height that typically control the design values for the short-term model. Furthermore, sensitivity analyses show that the current ISCLT2 area source algorithm, based on the virtual source approach, routinely underestimates (and underrepresents) the actual maximum concentration impacts by a factor of 2 to 4, especially

[6] American Petroleum Institute, 1992. Evaluation of Area and Volume Source Dispersion Models for Petroleum and Chemical Industry Facilities, Phase I (Final Report). API Publication No. 4539. (Docket No. A–92–65; II–A–1)

[7] American Petroleum Institute, 1992. Area and Volume Source Air Quality Model Performance Evaluation, Phase II (Final Report). API Publication No. 4540. (Docket No. A–92–65; II–A–2)

[8] "User Instructions for a New Area Source Algorithm" (August 1993), uploaded to the SCRAM BBS. (Docket No. A–92–65; II–A–3)

[9] W.B., B. Flannery, S. Teukolsky, and W. Vetterling, 1986. *Numerical Recipes*. Cambridge University Press, New York; 797 pp.

[10] Petersen, W.B., 1978. User's Guide for PAL—A Gaussian-Plume Algorithm for Point, Area, and Line Sources. EPA Publication No. EPA–600/4–78–013. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 281306)

[11] Environmental Protection Agency, 1991. User's Guide for the Fugitive Dust Model (FDM) (Revised). EPA Publication No. EPA–910/9–88–202R. U.S. Environmental Protection Agency, Region X. (NTIS No. PB 90–502410)

[12] Environmental Protection Agency, 1992. Comparison of a Revised Area Source Algorithm for the Industrial Source Complex Short Term Model and Wind Tunnel Data. EPA Publication No. EPA–454/R–92–014. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 93–226751)

[13] Snyder, W.H., 1991. DATA REPORT: Wind Tunnel Simulation of Dispersion from Superfund Area Sources. Part: Neutral Flow. (Docket No. A–92–65; II–a–4)

[14] Environmental Protection Agency, 1992. Sensitivity Analysis of a Revised Area Source Algorithm for the Industrial Source Complex Short Term Model. EPA Publication No. EPA–454/R–92–015. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 93–226769)

[15] RATIO = X_{NEW}/X_{OLD}

[16] Environmental Protection Agency, 1992. Development and Evaluation of a Revised Area Source Algorithm for the Industrial Source Complex Long Term Model. EPA Publication No. EPA–454/R–92–016. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 93–226777)

when the receptors are located inside or near the source.

B. Dry Deposition Algorithm

Deposition phenomena can be conceptualized in a two by two matrix, with a wet/dry dichotomy on one side and a particle/gas dichotomy on the other. Each of the four cells can then be further subdivided into simple and complex terrain components. Today's action proposes to replace the plume depletion and dry deposition algorithm [17] in the Industrial Source Complex model (ISC2) with a new algorithm that estimates the amount of material depleted from the plume as a combination of processes involving atmospheric turbulence and gravitational settling. This proposal embodies the simple terrain component of one cell in the conceptual matrix: dry deposition applied to particles. It is proposed that the new algorithm be implemented to treat dry deposition in rolling terrain, which is not possible in the current versions of ISC2. Future efforts may be directed at better characterizing gaseous and wet deposition in simple and complex.

The dry deposition algorithm currently used in ISC2 is applicable to large particles (i.e., those with diameters greater than ~20μm) for which deposition is dominated by gravitational settling. In 1993, EPA initiated a study to evaluate the performance of alternative deposition algorithms. A review of the technical literature identified four core algorithms and six variants suitable for testing, producing a field of ten algorithm candidates. Estimates based on these algorithms were compared with observations from several data bases. Objective statistical procedures [18] were used to measure model performance. The main feature of this approach is to compute normalized statistical measures of the fractional bias between observed and predicted values.

Based on the evaluation,[19] the performance among the three top-ranked dry deposition algorithms was statistically indistinguishable. The three top-ranked models were UAM 2, CARB 3 and ADOM 1. The UAM 2 and CARB 3 algorithms represent a hybrid variant of their respective core algorithms with an added Leaf Area Index (LAI) [20] adjustment. ADOM 1, currently employed in the Acid Deposition and Oxidant Model, is a core algorithm (does not include a LAI adjustment). The results of the evaluation suggest that the reflection coefficient method used in ISC2 does not perform well for particle sizes less than 20μm in diameter.

The technical applicability of a LAI adjustment, as implemented for particle deposition velocity, has not been extensively studied. Thus, the robustness of using a LAI in routine model applications is uncertain. Excluding algorithms with LAI adjustments, the ADOM 1 scheme produces the best composite fractional bias measure (CPM) and was significantly better than other models tested at the 95% confidence level. ADOM 1 slightly underestimates observed deposition velocities, a trait that is shared by all the algorithm candidates. Considering all of these factors, ADOM 1 is recommended for estimating dry deposition velocity in the ISC2 model.

The ADOM 1 dry deposition algorithm has been tested within the framework of the ISC2 model and comparisons of deposition estimates using the old and new deposition algorithms have been made for a range of source types and particulate emission scenarios. Similar comparisons have been made of particulate concentration estimates as affected by the old and new deposition algorithms. A report [21] documenting these analyses and assessing the potential consequences of replacing the current deposition algorithm in ISC2 with the proposed algorithm has been prepared.

The results of the comparative analyses of the proposed dry deposition algorithm vary with release type, particle size, and averaging period. Consequently, care should be exercised in interpreting the generalizations that follow regarding deposition and concentration estimates.

The effects on the actual deposition predicted by ADOM 1 were examined. For surface releases, the new algorithm gives higher annual and 24-hour deposition estimates for all particle sizes. For 1-hour and 3-hour estimates for surface releases the results were mixed. For elevated releases, deposition estimates given by the new algorithm are higher for 0.1μm and 1μm particles, lower for 10 and 20μm particles, and higher for 80μm and 100μm particles. The results for elevated releases of 50μm particles depend on release height.

The effects on ambient concentrations predicted by ISC2 were also examined. For both surface and elevated releases of small and intermediate particle sizes (i.e., 0.1, 1.0, 10 and 20μm), the differences in concentration estimates between the old and new algorithms are less than 10 percent. These differences are considered insignificant. Results for the large particle sizes (i.e., 50, 80, and 100μm) depend on release height. For surface releases, the concentration estimates using the new algorithm are diminished. For elevated releases, concentration estimates using the new algorithm are increased.

EPA is also soliciting public comment on whether it would be appropriate to require the proposed dry deposition algorithm to be used for all ISC2 analyses involving particulate matter in any of the programs for which Guideline usage is required under 40 CFR parts 51 and 52 (see **Summary**). Heretofore, use of the deposition algorithm has been optional, depending on the relevance of particle deposition to a particular application. However, with the more accurate deposition algorithm proposed herein, its use may result in the systematic prediction of more accurate ambient concentrations. Therefore, EPA is soliciting comment on whether it would be appropriate to revise Guideline section 8.2.7 (Gravitational Settling and Deposition) to require use of the deposition algorithm, and if so, whether the implementation guidance provided in the User's Instructions [17] is sufficient.

2. Enhancements to On-site Stability Classification

EPA is proposing to revise the on-site stability classification with the adoption of a new technique, adapted from Bowen et al.[22] and herein referred to as

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[17] "User Instructions for the Draft Deposition Models DEPST and DEPLT" (March 1994) have been uploaded to the SCRAM BBS. (Docket No. A-92-65; II-A-5).

[18] Environmental Protection Agency, 1992. Protocol for Determining the Best Performing Model. EPA Publication No. EPA-454/R-92-025. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 93-226082)

[19] Environmental Protection Agency, 1994. Development and Testing of a Dry Deposition Algorithm (Revised). EPA Publication No. EPA-454/R-94-015. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 94-183100)

Note: This report replaces one previously completed because an error was discovered after the earlier report was issued. The following memorandum details the nature of the error and documents the validity of the newer report.

Memorandum from Jawad S. Touma et al. to Joseph A. Tikvart: Comments on the report "Development and Testing of a Dry Deposition Algorithm (Revised)", 6 May 1994 (3pp. w/5 attachments) (Dockets No. A-92-65; II-E-1)

[20] The LAI is a ration of leaf surface area divided by ground surface area and can be estimated from land use type and season.

[21] Environmental Protection Agency, 1994. Comparison of ISC2 Deposition Estimates Based on Current and Proposed Deposition Algorithms. EPA Publication No. EPA-454/R-94-018. U.S. Environmental Protection Agency, Research Triangle Park, NC.

[22] Bowen, B.M., J.M. Dewart, and A. I. Chen. 1983. Stability Class Determination: A Comparison

the solar radiation/delta-T (SRDT) method. This method uses total solar radiation during daytime and temperature difference, delta-T (ΔT), at night and is a replacement for the one originally proposed (56 FR 5900). As proposed in supplement C, the hierarchy of stability classification schemes in the Guideline will be changed to reflect a preference for SRDT-derived stability categories. Operation of the method is fully described in section 6.4.4.2 of "On-Site Meteorological Program Guidance for Regulatory Modeling Applications" (EPA–450/4–87–013), hereafter, "on-site guidance".

The new method has been completely reconfigured in terms of its classification criteria, in response to the public comments provided at the Fifth Conference on Air Quality Modeling (March 1991) regarding the original proposal. The comments (Docket A–88–04, Category IV–D; see footnote #4) were generally favorable to the concept of a SRDT method for determining stability category. However, there were some substantial criticisms of specific SRDT components. Most significant were comments on:

(1) Accuracy of measurements associated with a 2–10m ΔT;

(2) Limitations on temperature measurements made at 2m;

(3) Use of a 10–60m ΔT in lieu of one measured from 2–10m;

(4) Lack of evaluation data bases;

(5) Use of net radiation measurements in lieu of solar radiation; and

(6) Merits of σ measurements for stability determination.

Regarding the use of net radiation, it is not apparent that there is sufficient experience with routine use of such measurements to justify requiring their use, whereas there has been extensive experience with ΔT systems. Regarding the use of σ measurements, experience has been that, unless such systems are tuned for site-specific regimes, the σ-based methods do not represent Pasquill-Gifford (P–G) stability classification well. Evaluation results,[23] based on on-site measurements from three widely separated locations, indicate that the SRDT method seems to be less sensitive to local measurement configurations and is expected to be geographically robust. Furthermore, the new SRDT method has been configured so that the system accuracy will not be limiting. Thus, the method will be less sensitive to random temperature differences. The claim (commenter IV–D–27 in Docket Item V–C–1; see footnote #3) that accurate measurement of the 2m temperature may be adversely affected by surface conditions under the tower has merit in certain circumstances. The new SRDT method does not mandate that the location of the lower temperature sensor be at 2m. EPA believes that proper siting of temperature probes in accordance with Chapter 3 of the on-site guidance, coupled with sound judgment, should obviate any such problem. Use of a 10–60m ΔT, an interval specified in the meteorological monitoring protocol used by the Nuclear Regulatory Commission, is accommodated by the new SRDT method. Finally, substantial effort was made in acquiring suitable on-site data bases with which to evaluate the new SRDT method; the new SRDT method has been more extensively evaluated.

To make the stability classification comparisons for the SRDT evaluation, a surrogate for the preferred Turner classification scheme[24] was devised. This surrogate method utilized "off-site" National Weather Service (NWS) observations in lieu of those otherwise made "on-site". To ensure the integrity of this surrogate method, it was necessary that candidate sites be sufficiently near a representative NWS station from which cloud cover and ceiling height observations could be obtained. Of ten on-site data bases considered for supporting the evaluation, three were ultimately selected because they had the requisite attributes. The data bases thus selected were: Kincaid, IL (21 weeks in 1980), Longview, WA (CY 1991), and a site near Bloomington, IN (7/91–7/92). Proximity of these sites to NWS stations ranged from 17 to 45 miles.

For theoretical reasons, as well as for consistency with the approach originally proposed, the SRDT method was initially evaluated using ΔT data from 2–10m; such data were available for all three sites. At two of the sites, ΔT data from 10–50m were also available. These data were of interest in trying to accommodate ΔT measurements from alternative height intervals.

As substantial site-to-site variability was seen in initial analyses using the 2–10m ΔT data, it was decided to pool the data from all three sites and then determine optimum SRDT "cutpoints" (i.e., meteorological criteria for discriminating stability category). Thus, optimum cutpoints were derived in an empirical, iterative fashion from a data base of 19,540 valid hours. Use of these optimum cutpoints resulted in a SRDT system that estimated the same P-G stability as the preferred Turner scheme for 62% of the hours; the categories were within one class for 89% of the hours. A randomization procedure in which the composite data were split into two complementary sets was done to ascertain robustness (insensitivity to random variations in the data) of the method. The optimum cutpoints from the composite data were then applied to the three sites individually to document site-specific residuals.

For the two sites with 10–50m ΔT data, the SRDT system using the optimum (for pooled data) cutpoints was applied in the same way as with the 2–10m ΔT data, with reasonably accurate and consistent results. Stability categories were duplicated by the SRDT method at least 56% of the hours, and were within one class for about 90% of the hours. Overall, the analyses show that the SRDT system works adequately for either ΔT interval: the system does not appear to be unduly sensitive to the actual ΔT height interval. Based on these analyses, EPA does not feel it should be overly prescriptive regarding the use of particular ΔT intervals. Rather, in guidance for implementation of the method, actual placement of temperature probes is related to fundamental site-specific phenomena, e.g., surface roughness. While the method was evaluated using only 2–10m and 10–50m ΔT data, it is considered to be robust enough to accommodate other ΔT height intervals as well, so long as section 6.4.4.2 of the on-site guidance cited above is followed.

Finally, consequence analyses were performed using a Gaussian dispersion model (i.e., ISC2) to document the effect of the SRDT method on design concentration ratios.[25] These analyses were performed for the 2–10m ΔT comparisons at all three sites and for the 10–50m ΔT comparisons at two sites. For all such analyses, scenarios included single 35m, 100m and 200m stacks and 180 receptors configured radially in 5 concentric rings. Averaging times included 1-hour, 3-hour, 24-hour, and period. Modeled concentrations of interest were the high, and high 2nd high value. Using stability categories

for One Site. Proceedings, Sixth Symposium on Turbulence and Diffusion, American Meteorological Society, Boston, MA; pp. 211–214. (Docket No. A–92–65; II–A–6)

[23] Environmental Protection Agency, 1993. An Evaluation of a Solar Radiation/Delta-T (SRDT) Method for Estimating Pasquill-Gifford (P–G) Stability Categories. EPA Publication No. EPA–454/R–93–055. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 94–113958)

[24] This method requires on-site measurements of wind speed coupled with observations of cloud cover and ceiling height. Turner, D.B., 1964. A Diffusion Model for an Urban Area. Journal of Applied Meteorology, 3(1): 83–91.

[25] $RATIO = X_{SRDT}/X_{Turner}$

derived from the 2–10m ΔT data for the three sites, the concentration ratios averaged 1.06–1.24 across three source types, four averaging times and two concentration types. Likewise, using those categories derived from the 10–50m ΔT data, the same concentration ratios also averaged 1.06–1.24.

In the supplement B revisions to the Guideline, EPA referenced "On-Site Meteorological Program Guidance for Regulatory Modeling Applications" in section 9.3.3. This document continues to serve as the primary source of supplementary technical guidance on the collection and use of on-site meteorological data. EPA is proposing an addendum [26] to accommodate the technical details of the SRDT system. Once finalized, the hierarchy of stability classification schemes in that document will also be changed to reflect the preference for those derived via SRDT. The use of other techniques prior to a year following promulgation will be exempt from this provision, after which they will not be considered the primary method for estimating stability. Finally, the module designed to implement the SRDT system in Version 1.3 of the Meteorological Processor for Regulatory Models (MPRM), EPA–600/3–88–043, will be activated and configured with the optimum cutpoints derived in the evaluation.

3. Screening Approaches for Assessing Annual NO_2 Impact

EPA is proposing a revision to simplify the screening approaches for assessing annual NO_2 concentration impact in Guideline section 6.2.3.

These revisions respond to public comments contending that the initial screening level (which assumed total conversion of NO to NO_2) was overly conservative, and that the ozone limiting approach described in the second and third screening levels was sometimes inapplicable or impracticable. Thus, a second level screening approach that embodies use of an empirically derived NO_2/NO_X ratio is proposed. This method replaces the multi-tiered ozone limiting method now recommended in the Guideline. As described in Chu and Meyer (1991),[27] the new approach reflects a review of 10 years of ambient NO_2 and NO_X concentration data collected at a variety of monitoring sites throughout the United States.

The underlying basis for the ambient ratio method (ARM) is that, for a well mixed plume, the photochemical conversion of NO to NO_2 is essentially controlled by the characteristics of the ambient air. This, in turn, is reflected in the annual NO_2/NO_X ratio monitored downwind. Since the photochemistry involved in converting NO to NO_2 is implicitly accounted for by the annual NO_2/NO_X ratio monitored downwind, no long-term complex photochemical calculation is needed. Thus, it makes the modeling exercise much simpler, yet still provides results consistent with available plume observational studies.

The method is conservative since, in many cases, maximum estimated ground level NO_X concentration may occur prior to thorough mixing of the plume. A second, less important, source of conservatism is that the existing NO_2 and NO_X data may overestimate the actual NO_2 and NO_X concentrations due to interference of PAN and nitric acid in the measurement. However, since the same amount is added to both the numerator and denominator of the NO_2NO_X ratio, it only makes the conversion ratio slightly more conservative. As shown by Chu and Meyer (1991), the ARM, while likely to be conservative, is somewhat less so than existing screening methods (such as the total conversion and the ozone limiting method) for estimating annual NO_2 concentrations and PSD NO_2 increments for NO_X sources. Serving as a second level screening method, ARM has the quality of simplicity, is easy to apply and is likely to be somewhat conservative. It relies only on the standard regulatory Gaussian models and data from nationwide NO_X monitoring networks. EPA has therefore selected this method to propose as a revision to the Guideline in supplement C.

4. Modeling Techniques for Toxic Air Pollutants

In response to a request made by the American Petroleum Institute (see footnote 3), two new models for treating toxic air pollutant releases are being proposed for addition to appendix B of the Guideline. These models, SLAB and HGSYSTEM, will then accompany DEGADIS, another appendix B model for treating dense gas releases for use on a case-by-case basis. (See footnote 2.)

Administrative Requirements

A. Executive Order 12866

Under Executive Order (E.O.) 12866 [58 FR 51735 (October 4, 1993)], the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of E.O. 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This final rule does not contain any information collection requirements subject to review by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires EPA to consider potential impacts of regulations on small "entities". The action here proposed is a supplement to the notice of final rulemaking that was published on July 20, 1993 (58 FR 38816). As described earlier in this preamble, the revisions here proposed as supplement C to the Guideline encompass the use of new model algorithms and techniques for using those models. This rule merely updates existing technical requirements for air quality modeling analyses mandated by various Clean Air Act programs (e.g., prevention of significant deterioration, new source review, SIP revisions) and imposes no new regulatory burdens. As such, there will be no additional impact on small entities regarding reporting, recordkeeping, compliance requirements, as stated in the notice of final rulemaking (*op. cit.*). Furthermore, this proposed rule does not duplicate, overlap, or conflict with other federal rules. Thus, pursuant to the provisions of 5 U.S.C. 605(b), EPA hereby certifies that the attached proposed rule will not have a significant impact on a substantial number of such entities.

[26] ADDENDUM: On-Site Meteorological Program Guidance for Regulatory Modeling Applications. Draft for Public Comment (September 1993). (Docket No. A–92–65; II–A–7)

[27] Chu, S.–H. and E.L. Meyer, 1991. Use of Ambient Ratios to Estimate Impact of NO_X Sources on Annual NO_2 Concentrations. Proceedings, 84th Annual Meeting & Exhibition of the Air & Waste Management Association, Vancouver, B.C.; 16–21 June 1991 (16pp.). (Docket No. A–92–65; II–A–8)

List of Subjects

40 CFR Part 51

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Hydrocarbons, Carbon monoxide.

40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead.

Authority: This notice of proposed rulemaking is issued under the authority granted by sections 110(a)(2), 165(e), 172(a) & (c), 173, 301(a)(1) and 320 of the 1990 Clean Air Act Amendments, 42 U.S.C. 7410(a)(2), 7475(e), 7502(a) & (c), 7503, 7601(a)(1) and 7620, respectively.

Dated: November 7, 1994.

Carol M. Browner,

Administrator.

Parts 51 and 52, Chapter I, Title 40 of the Code of Federal Regulations are amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7410(a)(2), 7475(e), 7502(a) and (b), 7503, 7601(a)(1) and 7620.

§ 51.112 [Amended]

2. In § 51.112, paragraphs (a)(1) and (a)(2) are amended by revising "and supplement B (1993)" to read ", supplement B (1993) and supplement C (1994)".

§ 51.160 [Amended]

3. In § 51.160, paragraphs (f)(1) and (f)(2) are amended by revising "and supplement B (1993)" to read ", supplement B (1993) and supplement C (1994)".

§ 51.166 [Amended]

4. In § 51.166, paragraph (l)(1) and (l)(2) are amended by revising "and supplement B (1993)" to read ", supplement B (1993) and supplement C (1994)".

5. Appendix W to Part 51, section 4.2.2, is amended by revising footnote 1 in Table 4–1 to read as follows:

Appendix W to Part 51—Guideline on Air Quality Models (Revised)

* * * * *

4.2.2 * * *

Table 4–1. * * *

	Land Use	Model[1]
*	*	*

[1] The models as listed in this table reflect the applications for which they were originally intended. Several of these models have been adapted to contain options which allow them to be interchanged. For example, ISCST2 could be substituted for ISCLT2. Similarly, for a point source application, ISCST2 with urban option can be substituted for RAM. Where a substitution is convenient to the user and equivalent estimates are assured, it may be made.

* * * * *

Appendix W [Amended]

6. Appendix W to Part 51, section 6.2.3, is revised to read as follows:

* * * * *

6.2.3 Models for Nitrogen Dioxide (Annual Average)

a. A tiered screening approach is recommended to obtain annual average estimates of NO_2 from point sources for New Source Review analysis, including PSD, and for SIP planning purposes. This multi-tiered approach is conceptually shown in Figure 6–1 below:

Figure 6–1—Multi-tiered Screening Approach for Estimating Annual NO_2 Concentrations From Point Sources

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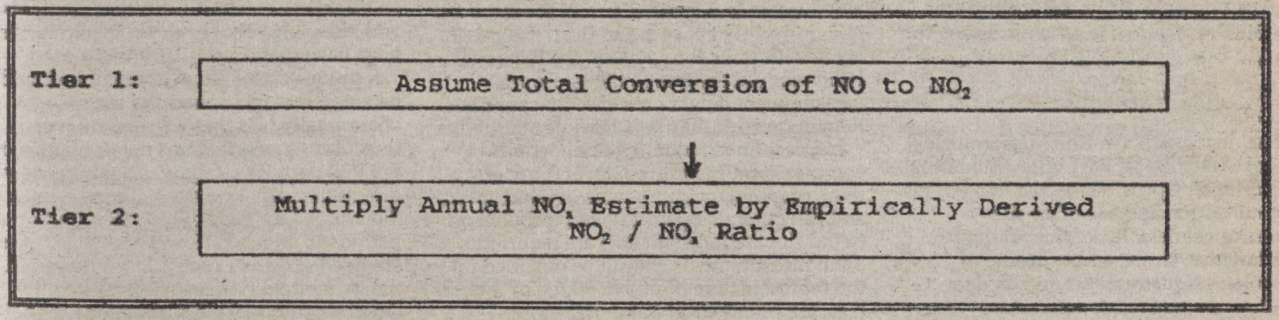

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b. For Tier 1 (the initial screen), use an appropriate Gaussian model from appendix A to estimate the maximum annual average concentration and assume a total conversion of NO to NO_2. If the concentration exceeds the NAAQS and/or PSD increments for NO_2, proceed to the 2nd level screen.

c. For Tier 2 (2nd level) screening analysis, multiply the Tier 1 estimate(s) by an empirically derived NO_2/NO_X value of 0.75 (annual national default).[36] An annual NO_2/NO_X ratio differing from 0.75 may be used if it can be shown that such a ratio is based on data likely to be representative of the location(s) where maximum annual impact from the individual source under review occurs. In the case where several sources contribute to consumption of a PSD increment, a locally derived annual NO_2/NO_X ratio should also be shown to be representative of the location where the maximum collective impact from the new plus existing sources occurs.

d. In urban areas, a proportional model may be used as a preliminary assessment to evaluate control strategies to meet the NAAQS for multiple minor sources, i.e. minor point, area and mobile sources of NO_X; concentrations resulting from major point sources should be estimated separately as discussed above, then added to the impact of the minor sources. An acceptable screening technique for urban complexes is to assume that all NO_X is emitted in the form of NO_2 and to use a model from appendix A for nonreactive pollutants to estimate NO_2 concentrations. A more accurate estimate can be obtained by: (1) calculating the annual average concentrations of NO_X with an urban model, and (2) converting these estimates to NO_2 concentrations using an empirically derived annual NO_2/NO_X ratio. A value of 0.75 is recommended for this ratio. However, a spatially averaged annual NO_2/NO_X ratio may be determined from an existing air quality monitoring network and used in lieu of the 0.75 value if it is determined to be representative of prevailing ratios in the urban area by the reviewing agency. To ensure use of appropriate locally derived

annual NO_2/NO_X ratios, monitoring data under consideration should be limited to those collected at monitors meeting siting criteria defined in 40 CFR 58, appendix D as representative of "neighborhood", "urban", or "regional" scales. Furthermore, the highest annual spatially averaged NO_2/NO_X ratio from the most recent 3 years of complete data should be used to foster conservatism in estimated impacts.

e. To demonstrate compliance with NO_2 PSD increments in urban areas, emissions from major and minor sources should be included in the modeling analysis. Point and area source emissions should be modeled as discussed above. If mobile source emissions do not contribute to localized areas of high ambient NO_2 concentrations, they should be modeled as area sources. When modeled as area sources, mobile source emissions should be assumed uniform over the entire highway link and allocated to each area source grid square based on the portion of highway link within each grid square. If localized areas of high concentrations are likely, then mobile sources should be modeled as line sources with the preferred model ISCLT2.

f. More refined techniques to handle special circumstances may be considered on a case-by-case basis and agreement with the reviewing authority should be obtained. Such techniques should consider individual quantities of NO and NO_2 emissions, atmospheric transport and dispersion, and atmospheric transformation of NO to NO_2. Where they are available, site-specific data on the conversion of NO to NO_2 may be used. Photochemical dispersion models, if used for other pollutants in the area, may also be applied to the NO_X problem.

* * * * *

7. Appendix W to Part 51, section 9.3.3.2, is revised to read as follows:

* * * * *

9.3.3.2 *Recommendations—Site-specific Data Collection.*

a. The document "On-Site Meteorological Program Guidance for Regulatory Modeling Applications"[66] provides recommendations on the collection and use of on-site meteorological data. Recommendations on characteristics, siting, and exposure of meteorological instruments and on data recording, processing, completeness requirements, reporting, and archiving are also included. This publication should be used as a supplement to the limited guidance on these subjects now found in the "Ambient Monitoring Guidelines for Prevention of Significant Deterioration".[63] Detailed information on quality assurance is provided in the "Quality Assurance Handbook for Air Pollution Measurement Systems: Volume IV".[67] As a minimum, site-specific measurements of ambient air temperature, transport wind speed and direction, and the parameters to determine Pasquill-Gifford (P–G) stability categories should be available in meteorological data sets to be used in modeling. Care should be taken to ensure that meteorological instruments are located to provide representative characterization of pollutant transport between sources and receptors of interest. The Regional Office will determine the appropriateness of the measurement locations.

b. All site-specific data should be reduced to hourly averages. Table 9–3 lists the wind related parameters and the averaging time requirements.

c. *Solar Radiation Measurements.* Total solar radiation should be measured with a reliable pyranometer, sited and operated in accordance with established on-site meteorological guidance.[66]

d. *Temperature Measurements.* Temperature measurements should be made at standard shelter height (2m) in accordance with established on-site meteorological guidance.[66]

e. *Temperature Difference Measurements.* Temperature difference (ΔT) measurements for use in estimating P–G stability categories using the SRDT methodology (see Stability Categories) should be obtained using two matched thermometers or a reliable thermocouple system to achieve adequate accuracy.

f. Siting, probe placement, and operation of ΔT systems should be based on guidance found in Chapter 3 of reference 66, and such guidance should be followed when obtaining vertical temperature gradient data for use in plume rise estimates or in determining the critical dividing streamline height.

g. *Wind Measurements.* The wind speed for determining plume rise using the methods of Briggs[56,57] should be measured at stack top. For refined modeling applications in simple terrain situations, if a source has a stack below 100m, select the stack top height as the wind measurement height for characterization of plume dilution and transport. In some cases, collection of stack top wind speed may be impractical. For sources with stacks extending above 100m, a 100m tower is suggested unless the stack top is significantly above 100m (i.e., ≥200m). In cases with stack tops ≥200m, the Regional Office should determine the appropriate measurement height on a case-by-case basis. Remote sensing may be a feasible alternative.

h. For refined modeling applications in complex terrain, multiple level (typically three or more) measurements of wind speed and direction, temperature and turbulence (wind fluctuation statistics) are required. Such measurements should be obtained up to the representative plume height(s) of interest (i.e., the plume height(s) under those conditions important to the determination of the design concentration). The representative plume height(s) of interest should be determined using an appropriate complex terrain screening procedure (e.g., CTSCREEN) and should be documented in the monitoring/modeling protocol. The necessary meteorological measurements should be obtained from an appropriately sited meteorological tower augmented by SODAR if the representative plume height(s) of interest exceed 100m. The meteorological tower need not exceed the lesser of the representative plume height of interest (the highest plume height if there is more than one plume height of interest) or 100m.

i. Specifications for wind measuring instruments and systems are contained in the "On-Site Meteorological Program Guidance for Regulatory Modeling Applications".[66]

j. *Stability Categories.* The (P–G) stability categories, as originally defined, couple near-surface measurements of wind speed with subjectively determined insolation assessments based on hourly cloud cover and ceiling height observations. The wind speed measurements are made at or near 10m. The insolation rate is typically assessed using observations of cloud cover and ceiling height based on criteria outlined by Turner.[50] In the absence of site specific observations of cloud cover and ceiling height, it is recommended that the P–G stability category be estimated using the solar radiation/delta-T (SRDT) method described in section 6.4.4.2 of reference 66. This method requires measurements of total solar radiation during the daytime and temperature difference (Δ) at night (see Temperature Difference Measurements), coupled with average wind speed at 10m above ground level. This technique is modified slightly from that published by Bowen et al. (1983),[136] has been evaluated with three on-site data bases,[137] and allows practical and reasonable implementation of the preferred Turner method.[55]

k. Two methods of stability classification which use wind fluctuation statistics, the σ_A and σ_E methods, are also described in detail in reference 66 (note applicable tables in Chapter 6). As a primary method, these two techniques may only be used for processing data collected within 1 year following the promulgation date of Supplement C, and then only when data are unavailable to implement either the preferred Turner method[55] or the SRDT method. After promulgation of Supplement C, these turbulence methods should only be used to provide back-up stability category estimates for missing hours in the record according to an established data substitution protocol[2] and after valid data retrieval requirements have been met.

l. In the case of the σ_A method it should be noted that wind meander may occasionally bias the determination of σ_A and thus lead to an erroneous determination of the P-G stability category. To minimize wind direction meander contributions, σ_A may be determined for each of four 15-minute periods in an hour. However, 360 samples are needed during each 15-minute period. If the σ_A method is being used for stability determinations in these situations, take the square root of one-quarter of the sum of the squares of the four 15 minute σ_A's, as illustrated in the footnote to Table 9–3. While this approach is an acceptable alternative for determining stability, as qualified above, σ_A's calculated in this manner are not likely to be suitable for input to models that are designed to accept on-site hourly σ's based on 60-minute periods, e.g., CTDMPLUS. For additional information on stability classification using wind fluctuation statistics, see references 68–72.

m. In summary, when on-site data are being used, P-G stability categories should be determined by (1) Turner's method[55] using site specific data which include cloud cover,

[2] Such protocols are usually part of the approved monitoring program plan. Data substitution guidance is provided in section 5.3 of reference 66.

ceiling height and surface (~10m) wind speeds, or (2) the radiation-based technique (SRDT) described in reference 66.

n. The following techniques may only be applied to on-site data bases collected within 1 year following the promulgation date of Supplement C, and then only when data are unavailable to implement the preferred Turner[55] or SRDT method; or to provide back-up stability category estimates for missing hours in the record according to an established data substitution protocol[g] and after valid data retrieval requirements have been met (choice is based on data availability and site suitability):

(1) σ_E from site-specific measurements in accordance with guidance;[66]

(2) σ_A from site-specific measurements in accordance with guidance;[66]

(3) Turner's method[55] using site-specific wind speed with cloud cover and ceiling height from a nearby NWS site.

o. *Meteorological Data Processors.* The following meteorological preprocessors are recommended by EPA: RAMMET, PCRAMMET, STAR, PCSTAR, MPRM,[135] and METPRO.[24] RAMMET is the recommended meteorological preprocessor for use in applications employing hourly NWS data. The RAMMET format is the standard data input format used in sequential Gaussian models recommended by EPA. PCRAMMET[138] is the PC equivalent of the mainframe version (RAMMET). STAR is the recommended preprocessor for use in applications employing joint frequency distributions (wind direction and wind speed by stability class) based on NWS data. PCSTAR is the PC equivalent of the mainframe version (STAR). MPRM is the recommended preprocessor for use in applications employing on-site meteorological data. The latest version (MPRM 1.3) has been configured to implement the SRDT method for estimating P-G stability categories. MPRM is a general purpose meteorological data preprocessor which supports regulatory models requiring RAMMET formatted data and STAR formatted data. In addition to on-site data, MPRM provides equivalent processing of NWS data. METPRO is the required meteorological data preprocessor for use with CTDMPLUS. All of the above mentioned data preprocessors are available for downloading from the SCRAM BBS.[19]

* * * * *

8. Appendix W to Part 51, section 12.0, is amended by:

a. Redesignating footnote g and h as footnotes h and i;

b. Revising references 36 and 90; and

c. Adding references 136 through 138.

The revisions and additions read as follows:

* * * * *

12.0 * * *

* * * * *

36. Chu, S.-H. and E. L.Meyer, 1991. Use of Ambient Ratios to Estimate Impact of NO_x Sources on Annual NO_2 Concentrations. Proceedings, 84th Annual Meeting & Exhibition of the Air & Waste Management Association, Vancouver, B.C.; 16–21 June 1991. (16pp.) (Docket No. A–92–65, II-A–7)

* * * * *

90. Environmental Research and Technology, 1987. User's Guide to the Rough Terrain Diffusion Model (RTDM), Rev. 3.20. ERT document No. PD535–585. Environmental Research and Technology, Inc., Concord, MA. (NTIS No. PB 88–171467)

* * * * *

136. Bowen, B.M., J.M. Dewart and A.I. Chen, 1983. Stability Class Determination: A Comparison for One Site. Proceedings, Sixth Symposium on Turbulence and Diffusion. American Meteorological Society, Boston, MA; pp. 211–214. (Docket No. A–92–65, II-A–5)

137. Environmental Protection Agency, 1993. An Evaluation of a Solar Radiation/Delta-T (SRDT) Method for Estimating Pasquill-Gifford (P-G) Stability Categories. EPA Publication No. EPA–454/R–93–055. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 94–113958)

138. Environmental Protection Agency, 1993. PCRAMMET User's Guide. EPA Publication No. EPA–454/B–93–009. U.S. Environmental Protection Agency, Research Triangle Park, NC.

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Appendix W [Amended]

9. Appendix W to Part 51, section 13.0, is amended by redesignating footnote i as footnote j.

Appendix W [Amended]

10. Appendix W to Part 51, Appendix A, is amended by:

a. Revising section A.5.d;

b. Revising section A.5.m;

c. Adding four references in alphabetical order in section A.5.n; and

d. Adding a reference at the end of section A.REF.

The revisions and additions read as follows:

Appendix A to Appendix W of Part 51—Summaries of Alternative Air Quality Models

* * * * *

A. 5 * * *

d. Type of Model

ISC2 is a Gaussian plume model. It has been revised to perform a double integration of the Gaussian plume kernel for area sources.

* * * * *

m. Physical Removal

Dry deposition effects for particles are treated using a resistance formulation in which the deposition velocity is the sum of the resistances to pollutant transfer within the surface layer of the atmosphere, plus a gravitational settling term (EPA, 1994), based on the modified surface depletion scheme of Horst (1983).

n. Evaluation Studies

* * * * *

Environmental Protection Agency, 1992. Comparison of a Revised Area Source Algorithm for the Industrial Source Complex Short Term Model and Wind Tunnel Data. EPA Publication No. EPA–454/R–92–014. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 93–226751)

Environmental Protection Agency, 1992. Sensitivity Analysis of a Revised Area Source Algorithm for the Industrial Source Complex Short Term Model. EPA Publication No. EPA–454/R–92–015. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 93–226769)

Environmental Protection Agency, 1992. Development and Evaluation of a Revised Area Source Algorithm for the Industrial Source Complex Long Term Model. EPA Publication No. EPA–454/R–92–016. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 93–226777)

Environmental Protection Agency, 1994. Development and Testing of a Dry Deposition Algorithm (Revised). EPA Publication No. EPA–454/R–94–015. U.S. Environmental Protection Agency, Research Triangle Park, NC.

* * * * *

A. Ref Rerences

* * * * *

Horst, T. W., 1983. A Correction to the Gaussian Source-depletion Model. In *Precipitation Scavenging, Dry Deposition and Resuspension.* H. R. Pruppacher, R. G. Semonin, and W. G. N. Slinn, eds., Elseview, NY.

11. Appendix W to Part 51, Appendix B, is amended by:

a. Adding two entries to the Table of Contents in numerical order; and

b. Adding sections B.32 and B.33 immediately following section B.31.

The additions read as follows:

Appendix B to Appendix W of Part 51—Summaries of Alternative Air Quality Models

Table of Contents

* * * * *

B.32 HGSYSTEM
B.33 SLAB

* * * * *

B.32 HGSYSTEM: Dispersion Models for Ideal Gases and Hydrogen Fluoride

References

Witlox, H.W.M., 1991. HGSYSTEM: dispersion models for ideal gases and hydrogen fluoride, tutorial and quick-reference guide. Report TNER.91.007. Thornton Research Centre, Shell Research, Chester, England. [EGG 1067–1150] (NTIS No. DE 93–000952)

Availability

The PC-DOS version of the HGSYSTEM software (HGSYSTEM: Version NOV90, Programs for modeling the dispersion of ideal gas and hydrogen fluoride releases. [EGG 1067–1153]), executable programs and source

code, can be installed from ten 5¼" diskettes. These diskettes and all documentation are available as a package from Energy, Science & Technology Center: (615) 576–1301.

Technical Contacts

Doug N. Blewitt, Amoco Corporation, Environmental Affairs & Safety Department, Mail Code 4901, 200 East Randolph Drive, Chicago, IL 60601, (312) 856–4099

Howard J. Feldman, American Petroleum Institute, 1220 L Street, Northwest, Washington, D.C. 20005, (202) 682–8340

Abstract

HGSYSTEM is a software package consisting of mathematical models for simulating one or more of the consecutive phases between spillage and far-field dispersion of a non-reactive ideal gas or hydrogen fluoride (HF). The individual models can be described as follows: (1) HFSPILL calculates the time-dependent spill rate of HF liquid or HF vapor from a pressurized vessel; (2) EVAP calculates the spreading and evaporation of a boiling liquid pool on water or non-boiling liquid pool on land; (3) HFPLUME calculates the depressurization to ambient pressure, the jet release and the near-field dispersion from a pressurized release of HF; (4) PLUME calculates the depressurization to ambient pressure, the jet release and the near-field dispersion from a pressurized release of non-reactive, ideal gases; (5) HEGADAS calculates the steady-state or time-dependent ground-level heavy-gas dispersion resulting from either a ground-level pool or a source in a vertical plane; and (6) PGPLUME simulates passive-gas dispersion downwind of a transition point based on a simple Pasquill/Gifford similarity model. The models assume flat, unobstructed terrain. HGSYSTEM can be used to model steady-state, finite-duration and time-dependent releases. The models can be run in either the interactive or batch mode.

a. Recommendations for Regulatory Use

HGSYSTEM can be used as a refined model to estimate short-term ambient concentrations. For toxic chemical releases (non-reactive chemicals or hydrogen fluoride; 1-hour or less averaging times) the expected area of exposure to concentrations above specified threshold values can be determined. For flammable non-reactive gases it can be used to determine the area in which the cloud may ignite.

b. Input Requirements

1. HFSPILL input data: reservoir data (temperature, pressure, volume, HF mass, mass-fraction water), pipe-exit diameter and ambient pressure.

2. EVAP input data: spill rate, liquid properties, and evaporation rate (boiling pool) or ambient data (non-boiling pool).

3. HFPLUME and PLUME input data: reservoir characteristics, pollutant parameters, pipe/release data, ambient conditions, surface roughness and stability class.

4. HEGADAS input data: ambient conditions, pollutant parameters, pool data or data at transition point, surface roughness, stability class and averaging time.

5. PGPLUME input data: link data provided by HFPLUME and the averaging time.

c. Output

1. The HGSYSTEM models contain three post-processor programs which can be used to extract modeling results for graphical display by external software packages. GET2COL can be used to extract data from the model output files. HSPOST can be used to develop isopleths, extract any 2 parameters for plotting and correct for finite release duration. HTPOST can be used to produce time history plots.

2. HFSPILL output data: reservoir mass, spill rate, and other reservoir variables as a function of time. For HF liquid, HFSPILL generates link data to HFPLUME for the initial phase of choked liquid flow (flashing jet), and link data to EVAP for the subsequent phase of unchoked liquid flow (evaporating liquid pool).

3. EVAP output data: pool dimensions, pool evaporation rate, pool mass and other pool variables for steady state conditions or as a function of time. EVAP generates link data to the dispersion model HEGADAS (pool dimensions and pool evaporation rate).

4. HFPLUME and PLUME output data: plume variables (concentration, width, centroid height, temperature, velocity, etc.) as a function of downwind distance.

5. HEGADAS output data: concentration variables and temperature as a function of downwind distance and (for transient case) time.

6. PGPLUME output data: concentration as a function of downwind distance, cross-wind distance and height.

d. Type of Model

HGSYSTEM is made up of four types of dispersion models. HFPLUME and PLUME simulate the near-field dispersion and PGPLUME simulates the passive-gas dispersion downwind of a transition point. HEGADAS simulates the ground-level heavy-gas dispersion.

e. Pollutant Types

HGSYSTEM may be used to model non-reactive chemicals or hydrogen fluoride.

f. Source-Receptor Relationships

HGSYSTEM estimates the expected area of exposure to concentrations above user-specified threshold values. By imposing conservation of mass, momentum and energy the concentration, density, speed and temperature are evaluated as a function of downwind distance.

g. Plume Behavior

1. HFPLUME and PLUME: (1) are steady-state models assuming a top-hat profile with cross-section averaged plume variables; and (2) the momentum equation is taken into account for horizontal ambient shear, gravity, ground collision, gravity-slumping pressure forces and ground-surface drag.

2. HEGADAS: assumes the heavy cloud to move with the ambient wind speed, and adopts a power-law fit of the ambient wind speed for the velocity profile.

3. PGPLUME: simulates the passive-gas dispersion downwind of a transition point from HFPLUME or PLUME for steady-state and finite duration releases.

h. Horizontal Winds

A power law fit of the ambient wind speed is used.

i. Vertical Wind Speed

Not treated.

j. Horizontal Dispersion

1. HFPLUME and PLUME: Plume dilution is caused by air entrainment resulting from high plume speeds, trailing vortices in wake of falling plume (before touchdown), ambient turbulence and density stratification. Plume dispersion is assumed to be steady and momentum-dominated, and effects of downwind diffusion and wind meander (averaging time) are not taken into account.

2. HEGADAS: This model adopts a concentration similarity profile expressed in terms of an unknown center-line ground-level concentration and unknown vertical/cross-wind dispersion parameters. These quantities are determined from a number of basic equations describing gas-mass conservation, air entrainment (empirical law describing vertical top-entrainment in terms of global Richardson number), cross-wind gravity spreading (initial gravity spreading followed by gravity-current collapse) and cross-wind diffusion (Briggs formula).

3. PGPLUME: It assumes a Gaussian concentration profile in which the cross-wind and vertical dispersion coefficients are determined by empirical expressions. All unknown parameters in this profile are determined by imposing appropriate matching criteria at the transition point.

k. Vertical Dispersion

See description above.

l. Chemical Transformation

Not treated.

m. Physical Removal

Not treated.

n. Evaluation Studies

1. PLUME has been validated against field data for releases of liquified propane, and wind tunnel data for buoyant and vertically-released dense plumes. HFPLUME and PLUME have been validated against field data for releases of HF (Goldfish experiments) and propane releases. In addition, the plume rise algorithms have been tested against Hoot, Meroney, and Peterka, Ooms and Petersen databases. HEGADAS has been validated against steady and transient releases of liquid propane and LNG over water (Maplin Sands field data), steady and finite-duration pressurized releases of HF (Goldfish experiments; linked with HFPLUME), instantaneous release of Freon (Thorney Island field data; linked with the box model HEGABOX) and wind tunnel data for steady, isothermal dispersion.

2. The validation studies are contained in the following references:

McFarlane, K., Prothero, A., Puttock, J.S., Roberts, P.T. and Witlox, H.W.M., 1990. Development and validation of atmospheric

dispersion models for ideal gases and hydrogen fluoride, Part I: Technical Reference Manual. Report TNER.90.015. Thornton Research Centre, Shell Research, Chester, England. [EGG 1067–1151] (NTIS No. DE 93–000953)

Witlox, H.W.M., McFarlane, K., Rees, F.J., and Puttock, J.S., 1990. Development and validation of atmospheric dispersion models for ideal gases and hydrogen fluoride, Part II: HGSYSTEM Program User's Manual. Report TNER.90.016. Thornton Research Centre, Shell Research, Chester, England. [EGG 1067–1152] (NTIS No. DE 93–000954)

B.33 SLAB

Reference

Ermak, D.L., 1990. User's Manual for SLAB: An Atmospheric Dispersion Model for Denser-than-Air Releases (UCRL–MA–105607), Lawrence Livermore National Laboratory.

Availability

1. The computer code is available on the Support Center for Regulatory Air Models Bulletin Board System (Upload/Download Area; see page B–1), and can also be obtained from:

Energy Science and Technology Center, P.O. Box 1020, Oak Ridge, TN 37830, (615) 576–2606

2. The User's Manual (NTIS No. DE 91–008443) can be obtained from:

Computer Products, National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, (703) 487–4650

Abstract

The SLAB model is a computer model, PC-based, that simulates the atmospheric dispersion of denser-than-air releases. The types of releases treated by the model include a ground-level evaporating pool, an elevated horizontal jet, a stack or elevated vertical jet and an instantaneous volume source. All sources except the evaporating pool may be characterized as aerosols. Only one type of release can be processed in any individual simulation. Also, the model simulates only one set of meteorological conditions; therefore direct application of the model over time periods longer than one or two hours is not recommended.

a. Recommendations for Use

The SLAB model should be used as a refined model to estimate spatial and temporal distribution of short-term ambient concentration (e.g., 1-hour or less averaging times) and the expected area of exposure to concentrations above specified threshold values for toxic chemical releases where the release is suspected to be denser than the ambient air.

b. Input Requirements

1. The SLAB model is executed in the batch mode. Data are input directly from an external input file. There are 29 input parameters required to run each simulation. These parameters are divided into 5 categories by the user's guide: source type, source properties, spill properties, field properties, and meteorological parameters. The model is not designed to accept real-time meteorological data or convert units of input values. Chemical property data are not available within the model and must be input by the user. Some chemical and physical property data are available in the user's guide.

2. Source type is chosen as one of the following: evaporating pool release, horizontal jet release, vertical jet or stack release, or instantaneous or short duration evaporating pool release.

3. Source property data requirements are physical and chemical properties (molecular weight, vapor heat capacity at constant pressure; boiling point; latent heat of vaporization; liquid heat capacity; liquid density; saturation pressure constants), and initial liquid mass fraction in the release.

4. Spill properties include: source temperature, emission rate, source dimensions, instantaneous source mass, release duration, and elevation above ground level.

5. Required field properties are: desired concentration averaging time, maximum downwind distance (to stop the calculation), and four separate heights at which the concentration calculations are to be made.

6. Meteorological parameter requirements are: ambient measurement height, ambient wind speed at designated ambient measurement height, ambient temperature, surface roughness, relative humidity, atmospheric stability class, and inverse Monin-Obukhov length (optional, only used as an input parameter when stability class is unknown).

c. Output

No graphical output is generated by the current version of this program. The output print file is automatically saved and must be sent to the appropriate printer by the user after program execution. Printed output includes in tabular form:

1. Listing of model input data;

2. Instantaneous spatially-averaged cloud parameters—time, downwind distance, magnitude of peak concentration, cloud dimensions (including length for puff-type simulations), volume (or mole) and mass fractions, downwind velocity, vapor mass fraction, density, temperature, cloud velocity, vapor fraction, water content, gravity flow velocities, and entrainment velocities;

3. Time-averaged cloud parameters—parameters which may be used externally to calculate time-averaged concentrations at any location within the simulation domain (tabulated as functions of downwind distance);

4. Time-averaged concentration values at plume centerline and at five off-centerline distances (off-centerline distances are multiples of the effective cloud half-width, which varies as a function of downwind distance) at four user-specified heights and at the height of the plume centerline.

d. Type of Model

As described by Ermak (1989), transport and dispersion are calculated by solving the conservation equations for mass, species, energy, and momentum, with the cloud being modeled as either a steady-state plume, a transient puff, or a combination of both, depending on the duration of the release. In the steady-state plume mode, the crosswind-averaged conservation equations are solved and all variables depend only on the downwind distance. In the transient puff mode, the volume-averaged conservation equations are solved, and all variables depend only on the downwind travel time of the puff center of mass. Time is related to downwind distance by the height-averaged ambient wind speed. The basic conservation equations are solved via a numerical integration scheme in space and time.

e. Pollutant Types

Pollutants are assumed to be non-reactive and non-depositing dense gases or liquid-vapor mixtures (aerosols). Surface heat transfer and water vapor flux are also included in the model.

f. Source-Receptor Relationships

1. Only one source can be modeled at a time.

2. There is no limitation to the number of receptors; the downwind receptor distances are internally calculated by the model. The SLAB calculation is carried out up to the user-specified maximum downwind distance.

3. The model contains submodels for the source characterization of evaporating pools, elevated vertical or horizontal jets, and instantaneous volume sources.

g. Plume Behavior

Plume trajectory and dispersion is based on crosswind-averaged mass, species, energy, and momentum balance equations. Surrounding terrain is assumed to be flat and of uniform surface roughness. No obstacle or building effects are taken into account.

h. Horizontal Winds

A power law approximation of the logarithmic velocity profile which accounts for stability and surface roughness is used.

i. Vertical Wind Speed

Not treated.

j. Vertical Dispersion

The crosswind dispersion parameters are calculated from formulas reported by Morgan et al. (1983), which are based on experimental data from several sources. The formulas account for entrainment due to atmospheric turbulence, surface friction, thermal convection due to ground heating, differential motion between the air and the cloud, and damping due to stable density stratification within the cloud.

k. Horizontal Dispersion

The horizontal dispersion parameters are calculated from formulas similar to those described for vertical dispersion, also from the work of Morgan, et al. (1983).

l. Chemical Transformation

The thermodynamics of the mixing of the dense gas or aerosol with ambient air (including water vapor) are treated. The relationship between the vapor and liquid fractions within the cloud is treated using the local thermodynamic equilibrium

approximation. Reactions of released chemicals with water or ambient air are not treated.

m. Physical Removal

Not treated.

n. Evaluation Studies

Blewitt, D. N., J. F. Yohn, and D. L. Ermak, 1987. An Evaluation of SLAB and DEGADIS Heavy Gas Dispersion Models Using the HF Spill Test Data, Proceedings, AIChE International Conference on Vapor Cloud Modeling, Boston, MA, November, pp. 56–80.

Ermak, D. L., S.T. Chan, D. L. Morgan, and L. K. Morris, 1982. A Comparison of Dense Gas Dispersion Model Simulations with Burro Series LNG Spill Test Results, *J. Haz. Matls.*, 6: 129–160.

Zapert, J. G., R. J. Londergan, and H. Thistle, 1991. Evaluation of Dense Gas Simulation Models. EPA Publication No. EPA–450/4–90–018. U.S. Environmental Protection Agency, Research Triangle Park, NC.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

§ 52.21 [Amended]

2. In § 52.21, paragraphs (l)(1) and (l)(2) are amended by revising "and supplement B (1993)" to read ", supplement B (1993) and supplement C (1994)".

[FR Doc. 94–28456 Filed 11–25–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[CA 71–2–6329; FRL–5112–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) for ozone. These revisions concern the control of oxides of nitrogen (NO_X) from boilers, steam generators, and process heaters. The intended effect of proposing approval of this rule is to regulate emissions of oxides of nitrogen (NO_X) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking will incorporate this rule into the federally approved SIP. EPA has evaluated this rule and is proposing to approve it under provisions of the CAA regarding EPA actions on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

DATES: Comments on this proposed action must be received in writing on or before December 28, 1994.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105. Please refer to document number CA 71–2–6329 in all correspondence.

Copies of the rule revisions and EPA's evaluation report of the rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

Ventura County Air Pollution Control District, 800 South Victoria Avenue, Ventura, CA 93009.

FOR FURTHER INFORMATION CONTACT: Duane F. James, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, telephone: (415) 744–1191.

SUPPLEMENTARY INFORMATION:

Applicability

The rule being proposed for approval into the California SIP is Ventura County Air Pollution Control District's (VCAPCD) Rule 74.15.1, "Boilers, Steam Generators, and Process Heaters." This rule was submitted by the California Air Resources Board (ARB) to EPA on November 18, 1993.

Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA) were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_X emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a NPRM entitled, "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_X Supplement) which describes the requirements of section 182(f). The November 25, 1992, notice should be referred to for further information on the NO_X requirements and is incorporated into this proposal by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X ("major" as defined in section 302 and section 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. The Ventura County Area is classified as severe;[1] therefore this area was subject to the RACT requirements of section 182(b)(2), cited above, and the November 15, 1992 deadline.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC emissions (not covered by a pre-enactment control technologies guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_X CTGs issued before enactment and EPA has not issued a CTG document for any NO_X sources since enactment of the CAA. The RACT rules covering NO_X sources and submitted as SIP revisions, are expected to require final installation of the actual NO_X controls by May 31, 1995, for those sources where installation by that date is practicable.

The State of California submitted the rule being acted on in this document on November 18, 1993. This document addresses EPA's proposed action for VCAPCD's Rule 74.15.1, "Boilers, Steam Generators, and Process Heaters." VCAPCD adopted Rule 74.15.1 on May 11, 1993. The submitted rule was found to be complete on December 23, 1993, pursuant of EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V,[2] and is being proposed for approval into the SIP.

NO_X emissions contribute to the production of ground level ozone and smog. The rule was adopted as part of VCAPCD's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in response to the CAA requirements cited above. The following is EPA's evaluation and proposed action for this rule.

EPA Evaluation and Proposed Action

In determining the approvability of a NO_X rule, EPA must evaluate the rule

[1] The Ventura County Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

for consistency with the requirements of the CAA and EPA regulations, as found in section 110, and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for this action, appears in various EPA policy guidance documents.[3] Among these provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_X emissions.

For the purposes of assisting state and local agencies in developing NO_X RACT rules, EPA prepared the NO_X supplement to the General Preamble, cited above (57 FR 55620). In the NO_X supplement, EPA provides guidance on how RACT will be determined for stationary sources of NO_X emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO_X (see section 4.5 of the NO_X Supplement). In addition, pursuant to section 183(c), EPA is issuing alternative control technique documents (ACTs), that identify alternative controls for all categories of stationary sources of NO_X. The ACT documents will provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_X. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary sources of NO_X. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO_X RACT rules meet federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

Rule 74.15.1 limits the discharge of NO_X from boilers, steam generators, and process heaters (ICIs) to 30 parts per million volume (ppmv) or 0.036 pounds per million Btu (lb/MMBtu). Rule 74.15.1 effectively increases the stringency of California RACT for ICIs by lowering the *de minimis* from 5 MMBtu/hr to 1 MMBtu/hr and decreasing the emission standard from 70 ppmv to 30 ppmv. The rule's compliance date of May 31, 1995, satisfies the CAA's NO_X RACT implementation date requirement of May 31, 1995 (section 182(b)(2)). The District expects this rule to provide a 71% reduction in NO_X emissions from the units subject to this rule. This reduction corresponds to 0.189 tons per day based on the District's inventory. A more detailed discussion of the sources controlled, the controls required, and the justification for why these controls represent RACT can be found in the Technical Support Document (TSD), dated March 3, 1994.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations and EPA policy. Therefore, VCAPCD's Rule 74.15.1, "Boilers, Steam Generators, and Process Heaters," is being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a), section 182(b)(2), section 182(f) and the NO_X Supplement to the General Preamble.

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

Regulatory Flexibility

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

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on affected small entities. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 14, 1994.

John Wise,

Acting Regional Administrator.

[FR Doc. 94–29155 Filed 11–25–94; 8:45 am]

BILLING CODE 6560–50–P

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

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40 CFR Part 60

[AD–FRL–5113–2]

RIN 2060–AE94

Standards of Performance for New Stationary Sources: Volatile Organic Compound Emissions From the Synthetic Organic Chemical Manufacturing Industry Wastewater; Reopening of Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: The EPA is extending the public comment period for the proposed standards of performance for wastewater sources in the Synthetic Organic Chemical Manufacturing Industry (SOCMI). As initially published in the **Federal Register** of September 12, 1994 (59 FR 46780), written comments on the proposed rule were to be submitted to the EPA on or before November 14, 1994 (a 60-day comment period). The public comment period is being extended and will end on January 13, 1995.

DATES: *Comments.* Comments must be received on or before January 13, 1995.

ADDRESSES: *Docket.* Docket No. A–94–32, containing supporting information used in developing the proposed rule is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the EPA's Air Docket, room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Lucas, Emission Standards Division (MD–13), U.S. Environmental

Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–0884.

SUPPLEMENTARY INFORMATION: Several persons who intend to submit comments concerning the proposed standards of performance for wastewater sources at SOCMI facilities have requested additional time to prepare their comments, beyond the 60 days originally provided. In consideration of these requests, the EPA is extending the comment period to give all interested persons the opportunity to comment fully. This extension of the public comment period is necessary to ensure that interested parties have adequate time to provide the EPA with written comments on the proposed rule.

Dated: November 21, 1994.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 94–29154 Filed 11–25–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7118]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base (100-year) flood elevation modifications for the communities listed below. The base (100-year) flood elevations and modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367 3 CFR, 1979 Comp., p. 376.

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Idaho	Coeur d'Alene (City) (Kootenai County).	French Gulch	Approximately 1,300 feet downstream of French Gulch Road.	None	*2,163
			Approximately 1,650 feet upstream of French Gulch Road.	None	*2,172
		Nettleton Gulch	At 15th Street downstream of Anne Avenue.	None	*2,185
			At 15th Street upstream of Anne Avenue	None	*2,187

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at the City of Coeur d'Alene, Engineering Department, 710 Mullan Street, Coeur d'Alene, Idaho.					
Send comments to The Honorable Al Hassell III, Mayor, City of Coeur d'Alene, 710 Mullan Street, Coeur d'Alene, Idaho 83814–3964.					
Iowa	Mason City (City) (Cerro Gordo County).	Willow Creek	Approximately 1,200 feet downstream of Chicago, Milwaukee, St. Paul & Pacific Railroad.	*1,087	*1,085
			Approximately 200 feet upstream of East State Street.	*1,097	*1,094
			Just upstream of Second Street, SW	*1,115	*1,110
			Approximately 350 feet upstream of North Pierce Avenue.	*1,118	*1,116
			Just upstream of Eisenhower Avenue	*1,142	*1,137
			At the west corporate limits, approximately 1,220 feet upstream of U.S. Highway 18.	*1,159	*1,158
		Cheslea Creek	At the confluence with Willow Creek	*1,118	*1,116
			Just downstream of Willowbrook Drive	*1,123	*1,121
			Approximately 350 feet upstream of 15th Street, SW.	*1,135	*1,135
			Approximately 280 feet downstream of 26th Street, SW.	*1,148	*1,146
			At the south corporate limits	*1,150	*1,143
Maps are available for inspection at the Planning Department, City of Mason City, City Hall, 10 First Street, NW, Second Floor, Mason City, Iowa.					
Send comments to The Honorable Carl Miller, Mayor, City of Mason City, City Hall, 10 First Street, NW, Mason City, Iowa 50401.					
Missouri	Black Jack (City) (St. Louis County).	Coldwater Creek	At Old Jamestown Road	*480	*480
			900 feet upstream of Old Jamestown Road.	*483	*482
			At Cleola Hills Circle	*485	*482
			300 feet downstream of Old Halls Ferry Road.	*490	*489
			At Old Halls Ferry Road	*490	*490
Maps are available for inspection at City Hall, City of Black Jack, 4655 Parker Road, Black Jack, Missouri.					
Send comments to The Honorable Harold Evangelista, Mayor, City of Black Jack, City Hall, 4655 Parker Road, Black Jack, Missouri 63033.					
Missouri	Clayton (City) (St. Louis County).	Black Creek	At centerline of Clayton Road	*483	*484
			200 feet upstream of Clayton Road	*488	*488
Maps are available for inspection at City Hall, City of Clayton, 10th North Bemington, Clayton, Missouri.					
Send comments to The Honorable Benjamin Uchitelle, Mayor, City of Clayton, City Hall, 10th North Bemington, Clayton, Missouri 63105.					
Missouri	St. Louis County (Unincorporated Areas).	Northeast Branch River Des Peres.	At the intersection of Teal Avenue and Ruddy Lane.	*543	*541
		Paddock Creek (Backwater from Coldwater Creek).	700 feet downstream of Lindbergh Boulevard.	*505	*504
		Shallow Flooding	Approximately 2,000 feet south along the City of Bridgeton corporate limits from its crossing of Cowmire Creek.	*None	*#2
Maps are available for inspection at the St. Louis County Department of Planning, 41 South Central Avenue, Clayton, Missouri.					
Send comments to The Honorable Buzz Westfall, County Executive, St. Louis County, 41 South Central Avenue, Clayton, Missouri 63105.					
Missouri	Sunset Hills (City) (St. Louis County).	Meramec River	1,000 feet upstream of Gravois Road	*423	*422
			500 feet upstream of State Highway 30	*424	*423
			800 feet upstream of Interstate Highway 44.	*526	*525
Maps are available for inspection at City Hall, City of Sunset Hills, 3939 South Lindbergh, Sunset Hills, Missouri.					
Send comments to The Honorable Kenneth Vogel, Mayor, City of Sunset Hills, City Hall, 3939 South Lindbergh, Sunset Hills, Missouri 63127.					
Missouri	University City (City) (St. Louis County).	Northeast Branch River Des Peres.	800 feet downstream of Julian Avenue	*502	*502
			100 feet downstream of Julian Avenue	*506	*503
			500 feet upstream of Ferguson Avenue	*511	*511

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at City Hall, City of University City, 6801 Delmar Boulevard, University City, Missouri. Send comments to The Honorable Janet Majerus, Mayor, City of University City, City Hall, 6801 Delmar Boulevard, University City, Missouri 63130.					
Missouri	Wellston (City) (St. Louis County).	Engelholm Creek	At the confluence with North Tributary of Engelholm Creek.	*518	*518
			70 feet upstream of the St. Louis Belt and Terminal Railroad.	*521	*518
			10 feet upstream of the Norfolk and Western Railway.	*523	*522
Maps are available for inspection at City Hall, City of Wellston, 1804 Kienlen Avenue, Wellston, Missouri. Send comments to The Honorable Robert Powell, Mayor, City of Wellston, City Hall, 1804 Kienlen Avenue, Wellston, Missouri 63133.					
Missouri	Winchester (City) (St. Louis County).	Grand Glaize Creek	Just downstream of Manchester Road	None	*513
Maps are available for inspection at City Hall, City of Winchester, 109 Lindy Boulevard, Winchester, Missouri. Send comments to The Honorable Fred O. Brenner, Sr., Mayor, City of Winchester, City Hall, 109 Lindy Boulevard, Winchester, Missouri 63021.					
Nebraska	Blair (City) (Washington County).	Cauble Creek	At confluence of Cauble Creek East Tributary.	*1,034	*1,033
			Approximately 100 feet upstream of U.S. Highway 73.	*1,055	*1,063
			Just downstream of College Drive	*1,056	*1,064
		Cauble Creek East Tributary.	Approximately 930 feet upstream of confluence of Cauble Creek.	*1,040	*1,038
			Approximately 30 feet upstream of Baronage Drive.	*1,065	*1,057
			Approximately 60 feet upstream of College View Drive.	N/A	*1,062
Maps are available for inspection at City Hall, City of Blair, 218 South 16th Street, Blair, Nebraska. Send comments to The Honorable Jerome Jenny, Mayor, City of Blair, 218 South 16th Street, Blair, Nebraska 68008.					
Nebraska	Lincoln (City) (Lancaster County).	Deadman's Run	At the confluence with Salt Creek	None	*1,142
			Just downstream of Huntington Avenue	None	*1,150
			Just upstream of the Missouri and Pacific Railroad.	None	*1,189
			Just upstream of "O" Street	None	*1,220
			Just downstream of "A" Street	None	*1,260
Maps are available for inspection at the Planning Department, City of Lincoln, 555 South 10th Street, Lincoln, Nebraska. Send comments to The Honorable Michael Johanns, Mayor, City of Lincoln, 555 South 10th Street, Lincoln, Nebraska 68508.					
Nevada	Clark County (Unincorporated Areas).	Middle Branch Blue Diamond Wash.	At the intersection of Pollock Drive and East Windmill Lane.	None	#1
			Just upstream of Bermuda Road	None	*2,178
			At Giles Street	None	*2,231
			100 feet upstream of Interstate 15	None	*2,266
			At the intersection of Industrial Road and Blue Diamond Road.	None	#1
			At South Valley View Boulevard	None	#1
			At South Decatur Boulevard	None	#1
			At South Lindell Road	None	#2
			Just downstream of the Union Pacific Railroad.	None	#3
		North Branch Blue Diamond Wash.	At the intersection of Goldilocks Avenue and South Maryland Parkway.	None	*#1
			Just downstream of Amigo Street	None	*2,135
			At Rancho Destino Road	None	*2,205
			Approximately 100 feet upstream of Interstate 15.	None	*2,271
			At the intersection of West Mesa Verde Lane and South Valley View Boulevard.	None	#1
			Approximately 350 feet south of the intersection of West Moberly Avenue and South Decatur Boulevard.	None	#2

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Just downstream of the Union Pacific Railroad.	None	#3
		Blue Diamond Fan	At the intersection of West Russell Road and Cameron Street.	None	#1
			At the intersection of South Rainbow Boulevard and West Robindale Road.	None	#1
			At the intersection of South Buffalo Drive and West Windmill Lane.	None	#2
			Approximately 1,000 feet north of the intersection of South Cimarron Road and West Camero Avenue.	None	#4
			Approximately 1,000 feet north of the intersection of Gagnier Boulevard and West Wigwam Avenue.	None	#5
		Central Branch Tropicana Wash.	At confluence with Flamingo Wash	None	*2,001
			Just upstream of East Harmon Avenue ...	None	*2,068
			At Industrial Road	None	*2,155
			Just upstream of West Hacienda Avenue	None	*2,241
			At West Oquendo Road	None	*2,356
			Approximately 500 feet downstream of South Rainbow Boulevard.	None	*2,438
		North Branch Tropicana Wash.	At confluence with Central Branch Tropicana Wash.	None	*2,234
			At South Jones Boulevard	None	*2,312
			At South Torrey Pines Drive	None	*2,346
			Approximately 430 feet downstream of South Rainbow Boulevard.	None	*2,381
		South Branch Tropicana Wash.	At confluence with Central Branch of Tropicana Wash.	None	*2,274
			At West Oquendo Road	None	*2,310
			50 feet upstream of South Jones Boulevard.	None	*2,371
			Approximately 500 feet upstream of West Sunset Road.	None	*2,405
		Duck Creek	Approximately 200 feet upstream of East Pebble Road.	None	*2,165
			At South Las Vegas Boulevard	None	*2,252
			Approximately 800 feet upstream of Interstate 15.	None	*2,287
		Duck Creek Tributary	At confluence with Duck Creek	None	*2,242
			At South Las Vegas Boulevard	None	*2,255
			Approximately 300 feet downstream of Interstate 15.	None	*2,282
		Duck Creek South Channel.	At convergence with Duck Creek	None	*2,189
			At divergence from Duck Creek	None	*2,231
		Unnamed Fan	At the intersection of West Eldorado Lane and South Fort Apache Road.	None	#1
			Approximately 1,000 feet south of the intersection of South Fort Apache Road and West Eldorado Lane.	None	#2
		Hemenway Wash	Approximately 1,000 feet downstream of Pacific Way.	None	*1,965
			Approximately 700 feet downstream of Pacific Way.	None	*1,979

Maps are available for inspection at the Office of the Director of Public Works, Clark County Bridger Building, 225 East Bridger Avenue, Las Vegas, Nevada.

Send comments to The Honorable Jay Bingham, Chairman, Clark County Board of Commissioners, 225 East Bridger Avenue, Sixth Floor, Las Vegas, Nevada 89155.

Nevada	North Las Vegas (City) (Clark County).	Las Vegas Wash	At East Lake Mead Boulevard	*1,825	*1,821
			At North Las Vegas Boulevard	*1,847	*1,848
			Approximately 500 feet east of the intersection of East Evans Avenue and North Las Vegas Boulevard.	None	#2
			At East Cheyenne Avenue	*1,864	*1,864
			At East Gowan Road	*1,873	*1,875

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Just upstream of the Union Pacific Railroad.	*1,916	*1,913
			Just upstream of East Lone Mountain Road.	*1,941	*1,940
		Unnamed Channel	At confluence with Las Vegas Wash	*1,870	*1,872
			At East Gowan Road	*1,877	*1,879
			Just upstream of Berg Street	*1,889	*1,890
			Between Union Pacific Railroad and Interstate 15.	*1,902	*1,900
		Union Pacific Railroad Overflow.	Approximately 125 feet upstream of confluence with Unnamed Tributary to Las Vegas Wash.	*1,902	*1,901
			At confluence with unnamed channel	*1,909	*1,907
			At divergence from Las Vegas Wash	*1,916	*1,915

Maps are available for inspection at the Public Works Department, 2200 Civic Center Drive, North Las Vegas, Nevada.

Send Comments to The Honorable James Seastrand, Mayor, City of North Las Vegas, 2200 Civic Center Drive, North Las Vegas, Nevada 89030.

Texas	Comal County (Unincorporated Areas).	Post Oak Creek	At confluence with Cibolo Creek	*1,257	*1,260
			Approximately 3,900 feet upstream of confluence with Cibolo Creek.	*1,266	*1,266
		Cibolo Tributary	At confluence with Cibolo Creek	*1,242	*1,250
			Approximately 2,400 feet upstream of confluence with Cibolo Creek.	*1,254	*1,254
		Kelley Creek	At confluence with Cibolo Creek	None	*1,115
			At Bartels Road	None	*1,140
		Cibolo/Kelley Creek Overflow.	At convergence with Kelley Creek	None	*1,134
			At divergence from Cibolo Creek	None	*1,155
		Indian Creek	Approximately 200 feet upstream of confluence with Cibolo Creek.	*1,073	*1,074
			Approximately 2,600 feet upstream of confluence with Indian Creek Tributary A.	*1,092	*1,092
		Indian Creek Tributary A	Approximately 200 feet upstream of confluence with Indian Creek.	*1,083	*1,083
			Approximately 900 feet upstream of confluence with Indian Creek.	*1,083	*1,085
			Approximately 1,750 feet upstream of confluence with Indian Creek.	*1,088	*1,088
		Indian Creek Tributary B	At confluence with Indian Creek	*1,083	*1,083
			Approximately 2,900 feet upstream of confluence with Indian Creek.	*1,091	*1,092
			Approximately 4,000 feet upstream of confluence with Indian Creek.	*1,094	*1,094
		Bracken Tributary	At confluence with Cibolo Creek	*766	*771
			Approximately 2,000 feet upstream of confluence with Cibolo Creek.	*772	*772
		Garden Ridge Tributary	At confluence with Bracken Tributary	*771	*772
			Approximately 830 feet upstream of confluence with Bracken Tributary.	*772	*772
		Cibolo Creek	Just upstream of Missouri, Kansas and Texas Railroad.	*768	*771
			Approximately 21,000 feet upstream of Missouri-Pacific Railroad.	*839	*840
			Approximately 35,000 feet upstream of Missouri-Pacific Railroad.	*877	*880
			Approximately 14,800 feet downstream of FM 1864 (downstream crossing).	*929	*930
			Just downstream of FM 1863 (upstream crossing).	*961	*965
			At confluence of Lewis Creek	*992	*994
			Just upstream of Smithson Valley Road	*1,013	*1,017
			Just downstream of U.S. Route 281	*1,061	*1,061
			At confluence of Museback Creek	*1,100	*1,104
			At Blanco Road	None	*1,130
			Approximately 16,900 feet upstream of confluence with Pleasant Valley Creek.	None	*1,200

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 8,900 feet downstream of confluence with Cibolo Tributary.	None	*1,230
			Approximately 200 feet upstream of Balcones Creek.	*1,270	*1,274

Maps are available for inspection at Comal County Road Department, 4931 State Highway 46 West, New Braunfels, Texas.

Send Comments to The Honorable Carter Casteel, Comal County Judge, Comal County Courthouse, 150 North Seguin, Suite 301, New Braunfels, Texas 78130.

Texas	Denison (City) (Grayson County).	Shawnee Creek	At Randell Lake	None	*625
			Approximately 950 feet downstream of U.S. Highway 84.	None	*629
			Approximately 1,850 feet upstream of U.S. Highway 84.	None	*644
			Approximately 3,000 feet downstream of County Road.	None	*656
		Iron Ore Creek	Approximately 500 feet downstream of Business U.S. Highway 75 northbound.	*619	*618
			Approximately 1,500 feet downstream of Flowers Drive.	*620	*620
			Approximately 2,600 feet upstream of Park Avenue.	*626	*627
			Approximately 5,000 feet upstream of Park Avenue.	*630	*631
			Approximately 2,200 feet downstream of Spur 503 Access Ramp.	*632	*633
			Approximately 1,400 feet downstream of Spur 503 Access Ramp.	*633	*636
			Approximately 100 feet upstream of Spur Access Ramp.	*636	*640
			Approximately 600 feet upstream of Spur 503 Access Ramp.	*638	*643
			Approximately 4,600 feet upstream of State Highway 131.	*668	*668
		Loy Creek Below Loy Lake.	Approximately 900 feet downstream of Spur 503 Main Lane.	*625	*626
			Approximately 400 feet downstream of Spur 503 Main Lane.	*625	*626
			Approximately 100 feet downstream of Spur 503 Main Lane.	*625	*626
			Approximately 2,800 feet upstream of Spur 503 Main Lane.	*631	*633
			Approximately 800 feet downstream of Polaris Drive.	*642	*645
			Just downstream of Polaris Drive	*649	*668
			Approximately 700 feet upstream of Loy Lake Road.	*658	*668
		Loy Creek Above Loy Lake.	Approximately 300 feet downstream of Cathey Drive.	None	*698
			Just upstream of State Highway 131	None	*701
			Approximately 300 feet upstream of State Highway 131.	None	*703
		Waterloo Creek	Approximately 8,200 feet downstream of Missouri, Kansas and Texas Railroad at the confluence with Iron Ore Creek.	*620	*620
			Approximately 7,450 feet downstream of Missouri, Kansas and Texas Railroad.	*620	*620
			Approximately 7,100 feet downstream of Missouri, Kansas and Texas Railroad.	*620	*621
			At Missouri, Kansas and Texas Railroad	*642	*645
			Approximately 3,200 feet upstream of Missouri, Kansas and Texas Railroad.	None	*661
		Ellsworth Branch Tributary A.	Approximately 40 feet upstream of Theresa Drive.	None	*658
			Just upstream of State Highway 691	None	*671

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at the City of Denison, Planning and Zoning Department, 108 West Main, Denison, Texas. Send comments to The Honorable Wayne Cabaniss, Mayor, City of Denison, 108 West Main, Denison, Texas 75020.					
Texas	Grayson County (Unincorporated Areas).	Shawnee Creek	Approximately 950 feet downstream of U.S. Highway 84.	None	*629
			Approximately 1,850 feet upstream of U.S. Highway 84.	None	*644
			Approximately 3,000 feet downstream of County Road.	None	*656
			At County Road	None	*676
		Iron Ore Creek	Approximately 100 feet upstream of Interurban Road.	*608	*608
			Approximately 500 feet downstream of Business U.S. Highway 75 northbound.	*619	*618
			Approximately 1,500 feet downstream of Flowers Drive.	*620	*620
			Approximately 200 feet upstream of Park Avenue.	*623	*624
			Approximately 2,600 feet upstream of Park Avenue.	*626	*627
			Approximately 5,000 feet upstream of Park Avenue.	*630	*631
			Approximately 2,200 feet downstream of Spur 503 Access Ramp.	*632	*633
			Approximately 1,400 feet downstream of Spur 503 Access Ramp.	*633	*636
			Approximately 100 feet upstream of Spur 503 Access Ramp.	*636	*640
			Approximately 600 feet upstream of Spur 503 Access Ramp.	*638	*643
			At Loy Lake Road	*649	*654
			Approximately 4,600 feet upstream of State Highway 131.	*668	*668
			Approximately 50 feet downstream of Preston Road.	*677	*677
			Approximately 5,500 feet upstream of Preston Road.	*695	*695
			Approximately 50 feet upstream of Davy Lane.	*712	*712
		Loy Creek Below Loy Lake.	Approximately 900 feet downstream of Spur 503 Main Lane.	*625	*626
			Approximately 400 feet downstream of Spur 503 Main Lane.	*625	*626
			Approximately 800 feet downstream of Polaris Drive.	*642	*645
			Just downstream of Polaris Drive	*649	*668
		Loy Creek Above Loy Lake.	Approximately 3,700 feet downstream of Cathey Drive.	None	*678
			Approximately 300 feet downstream of Cathey Drive.	None	*698
		Ellsworth Branch	Approximately 9,800 feet downstream of State Highway 691 at the confluence with Iron Ore Creek.	*626	*626
			Approximately 300 feet downstream of State Highway 691.	*660	*650
			At County Road	*687	*681
			Approximately 7,500 feet upstream of County Road.	None	*728
		Ellsworth Branch Tributary A.	Approximately 60 feet downstream of Missouri, Kansas and Texas Railroad.	None	*643
			Approximately 40 feet upstream of Theresa Drive.	None	*658
		Waterloo Creek	Approximately 7,450 feet downstream of Missouri, Kansas and Texas Railroad.	*620	*620
			Approximately 7,100 feet downstream of Missouri, Kansas and Texas Railroad.	*620	*621
		Post Oak Creek	Approximately 5,800 feet downstream of Sewer Plant Road.	*626	*625
			At Sewer Plant Road	*632	*631

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 3,000 feet downstream of East Street.	*641	*640
			Approximately 200 feet upstream of East Street.	*651	*649
			Approximately 700 feet downstream of Travis Street.	*658	*657
			Approximately 4,900 feet downstream of U.S. Highway 82.	*722	*721
			Approximately 250 feet downstream of U.S. Highway 82.	*737	*752
			Approximately 1,800 feet upstream of U.S. Highway 82.	*743	*752
			Approximately 2,150 feet upstream of U.S. Highway 82.	None	*752
		Sand Creek	Approximately 2,500 feet downstream of Washington Avenue.	*709	*709
			Approximately 1,950 feet upstream of Washington Avenue.	*716	*718
			Approximately 6,750 feet upstream of Washington Avenue.	*737	*728
			Approximately 11,550 feet upstream of Washington Avenue.	None	*741
		East Fork Post Oak Creek.	Approximately 580 feet downstream of Pecan Street.	*686	*686
			Approximately 130 feet upstream of Union Pacific Railroad.	*693	*697
			Approximately 2,600 feet upstream of Union Pacific Railroad.	*710	*712
			Approximately 800 feet upstream of Taylor Street.	*724	*725
			Approximately 700 feet upstream of McLain Drive.	*748	*745
			Approximately 560 feet downstream of U.S. Highway 82 East Main Lane.	*762	*760
			Approximately 1,250 feet upstream of Pecan Grove Road.	None	*780
			Approximately 900 feet upstream of Forest Creek Drive.	None	*791
		Choctaw Creek Tributary A.	Approximately 2,800 feet downstream of unnamed road.	None	*636
			Approximately 100 feet downstream of Southern Pacific Railroad.	None	*653

Maps are available for inspection at Grayson County's Office, 100 West Houston, Sherman, Texas.

Send comments to The Honorable Horace Groff, Grayson County Judge, 100 West Houston, Sherman, Texas 75090.

Texas	Kendall County (Unincorporated Areas).	Cibolo Creek (Lower Reach).	Approximately 300 feet upstream of confluence of Balcones Creek.	*1,270	*1,274
			Approximately 9,300 feet upstream of confluence of Balcones Creek.	*1,290	*1,300
		Balcones Creek	Approximately 1,050 feet upstream of confluence with Cibolo Creek (Lower Reach).	*1,270	*1,275
			Approximately 3,200 feet upstream of confluence with Cibolo Creek (Lower Reach).	*1,278	*1,278

Maps are available for inspection at Kendall County Tax Office, 211 East San Antonio Street, Boerne, Texas.

Send comments to The Honorable James W. Gooden, Kendall County Judge, 204 East San Antonio Street, Suite One, Boerne, Texas 78006.

Texas	Schertz (City) (Bexar, Comal, and Guadalupe Counties).	Cibolo Creek	At Lower Seguin Road	*None	*650
			Approximately 200 feet upstream of confluence with Dietz Creek.	*686	*687
			Approximately 200 feet downstream of FM 78.	*713	*712
			Approximately 7,400 feet upstream of Main Street.	*725	*723
		Salitrillo Creek	At Martinez Creek Dam No. 6–A	None	*629

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at the City of Schertz, City Hall, 1400 Schertz, Parkway, Schertz, Texas. Send comments to The Honorable Earl W. Sawyer, Mayor, City of Schertz, P.O. Drawer I, Schertz, Texas 78154.					
Texas	Sherman (City) (Grayson County).	Ellsworth Branch Tributary A.	Just upstream of State Highway 691	None	*671
			Approximately 1,750 feet upstream of State Highway 691.	None	*674
			Approximately 2,500 feet upstream of State Highway 691.	None	*685
			Approximately 1,200 feet upstream of Business Highway 75.	None	*723
			Approximately 60 feet upstream of Fallon Drive.	None	*746
		Post Oak Creek	Approximately 700 feet downstream of Travis Street.	*658	*657
			Approximately 6,700 feet upstream of Highway 75 West Access Road.	*674	*674
			At Hillcrest Street	*689	*688
			At McGee Street	*695	*694
			At Lambreth Street	*712	*712
			Approximately 4,900 downstream of U.S. Highway 82.	*722	*721
			Approximately 1,800 feet upstream of U.S. Highway 82.	*743	*752
		Sand Creek	Approximately 2,800 feet downstream of Center Street.	*673	*674
			Approximately 2,000 feet upstream of Center Street.	*681	*682
			Approximately 100 feet upstream of Highway 56.	*693	*691
			Approximately 2,400 feet downstream of Union pacific Railroad.	*703	*701
			Approximately 800 feet upstream of Union Pacific Railroad.	*709	*709
		Choctaw Creek Tributary A.	Approximately 100 feet downstream of Southern pacific Railroad.	None	*653
			Approximately 2,100 feet upstream of Southern Pacific Railroad.	None	*671
			Approximately 200 feet upstream of Farm Road 1417.	None	*714
Maps are available for inspection at the City of Sherman, City Engineer's Office, 400 North Rusk, Sherman, Texas. Send comments to The Honorable Harry Reynolds, Mayor, City of Sherman, P.O. Box 1106, Sherman, Texas 75091–1106.					
Washington	Okanogan (City) (Okanogan County).	Okanogan River	Approximately 1.3 miles upstream of Oak Street.	None	*834
			Approximately 2.5 miles upstream of Oak Street.	None	*835
Maps are available for inspection at the City of Okanogan, Office of Planning, 237 4th Avenue North, Okanogan, Washington. Send comments to The Honorable Ella Schreckengost, Mayor, City of Okanogan, P.O. Box 752, Okanogan, Washington 98847.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: November 21, 1994.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 94–29220 Filed 11–25–94; 8:45 am]

BILLING CODE 6718–03–P–M

44 CFR Part 337

RIN 3067–AB51

National Defense Executive Reserve Guidance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would add a new part 337 to title 44, Code of Federal Regulations, National Defense Executive Reserve Guidance. This part would provide guidance to Federal departments and agencies that sponsor reserve units and recruit and train unit members under the National Defense Executive Reserve.

DATES: Comments are requested and should be submitted no later than January 27, 1995.

ADDRESSES: Please submit written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (facsimile) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: Linda Matticks, Program Analyst, Preparedness, Training and Exercises Directorate, Federal Emergency Management Agency, Room 633, 500 C Street SW., Washington, DC 20472, (202) 646–2703.

SUPPLEMENTARY INFORMATION: New part 337 responds to Executive Order 12919 of June 8, 1994, 59 FR 29525, which delegates to the Director of FEMA the responsibility to provide for the appropriate guidance for the recruitment, training, and activation of National Defense Executive Reserve Units. This part would provide guidance for those Federal departments and agencies delegated authority under Executive Order 12919 of June 3, 1994 (59 FR 29525, June 7, 1994) to sponsor reserve units under the National Defense Executive Reserve and guidance for the recruitment and training of unit members.

Executive Order 12866, Regulatory Planning and Review

This proposed rule would not be a significant regulatory action for the purposes of Executive Order 12866, as defined in § 3(f) of that Executive Order. To the greatest extent practicable, FEMA would adhere to the principles of regulation set forth in § 1(b) of the Executive Order.

Regulatory Flexibility Act

I certify that this rule would not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule would not be expected (1) to affect adversely the availability of Federal benefits to small entities, (2) to have significant secondary or incidental effects on a substantial number of small entities, and (3) to create any additional burden on small entities. As a result, a regulatory flexibility analysis would not be prepared.

Paper Work Reduction Act

The information collection contained in this rule has been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C 3501 et seq. and assigned OMB control number 3067–0001. Public reporting burden for the information collection, FEMA Form 85–3, National Defense Executive Reserve Personal Qualifications Statement, is estimated to average 30 minutes per response. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the form. Send comments regarding this burden estimate or any aspect of the form, including suggestions for reducing the burden, to Information Collections Management, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472; and to the Office of Management and Budget, Paperwork Reduction Project (3067–1001), Washington, DC 20503.

National Environmental Policy Act

This rule would be categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 337

National defense, National Defense Executive Reserve, Reporting and recordkeeping requirements.

Accordingly, Title 44, Code of Federal Regulations, is proposed to be amended by adding part 337 as follows:

PART 337—NATIONAL DEFENSE EXECUTIVE RESERVE GUIDANCE

Sec.

337.1 Introduction
337.2 Policy
337.3 Purpose
337.4 Applicability and scope
337.5 Definitions
337.6 Implementation
337.7 Criteria
337.8 Reserve membership
337.9 Reporting

Appendix A to Part 337—National Defense Executive Reserve Application

Appendix B to Part 337—National Defense Executive Reserve Statement of Understanding

Authority: National Security Act of 1947, 50 U.S.C. 404; Defense Production Act of 1950, 50 U.S.C. App. 2061, et seq.; The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq.; E.O. 12148 of July 20, 1979, 3 CFR, 1979 Comp., p. 412; E.O. 12656 of November 18, 1988, 3 CFR, 1988 Comp., p. 585; and E.O. 12919 of June 3, 1994 (59 FR 29525, June 7, 1994).

PART 337—NATIONAL DEFENSE EXECUTIVE RESERVE GUIDANCE

§ 337.1 Introduction.

Section 710(e) of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2160(e)) authorizes the President to establish and train a nucleus Executive Reserve. The President by Executive Order 10660 of February 15, 1956 established the National Defense Executive Reserve (NDER). The Executive Order authorized the heads of departments or agencies designated by the Director of the Office of Defense Mobilization (predecessor to the Director of the Federal Emergency Management Agency (FEMA)) to establish units of the Executive Reserve. Executive Order 12919 of June 3, 1994, superseded Executive Order 11179 which superseded Executive Order 10660 but continued the NDER program. The NDER is part of the national security emergency preparedness program and provides for a standby reserve of highly qualified individuals who are trained as volunteers until they are activated by the President, or the head of a department or agency during periods of emergency. The program facilitates the employment of Reservists in executive positions in government during an emergency requiring such activation. In addition, the Executive Reserve may be used for emergency preparedness activities as defined under Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

§ 337.2 Policy.

(a) It is the policy of the President that there shall be in the Executive Branch of the Government an NDER composed of persons of recognized expertise from various segments of the private sector and from government (other than fulltime Federal employees) to be trained for employment in the Federal Government in the event of an emergency that requires such employment.

(b) As part of the President's national security emergency preparedness policy under Executive Order 12656, Federal departments and agencies shall develop plans and programs to mobilize personnel (including reservist programs) as appropriate within their assigned areas of responsibility and to assess essential emergency requirements and plan for possible use of such resources to meet essential demands during and following national emergencies.

§ 337.3 Purpose.

This part establishes policy and program guidance to assist those Federal

departments and agencies authorized to establish Executive Reserve units in the NDER. This guidance is to aid in the establishment and administration of such reserve units and in the recruitment and training of its members. The purpose of this part is to improve the ability of departments and agencies to mobilize its manpower requirements in times of emergencies. The NDER is a mechanism that allows the Federal Government to enlist the best and most talented personnel in the private sector to fill both defense and essential civilian needs in time of emergencies.

§ 337.4 Applicability and scope.

This part is applicable to all Federal departments and agencies that sponsor or that may wish to sponsor a reserve unit under the NDER program. It provides the standards and procedural guidance for establishing and administering reserve units and for the recruitment and training of its members.

§ 337.5 Definitions.

National Defense Executive Reserve is a program that provides for standby Executive Reserve units sponsored by Federal departments and agencies that are composed of individuals of recognized expertise from various segments of the private sector and from government (except full-time Federal employees) who are trained to serve in executive positions in the Federal Government in time of an emergency that requires such employment.

§ 337.6 Implementation.

(a) *General.* The Director of FEMA is responsible for the development of appropriate guidance for the NDER and for the coordination of the program activities of the departments and agencies in establishing units of the Executive Reserve. The Director is responsible for providing appropriate standards and procedural guidance for recruitment, training and activation of the reserve unit members. The Director shall issue necessary rules and guidance in connection with the program and may request the services of participating departments and agencies and private sector organizations, institutions, and enterprises in the development of training programs and materials and in keeping of a centralized roster of Executive Reserve members.

(b) *Interagency NDER Committee.* An Interagency NDER Committee, composed of representatives of the departments and agencies sponsoring Executive Reserve units and chaired by a representative from FEMA, will advise the Director of FEMA on matters concerning the NDER program.

(c) *Federal departments and agencies.* The head of any department and agency, subject to the guidance of the Director of FEMA may establish a unit of the Executive Reserve in that department or agency. It is the responsibility of each department and agency that establishes a unit to obtain the necessary funding for the unit, to recruit their own members, to set their own qualifications for membership in addition to the requirements set forth in this part, to obtain the necessary security clearances and to conduct training and annual exercises for such members. FEMA will assist the departments and agencies in their recruitment efforts through referrals.

§ 337.7 Criteria.

(a) The following criteria shall be used in establishing and maintaining a unit of the Executive Reserve:

(1) The purpose of establishing a reserve unit shall be to augment the department's or agency's requirements for trained highly-qualified executive personnel as determined by that department or agency, for use in time of emergencies.

(2) The functional assignments of members of the reserve unit shall be described in an organization chart for use in time of an emergency, accompanied by position descriptions and staffing patterns related to the organization chart and augmentation plans. These plans must be approved by the head of the department or agency, and a copy of such plans is to be provided to the Director, FEMA. A reservist shall not be assigned to a position that is already filled by a regular government employee.

(3) Each reserve unit shall be directed by an agency official designated by the head thereof. The name of the official designated shall be furnished to the Director, FEMA.

(b) The administration and maintenance of a reserve unit is the responsibility of the sponsoring agency. Recruitment, security clearances, training, travel, pay, personnel records, and other administrative matters shall be accomplished in accordance with the standards and procedures set forth in this part, the Ethics Reform Act of 1989, and 5 CFR part 2635, Executive Order 12674, and in the Federal Personnel Manual to the extent such matters are covered, otherwise, the sponsoring department or agency is responsible for implementing its own standards and procedures for that purpose.

(c) Funding the training, travel, and administrative support of the reserve members shall be the responsibility of the sponsoring department or agency.

(d) The disestablishment of a reserve unit by the head of a department or agency shall be reported to the Director, FEMA.

(e) All documents and communications directed to FEMA shall be addressed to Associate Director, Preparedness, Training and Exercises Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, Attn: NDER Program.

§ 337.8 Reserve membership.

(a) *General membership conditions.* Candidates must agree to the following conditions to become members of the NDER:

(1) Maintain an active participation in the unit to which he or she is assigned and attend scheduled training and exercises;

(2) Report without delay for full-time government employment with the assigned department or agency upon being activated in time of an emergency;

(3) Serve without compensation, except for reimbursement for expenses incurred while training;

(4) Serve for a period of 5 years, with a possibility of additional extensions of 5 year terms;

(5) Inform the department or agency when he or she is unavailable for full-time government employment in time of an emergency; and

(6) Secure concurrence from his or her employer to participate in the Executive Reserve unit.

(b) *Membership requirements.* The following standards apply to the eligibility of candidates to be reserve members:

(1) Must be U.S. citizens;

(2) No discrimination in the selection because of race, color, religion, sex, age, national origin, or against qualified handicapped individuals;

(3) Members of the Ready Reserve (including the National Guard), retired military personnel with mobilization orders, active Federal employees, and State and local government employees with emergency assignments are not eligible for NDER membership. Persons running for or elected to public office are not eligible;

(4) Candidates must be eligible to be cleared for access to at least Secret information; and

(5) Candidates must possess the qualifications required to perform in the assigned emergency position to be filled by the candidate in time of an emergency. Qualifications for Federal positions are set forth in the Federal Personnel Manual, Standards of Qualification, Chapter X–118.

(c) *Procedures for designating members.* The following steps shall be

taken by the sponsoring department or agency when processing a candidate for membership in the Executive Reserve:

(1) Candidate is to complete an application (FEMA Form 85–3, National Defense Executive Reserve Personal Qualifications Statement) for the NDER program, along with a Statement of Understanding from the candidate's employer, if applicable, that the employee may participate in the NDER program. See appendixes A and B of this part.

(2) The sponsoring agency shall send a copy of candidate's application to the Director of FEMA to determine that the candidate is not currently a member of the NDER program. FEMA will enter the data from the form into the NDER Central Register and return the application to the sponsoring agency.

(3) Members of the NDER may be cleared for access to at least secret information. If a security clearance is required, applicable forms shall be completed by the candidate and returned to the sponsoring department or agency. If required, that department or agency shall conduct a security investigation of the candidate in accordance with current security regulations.

(4) When the sponsoring department or agency has approved the candidate, the head thereof shall issue to the new member, a Certificate of Membership in the department's or agency's Executive Reserve unit and a letter informing the member of his or her appointment. The sponsoring department or agency shall then notify FEMA of the appointment so that the new member's file in the NDER Central Register may be updated.

(5) Appointments of members to the Executive Reserve units shall not exceed five (5) years. Redesignations, transfers and terminations are covered in §337.8(f). (Use of FEMA Form 85–3 has been approved by the Office of Management and Budget under control number 3067–0001.)

(d) *Conflicts of interest.* (1) The activities of members appointed to the Executive Reserve under this part shall not include acting or advising on any matter pending before any department or agency but shall be limited to receiving training for the member's emergency assignment. When the member is called to Federal employment during an emergency, the sponsoring department or agency shall inform the member of the following conflicts of interest statutes and regulations and any change thereto or of any new laws or regulations governing this topic:

(i) Bribery, graft and conflict of interest statutes (18 U.S.C. ch. 11);

(ii) Ethics Reform Act of 1989;

(iii) 5 CFR part 2635;

(iv) Executive Order 12674;

(v) Sponsoring department's or agency's conflict of interest regulations. Questions about conflicts of interest and financial interest should be referred to the sponsoring department's or agency's Designated Agency Ethics Official (DAEO). Such questions may also be directed to the Office of Government Ethics, Washington, DC 20415.

(e) *Orientation and training.* (1) The program official of the Executive Reserve unit shall give to all new members appointed to the unit an orientation covering the overall NDER program, the appropriate emergency preparedness plans and programs of the sponsoring department or agency, and the appointee's emergency assignment.

(2) Members shall be kept abreast of their expected duties and of any new developments in the department's or agency's appropriate emergency preparedness programs through formal training and exercises at least annually.

(3) Departments and agencies are responsible for designing their own orientation and training programs. Executive Reserve program officials shall design these programs to reflect the appropriate emergency preparedness activities to which the members will be assigned as well as an overview of department's and agency's total national security emergency preparedness programs.

(f) *Redesignation, transfer, and termination.* (1) To be redesignated, a reservist must have attended at least one annual training session within the previous term of appointment or have otherwise participated in approved training. However, the unit's program official of the sponsoring department or agency may authorize the redesignation of a reservist on a case-by-case basis, where there are special circumstances or conditions to warrant or justify such redesignation.

(2) A Reservist who changes employment since his or her previous designation, will be required to file a new application with a Statement of Understanding (appendix B of this part) from his or her employer agreeing to the member's participation in the NDER program.

(3) A sponsoring department or agency that requests the transfer of a reservist from one unit to another must obtain the concurrence of:

(A) The reservist current unit;

(B) The reservist; and

(C) The reservist's employer.

(4) A reservist may be terminated if it is determined by the sponsoring department or agency that the member's services are no longer needed. A reservist is terminated automatically when the member's term expires without redesignation or when the reservist fails to meet the membership requirements as set forth in this Part or as set forth in the sponsoring department's or agency's qualifications. A reservist may resign at any time.

(5) A reservist who has served with distinction and who is not redesignated may be placed in Reservist Emeritus Status. Such a reservist may participate in training programs and other activities when the unit would benefit from the member's knowledge and experience. A Reservist Emeritus will not receive an appropriate emergency assignment nor will he or she be called to duty in time of an emergency without consent.

(6) Notification of any changes in status of a reservist, whether by redesignation, transfer, termination or Emeritus determination, shall be furnished in writing to the Director of FEMA to include the date of such action and any change of addresses, home or business.

(g) *Activating reservists.* (1) The head of each department or agency with an NDER unit may activate the unit, in whole or in part, upon written determination that an emergency exists and that the activation of the unit is necessary to carry out the emergency program functions of the department or agency.

(2) At least 72 hours prior to activating the NDER unit, the head of the department or agency shall notify, in writing, the Assistant to the President for National Security Affairs of the impending activation, and a copy of such plans is to be provided to the Director, FEMA.

(3) Once the authority to activate reservists has been approved by the Assistant to the President for National Security Affairs, whether it be an activation by unit or by individual, the sponsoring department or agency is responsible for notifying the reservists.

(4) The authority for appointing reservists to assigned positions upon being activated may be found in the Federal Personnel Manual, part 910–1. Appointments in the event of an attack on the United States are addressed in the Federal Personnel Manual Supplement.

(h) *Central register of reservists.* The Director of FEMA shall maintain a central register of all NDER members and candidates. The register will be used to compile periodic and special reports and to prevent duplication in recruiting of NDER members.

(i) *Employment of reservist in a non-NDER status.* Departments and agencies

wishing to appoint a member of the Reserve as a Federal employee or consultant outside the NDER, must follow the established Office of Personnel Management procedures for hiring regular Federal employees.

(j) *Records.* Departments and agencies sponsoring NDER units shall keep administrative records of their units' activities that will enable them to report information to the Director of FEMA of the type necessary for the periodic reports to the President required under Executive Order 12656 and Executive Order 12919.

§ 337.9 Reporting.

Under Executive Order 12656, the Director of FEMA is required to submit a periodic report to the President on the Federal Government's capability to respond to national security emergencies. In addition, the Director of FEMA is to report to the President periodically concerning all program activities conducted pursuant to Executive Order 12919. An evaluation of the NDER programs of Federal departments and agencies will be included in these reports. Therefore, Federal departments and agencies shall report the following information to the Director on an annual basis in accordance with written instructions provided by FEMA:

(a) The number of active and emeritus members in each unit;

(b) Training activities for the past fiscal year and training plans for the upcoming fiscal year, including a description of the program, its location, the number of reserve, Federal, State, local and guest participants, and dates; and

(c) A written evaluation of NDER activities during the past fiscal year. (These reporting requirements have been cleared in accordance with Federal Information Resources Management Regulations (FIRMR) 201–45.6 (41 CFR 201–45.6) and assigned interagency report control number 1086–FEM–XX).

BILLING CODE 6718–20–P

Appendix A

FEDERAL EMERGENCY MANAGEMENT AGENCY **NATIONAL DEFENSE EXECUTIVE RESERVE PERSONAL QUALIFICATIONS STATEMENT**	**See Privacy Act Statement and Paperwork Burden Disclosure Notice on Page 2.**	*O.M.B. NO. 3067-0001 Expires May 31, 1993*
RETURN ORIGINAL TO: *(Sponsoring Agency)*	1. NAME (Last, First, Middle) ☐ Mr. ☐ Mrs. ☐ Miss ☐ Ms. OTHER TITLES USED *(Gen., Dr., etc.)*	

2. HOME ADDRESS (City, state and zip code)	3. PREFERRED MAILING ADDRESS ☐ HOME ☐ BUSINESS

4. SOCIAL SECURITY NO.	5. ARE YOU A CITIZEN OF THE UNITED STATES ☐ YES ☐ NO	6. BIRTH DATE *(Month, day, year)*	7. BIRTHPLACE

8. HOME TELEPHONE *(Including area code)*	9. BUSINESS TELEPHONE *(Including area code)*	10. HIGH SCHOOL GRADUATE? ☐ YES ☐ NO

11. NAME OF COLLEGE OR UNIVERSITY	DATES ATTENDED FROM	DATES ATTENDED TO	MAJOR AND OTHER PRINCIPAL SUBJECTS	DEGREE RECEIVED	YEAR RECEIVED

12. SKILL AREAS *(SELECT PRIMARY AND SECONDARY SKILLS FROM LISTING ON PAGE 3 OF THIS FORM)*

12a. PRIMARY	12b. SECONDARY

13. EMPLOYMENT EXPERIENCE (Start with your most recent position and work back at least 5 years. If more space is required continue on a separate sheet of paper with your name at the top and give similar information.)

13a. NAME AND ADDRESS OF ESTABLISHMENT *(If retired, please indicate)*	TYPE OF BUSINESS *(Select from listing on page 3 of this form)*	
	NUMBER OF EMPLOYEES YOU SUPERVISE(D)	NUMBER OF EMPLOYEES IN YOUR ESTABLISHMENT ☐ 500-Less ☐ 500-5000 ☐ Over-5000

DATES OF EMPLOYMENT FROM	DATES OF EMPLOYMENT TO	NAME AND TITLE OF YOUR SUPERVISOR
	PRESENT	TITLE OF YOUR POSITION

DESCRIPTION OF WORK *(Describe your specific duties)*

13b. NAME AND ADDRESS OF ESTABLISHMENT *(If retired, please indicate)*	TYPE OF BUSINESS *(Select from listing on page 3 of this form)*	
	NUMBER OF EMPLOYEES YOU SUPERVISE(D)	NUMBER OF EMPLOYEES IN YOUR ESTABLISHMENT ☐ 500-Less ☐ 500-5000 ☐ Over-5000

DATES OF EMPLOYMENT FROM	DATES OF EMPLOYMENT TO	NAME AND TITLE OF YOUR SUPERVISOR
		TITLE OF YOUR POSITION

DESCRIPTION OF WORK *(Describe your specific duties)*

14. LIST BELOW ANY ACTIVITIES AND MEMBERSHIPS *(Such as CPA, Bar membership, Professional and Learned Societies, Trade Associations, etc.)*

15. PREVIOUS GOVERNMENT EXPERIENCE *(Federal, state, or local; also include WOC (Without Compensation) positions, but exclude committee memberships)*

FROM	TO	AGENCY

16. WOULD YOU SERVE ANYWHERE IN THE UNITED STATES IF CALLED TO ACTIVE DUTY AS AN EXECUTIVE RESERVIST? *(If "No" specify acceptable geographical area(s) in which you wolud be willing to serve)*

☐ YES ☐ NO

17. DO YOU HAVE ANY OBLIGATION THAT MIGHT INTERFERE WITH AN EXECUTIVE RESERVE CALL-UP? *(Such as military, civil defense, elected public office, etc.) (If yes, specify)*

☐ YES ☐ NO

18. APPLICANT'S SIGNATURE *(Sign in ink)* | DATE

19. SPONSORING AGENCY PROPOSED NDER ASSIGNMENT

19a. POSITION TITLE | 19b. GEOGRAPHIC LOCATION *(Specify)* ☐ NATIONAL OFFICE ☐ REGION (Specify)

19c. BRIEF DESCRIPTION OF DUTIES | 20. DATE OF PRECLEARANCE SECURITY NAME CHECK

21. REQUESTING OFFICIAL *(Name and title)* | DATE

22. ACTION BY FEMA: RECRUITMENT OF CANDIDATE ☐ APPROVED ☐ DISAPPROVED ☐ OTHER (See attached memo) | 23. NDER COORDINATOR

PRIVACY ACT STATEMENT

The sponsoring agency is authorized to establish and recruit for a National Defense Executive Reserve by the Defense Production Act of 1950 (50 U.S.C. APP. 2153(A) and 2160(E) and E.O. 11179 of September 22, 1964). The information requested is needed to evaluate your qualifications to serve and to properly place you in the program, and in the routine management of the NDER.

Information from this form may be published in a directory of NDER members. The Directory would only be made available to Federal Officials with responsibility for the NDER Program. Information from this form may also be disclosed as a routine use to a member of congress or to a congressional staff member responding to a request made by you.

Completion of this form is voluntary. However, failure to complete it will prevent consideration of an applicant for membership in the National Defense Executive Reserve.

PAPERWORK BURDEN DISCLOSURE NOTICE

"Public reporting burden for the collection of information entitled "National Defense Executive Reserve Personal Qualifications Statement" is estimated to average 30 minutes per response, which includes the time for reviewing, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the form. Send comments regarding the burden estimate or any aspect of the collection, including suggestions for reducing the burden, to: Information Collections Management, Federal Emergency Management Agency, 500 C Street, S.W., Washington, D.C. 20472; and to the Office of Management and Budget, Paperwork Reduction Project (3067-0001), Washington, D.C. 20503."

SKILL AREAS

(Select appropriate area(s) and enter in items 12a. and 12b. of this form)

ARCHITECTURE & ENVIRONMENTAL DESIGN
- Architecture
- City Planning
- Naval

BIOLOGICAL SCIENCES
- Bacteriology
- Biology
- Botany

BUSINESS
- Accounting
- Banking & Finance
- Hotel & Restaurant Management
- Insurance
- International Business
- Investments & Securities
- Labor & Industrial Relations
- Management
- Marine Transportation
- Marketing & Purchasing
- Operations Research
- Personnel Management
- Public Utilities
- Real Estate
- Transportation

COMMUNICATION
- Journalism
- Radio & Television
- Telecommunications

COMPUTERS & INFORMATION SCIENCES

EDUCATION
- Training

ENGINEERING
- Aeronautical
- Architectural
- Chemical
- Civil
- Electrical
- Environmental
- Industrial
- Marine
- Mechanical
- Mining

HEALTH PROFESSIONS
- Doctor
- Nurse
- Nutrition
- Pharmacology
- Technician

LAW

NATURAL RESOURCES
- Agriculture
- Natural Resources Management

PUBLIC AFFAIRS
- Emergency Management
- Law Enforcement
- Public Administration

SCIENCES
- Chemistry
- Geology
- Mathematics
- Metallurgy
- Meteorology
- Physics
- Psychology
- Statistics

SOCIAL SCIENCES
- Economics
- International Relations

BUSINESS TYPES

(Select appropriate type(s) and enter in item 13 of this form)

AGRICULTURE
- Crops
- Forestry
- Livestock
- Services

COMMUNICATION
- Cable
- Radio & Television
- Radiotelephone
- Telegraph
- Telephone

CONSTRUCTION
- Building
- Other than building
- Special Trade

FINANCE
- Banking
- Credit Agencies
- Stock Brokerage

INSURANCE
- Agents & Brokers
- Carriers

MANUFACTURING
- Apparel & Fabrics
- Chemicals
- Electrical & Electronic Machinery/ Equipment/Supplies
- Fabricated Metal
- Food
- Furniture & Fixtures
- Industrial/Commercial/Computer Equipment
- Leather
- Lumber & Wood (Composite)
- Machinery
- Measuring & Controlling Instruments
- Paper
- Petroleum Refining
- Primary Metals
- Printing & Publishing
- Rubber & Plastics
- Stone Clay Glass & Concrete

MANUFACTURING *(Continued)*
- Textile
- Tobacco
- Transportation Equipment

MINING
- Coal
- Metal
- Nonmetallic
- Petroleum & Gas

PUBLIC ADMINISTRATION
- Economic
- Environmental & Housing
- Finance
- General Government
- Human Resources
- International
- Justice

REAL ESTATE
- Agents & Managers
- Operators & Lessors

RETAIL TRADE
- Apparel
- Automotive Dealers & Gasoline Stations
- Building Materials Hardware & Garden Supply
- Eating & Drinking Places
- Food
- Furniture
- General Merchandise

SERVICES
- Automotive Repair
- Business
- Computer
- Consulting
- Educational
- Electric
- Engineering/Accounting/Research/Management
- Gas
- Health

SERVICES *(Continued)*
- Legal
- Lodging Places
- Membership Organizations
- Miscellaneous Repair
- Motion Pictures
- Personal
- Recreation
- Sanitary
- Social
- Telecommunications

TRANSPORTATION
- Air
- Local
- Motor Freight & Warehousing
- Railroad
- U.S. Postal Service
- Water

WHOLESALE TRADE
- Durable
- Nondurable

NONCLASSIFIABLE ESTABLISHMENTS *(Specify)*

(Please detach this portion before submitting this form)

Appendix B.

FEDERAL EMERGENCY MANAGEMENT AGENCY

NATIONAL DEFENSE EXECUTIVE RESERVE
STATEMENT OF UNDERSTANDING

As a member of the National Defense Executive Reserve unit of the _____

_____, I accept the following responsibilities:

While a member of the Reserve, I will maintain close liaison with the Government program to which I am assigned. I also will attend scheduled training meetings and exercises when ever possible.

In the event of an emergency, determined by the President, I intend to be available for full time Government employment within my assigned program. I understand that the manner in which the Government proposes to employ me will not expose me to unreasonable legal risks with respect to the conflict of interest and antitrust laws.

If I am called to full time Government employment in an emergency, I will have the option of serving with or without compensation.

I understand my appointment will be for a period of five years, may be extended for additional terms, and be terminated at any time by me or the sponsoring agency.

If I become unavailable for full time Government employment, I will so inform the Reserve unit to which I am assigned.

My employer concurs with the commitment I am making to the National Defense Executive Reserve.

NAME OF RESERVIST (*Type or Print*)	SIGNATURE OF RESERVIST	DATE
NAME OF EMPLOYER (*Type or Print*)		
TITLE OF EMPLOYER'S REPRESENTIVE	SIGNATURE OF EMPLOYER'S REPRESENTIVE	DATE

FEMA Form 13-3, AUG 90 REPLACES ALL PREVIOUS EDITIONS

Dated: November 16, 1994.

Harvey G. Ryland,

Deputy Director.

[FR Doc. 94–28790 Filed 11–25–94; 8:45 am]

BILLING CODE 6718–20–C

Notices

Federal Register
Vol. 59, No. 227
Monday, November 28, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Judicial Review; Committee on Regulation

ACTION: Notice of public meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of meetings of the Committee on Judicial Review and Committee on Regulation of the Administrative Conference of the United States.

Agency: Committee on Judicial Review.
Dates: Thursday, December 8, 1994, at 9:30 a.m.
Location: Office of the Chairman, Administrative Conference, 2120 L Street, N.W., Suite 500, Washington, DC.
For Further Information Contact: Mary Candace Fowler, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, N.W., Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

Agency: Committee on Regulation.
Date: Tuesday, December 20, 1994, at 1:30 p.m.
Location: Office of the Chairman, Administrative Conference, 2120 L Street, N.W., Suite 500, Washington, DC.
For Further Information Contact: David M. Pritzker, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, N.W., Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

SUPPLEMENTARY INFORMATION: The Committee on Judicial Review will meet to continue discussion of a report by Professor William Kovacic and draft recommendations on choice of forum issues in government contract bid protest proceedings.

The Committee on Regulation will meet to continue its discussion of a draft report by Professor Douglas Michael of the University of Kentucky College of Law on self-enforcement as a regulatory alternative to direct enforcement. This draft follows an earlier study by Professor Michael, which led to Recommendation 94–1, The Use of Audited Self-Regulation as a Regulatory Technique, adopted by the Administrative Conference in June 1994.

Attendance at the meetings is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The chairman of each committee, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of each meeting will be available on request.

Dated: November 22, 1994.

Jeffrey S. Lubbers,
Research Director.

[FR Doc. 94–29325 Filed 11–25–94; 8:45 am]
BILLING CODE 6110–01–W

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 94–124–1]

Availability of Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment and finding of no significant impact for the shipment of an unlicensed veterinary biological product for field testing. A risk analysis, which forms the basis for the environmental assessment, has led us to conclude that shipment of the unlicensed veterinary biological product for field testing will not have a significant impact on the quality of the human environment. Based on our finding of no significant impact, we have determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact may be obtained by writing to the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to the docket number of this notice when requesting copies. Copies of the environmental assessment and finding of no significant impact (as well as the risk analysis with confidential business information removed) are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Jeanette Greenberg, Veterinary Biologics, BBEP, APHIS, USDA, room 571, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; telephone (301) 436–5390; fax (301) 436–8669.

SUPPLEMENTARY INFORMATION: A veterinary biological product regulated under the Virus-Serum-Toxin Act (21 U.S.C. 151 et seq.) must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. A field test is generally necessary to satisfy prelicensing requirements for veterinary biological products. In order to ship an unlicensed product for the purpose of conducting a proposed field test, a person must receive authorization from the Animal and Plant Health Inspection Service (APHIS).

In determining whether to authorize shipment for field testing of the unlicensed veterinary biological product referenced in this notice, APHIS conducted a risk analysis to assess the product's potential effects on the safety of animals, public health, and the environment. Based on that risk analysis, APHIS has prepared an environmental assessment. APHIS has concluded that shipment of the unlicensed veterinary biological product for field testing will not significantly affect the quality of the human environment. Based on this finding of no significant impact, we have determined that there is no need to prepare an environmental impact statement.

An environmental assessment and finding of no significant impact have been prepared for the shipment of the following unlicensed veterinary biological product for field testing:

Requester(s)	Product	Field test location(s)
Select Laboratories, Inc.	A live, genetically engineered Newcastle disease-fowlpox vaccine, fowlpox vector.	Poultry houses in Georgia, Maryland, North Carolina.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 18th day of November 1994.

Alex B. Thiermann,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–29098 Filed 11–25–94; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

Emigrant Wilderness Management Direction, Stanislaus National Forest, Tuolumne County, California

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement (EIS).

SUMMARY: The Forest Service will prepare an EIS for a proposal to revise current management direction for the 113,000-acre Emigrant Wilderness on the Summit Ranger District, Stanislaus National Forest, Tuolumne County, California

DATES: To be most helpful in the preparation of the Draft EIS, comments should be received in writing by April 1, 1995.

ADDRESSES: Submit written comments and suggestions to Karen Caldwell, District Ranger, Summit Ranger District, #1 Pinecrest Lake Road, Pinecrest, CA, 95364, (209) 965–3434.

FOR FURTHER INFORMATION CONTACT: Cindy Diaz, Team Leader, (209) 965–3434.

SUPPLEMENTARY INFORMATION: This EIS will evaluate alternatives, including standards and guidelines to assure an enduring resource of Wilderness as described in the 1964 Wilderness Act (U.S.C. 16 1131–1136). The resulting decision will be utilized to amend the 1991 Stanislaus National Forest Land and Resource Management Plan (LRMP) for Management Area 1, Wilderness. This EIS will include all areas within the Emigrant Wilderness boundary and will not consider Wilderness additions.

Preliminary scoping, which was initiated with notification in the Stanislaus National Forest quarterly NEPA summary in spring of 1993, press releases and direct mailings during August of 1993 and a public meeting October 2 of 1993, has resulted in the identification of nine key issues: Ecosystems, Heritage Resources, Fisheries, Economic and Regional Considerations, Social, Range, Wilderness Opportunities, Recreation, and Access.

The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. Project mailing list participants from the preliminary scoping efforts receive periodic updates on the planning process along with notifications of public meetings.

Glenn Gottschall, acting Stanislaus National Forest Supervisor, is the responsible official, 19777 Greenley Road, Sonora, CA, 95370, (209) 532–3671.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by October of 1995.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's Notice of availability appears in the **Federal Register.** It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. City of Angoon v. Hodel, (9th Circuit, 1986) and Wisconsin Heritages, Inc. v. Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Dated: November 8, 1994.

Glenn Gottschall,

Acting Forest Supervisor.

[FR Doc. 94–29138 Filed 11–25–94; 8:45 am]

BILLING CODE 3410–11–M

Foss-Perkins Timber Sale and Vegetation Management Project, Ochoco National Forest, Harney County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the USDA, Forest Service, will prepare an environmental impact statement (EIS) for a timber sale and vegetation management actions in the Foss-Perkins analysis area. The Foss-Perkins analysis area is about 36 air miles northwest of the Burns/Hines area. Drainages include Delintment, Dodson, and Short Creeks. This proposal is tentatively planned for fiscal years 1995–96.

The Proposed Action for the analysis area includes; timber harvest, road construction, tree thinning, prescribed burning, slash treatment, and watershed improvement projects. The purpose and need for these actions is to improve ecosystem health, reduce fire hazard, maintain and improve water quality, and provide timber to the economy. The Proposed Action will incorporate the direction in the Ochoco National Forest Land and Resource Management Plan as amended by the Regional Forester's Eastside Forest Plans Amendment No. 1, May 20, 1994. The Forest Plan provides the overall guidance for management of the area and the proposed projects.

The Ochoco National Forest invites further written comments and suggestions in addition to the comments already received on the scope of the analysis. The agency will also give notice of the full environmental analysis

and decision-making process so that interested and affected people have an opportunity to participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis should be received in writing by January 17, 1995.

ADDRESSES: Send written comments and suggestions concerning the management of this area to Jim Keniston, District Ranger, Snow Mountain Ranger District, HC 74 Box 12870, Hines, OR 97738.

FOR FURTHER INFORMATION: Direct questions about the Proposed Action and EIS to Kathleen Burleigh, Planning Staff and/or Jay Klink, Resource Planner, Snow Mountain Ranger District, HC 74 Box 12870, Hines, Oregon 97738, phone (503) 573–7292.

SUPPLEMENTARY INFORMATION: The Forest Service Proposed Action is to treat 1500 acres of forested vegetation using group and individual tree selection and commercial and precommercial thinning, harvest 7 to 9 million board feet of timber, construct 2 miles of road, reconstruct roads, treat activity and natural fuels on 500 to 1000 acres, and implement riparian, wildlife, and range improvement projects. The Proposed Action is designed:

—To treat the most insect and disease infested stands in the analysis area, to reduce the susceptibility of high risk timber stands to insect and disease attack, and to prevent further infestation and accelerated mortality rates.
—To provide timber to the economy.
—To meet the desired residue profiles for vegetation types in the analysis area.
—To maintain and improve water quality to bring the area closer to the desired future condition.
—To maintain and improve ecosystem health.

The Responsible Official must decide: how much timber to harvest, if any, and where and how the harvest activities would take place; how many miles of roads to construct and reconstruct, if any; how many acres of fuels (activity and natural) to treat, if any, and where and how the fuels treatment should take place; and what riparian, wildlife and range improvement projects to implement, if any.

The proposed Action is intended to implement the Chief of the Forest Service's direction to implement ecosystem management and to provide recovery from the insects, disease, and fuel buildup within the Foss-Perkins analysis area.

The Foss-Perkins project area borders the Silver Creek Roadless Area. The project area is approximately 9000 acres in size. There is no designated roadless area within the project area, however there is a portion of the Silver Creek Research Natural Area within the project boundary. Silver Creek is located ¼ to ½ mile west of the project area and was recently studied for determination of suitability for inclusion in the Wild and Scenic River System. It was determined that Silver Creek is not suitable for Wild and Scenic designation due to poor riparian condition.

Alternatives will include a no action alternative, which involves no harvest or road construction, and additional alternatives to respond to issues generated during the scoping process. Some of these additional alternatives will incorporate the *Viable Ecosystem Management Guide* developed by the Ochoco National Forest which addresses the historic range of variability of timber stands in this region. The area also needs to be assessed for its roadless area suitability and semi-primitive management potential. However, a decision to amend the Forest Plan and designate any portions of the area as roadless is outside the scope of this project.

Initial scoping for this project began in July of 1989. Issues raised by the public during scoping will be used to develop alternatives to the proposed action. Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, tribes, and other individuals or organizations who may be interested in or affected by the proposed actions. This information will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental process.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The District has identified the following issues. These are internal issues the District has identified and would now like the public to review them and add anymore they feel worthy of note.

Soil Compaction—Past activities have caused soil compaction. The Proposed Action could cause additional soil compaction.

Roadless Area—The Proposed Action could impact roadless area attributes.

Old-Growth Fragmentation—The Proposed Action could increase timber stand fragmentation.

Forest Health—Timber stand health is declining due to fire exclusion and drought. This has resulted in overstocked conditions, increased insect and disease infestations, heavy forest fuel levels, and an increase in dead and dying timber.

Water Quality—Vegetation treatment and grazing in and adjacent to riparian zones may effect stream channel stability and water quality. Habitat for red band trout and Malheur mottled sculpin may be affected by vegetation treatment in and adjacent to riparian zones.

Big Game Cover—Timber harvest could adversely affect big game habitat and populations in the analysis area.

Socioeconomic—Timber harvesting could enhance local and regional economies by providing revenues and jobs.

Livestock Grazing—The Proposed Action could have an effect on the number of livestock and the timing and location of where livestock graze.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by May 1995. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. EPA will publish a notice of availability of the draft EIS in the **Fedeal Register.** The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp v. NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon v. Hodel,* 803 f. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc. v. Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).

Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the Proposed Action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.13 in addressing these points).

The final EIS is scheduled to be completed by January 1996. In the final EIS, The Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. Thomas A. Schmidt, Forest Supervisor, Ochoco National Forest, is the Responsible Official. As the responsible official he will document the decision and reasons for the decision in the Board of Decision. That decision will be subject to appeal under 36 CFR part 215.

Dated: November 18, 1994.

Rodney D. Collins,

Acting Forest Supervisor.

[FR Doc. 94–29161 Filed 11–25–94; 8:45 am]

BILLING CODE 3410–11–M

Patent Licenses; Biological Treatment for Controlling Wood Deteriorating Fungi

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Forest Service, Forest Products Laboratory (FPL) has developed and patented an environmentally friendly microbiocide, Actinomycete mutant, which protects wood and wood products against wood-attaching fungi and is seeking to license it and to enter into a Cooperative Research and Development Agreement (CRADA) for its further development.

DATES: The FPL will receive applications for exclusive and/or co-exclusive licenses together with proposals for further development of the research under a CRADA until 4:00 p.m. January 9, 1995.

FOR FURTHER INFORMATION CONTACT: John G. Bachhuber, USDA, Forest Service, Forest Products Laboratory, One Gifford Pinchot Drive, Madison, Wisconsin 53705–2398, (608) 231–9282.

SUPPLEMENTARY INFORMATION: Patent No. 5,536,624, "Biological Treatment for Controlling Wood Deteriorating Fungi", has been granted to the FPL. The environmentally benign technology contained therein protects wood against discoloration by sapstain (blue-stain) and mold fungi and degradation by wood-rotting fungi. It involves the treatment of wood and wood products with the microbiocide in the form of (1) living cells, (2) metabolites, and (3) metabolites with low concentration of cobiocides. This technology is an alternative to treating wood with synthetic chemical preservatives which can pose a serious threat to the environment. The current market worldwide for antisapstain chemicals alone is about eighty million dollars annually. The value of treated wood shipments for the United States of America is about two billion, five hundred million dollars annually.

It is anticipated that the entity entering into a CRADA will be granted a right of first refusal to license any new patents resulting form the research under the CRADA.

This notice is issued under the authority of the Federal Technology Transfer Act of 1986 (15 U.S.C. 3710a).

Dated: November 17, 1994.

Kenneth R. Peterson,

Acting Director.

[FR Doc. 94–29137 Filed 11–25–94; 8:45 am]

BILLING CODE 3410–11–M

BIPARTISAN COMMISSION ON ENTITLEMENT AND TAX REFORM

Meeting

Notice is hereby given, pursuant to Public Law 92–463, that the Bipartisan Commission on Entitlement and Tax Reform meeting on November 30, 1994, has been cancelled. Two new meetings have been scheduled for December 9 and December 14 at 10:00 a.m. They will be held in the Cannon House Office Building, Room 210, Washington, D.C. 20510.

Both meetings of the Commission shall be open to the public. The proposed agenda includes discussion and possible adoption of policy recommendations relating to the Commission's charter, including but not limited to, options for controlling the spiraling growth on entitlement expenditures and the need to examine the structure of the current federal income tax system.

Records shall be kept of all Commission proceedings and shall be available for public inspection in Room 825 of the Hart Senate Office Building, 120 Constitution Avenue, N.E., Washington, D.C. 20510.

J. Robert Kerrey,

Chairman.

John C. Danforth,

Vice-Chairman.

[FR Doc. 94–22294 Filed 11–23–94; 9:12 am]

BILLING CODE 4151–04–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Office of the Secretary.

Title: DOC's Partners in Quality Contracts (PQC) Program.

Agency Form Number: None.

OMB Approval Number: None.

Type of Request: New Collection.

Burden: 4,400 hours.

Number of Respondents: 100.

Avg Hours Per Response: Approximately 6 hours for the Contractor Profile and 38 hours for the application.

Needs and Uses: The National Performance Review outlined several objectives, one of which was improving the Federal acquisition process. The PQC program is designed to be a voluntary nonmonetary recognition program that will showcase the importance of quality in the government acquisition process. Without the information provided by applicants, the objective of the program could not be carried out.

Affected Public: Businesses or other for–profit institutions, small businesses or organizations.

Frequency: One–time application process but selections will be made on an annual basis.

Respondent's Obligation: Information will be provided voluntarily in order to obtain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposal can be obtained by

calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: November 21, 1994.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–29236 Filed 11–25–94; 8:45 am]

BILLING CODE 3510–CW–F

International Trade Administration

[A–570–839]

Initiation of Antidumping Duty Investigation: Certain Partial-Extension Steel Drawer Slides With Rollers From the People's Republic of China (PRC)

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 28, 1994.

FOR FURTHER INFORMATION CONTACT: Michelle A. Frederick or John Brinkmann, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0186 or (202) 482–5288, respectively.

INITIATION OF INVESTIGATION:

The Petition

On October 31, 1994, we received a petition filed in proper form from Hardware Designers, Inc. (the petitioner). At the request of the Department of Commerce (the Department), the petitioner filed supplements to support and clarify the petition's data on November 16 and 18, 1994. In accordance with 19 CFR 353.12, the petitioner alleges that certain partial-extension steel drawer slides with rollers (drawer slides) are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

The petitioner states that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because the petition is filed on behalf of the U.S. industry producing the product subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, such party should file a written notification with the Assistant Secretary for Import Administration.

Scope of Investigation

The subject merchandise in this investigation is certain partial-extension steel drawer slides of any length with rollers. A drawer slide is composed of two separate drawer slide rails. Each rail has screw holes and an attached polymer roller. The polymer roller may or may not have ball bearings. The subject drawer slides come in two models: European or Low-Profile and Over-Under or High-Profile. The former model has two opposing rails that provide one channel along which both rollers move and the latter has two opposing rails that provide two channels, one for each roller. For both models of drawer slides, the two opposing rails differ slightly in shape depending on whether the rail is to be affixed to the side of a cabinet or the side of a drawer. A rail may also feature a flange for affixing to or aligning along the bottom of a drawer.

Drawer slides may be packaged in an assembly pack with two drawer slides; that is, four rails with their attached rollers, or in an assembly pack with one drawer slide; that is, two rails with their attached rollers; or individually; as a drawer slide rail with its attached roller. An assembly pack may or may not contain a packet of screws.

Not included in the scope of this investigation are linear ball bearing steel drawer slides (with ball bearing in a linear plane between the steel elements of the slide), roller bearing drawer slides (with roller bearings in the wheel), metal box drawer slides (slides built into the side of a metal or aluminum drawer), full extension drawer slides (with more than four rails per pair), and industrial slides (customized, high-precision slides without polymer rollers).

The subject merchandise is currently classifiable under subheading 8302.42.30 of the *Harmonized Tariff Schedule of the United States* (HTSUS). It may also be classified under 9403.90.80. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

United States Price and Foreign Market Value

The petitioner based United States Price (USP) on a January 1994 price quotation obtained for a set of 14-inch drawer slides. The terms of the price quotation were CIF New York. In calculating USP, the petitioner deducted amounts for foreign inland freight, ocean freight, and marine insurance.

The petitioner contends that the PRC is a non-market economy (NME) country within the meaning of section 771(18)(A) of the Act. The Department has determined in all previous investigations that the PRC is an NME, and the presumption of NME status continues for purposes of initiation of this investigation. See *e.g., Final Determination of Sales at Less than Fair Value: Certain Paper Clips from the PRC,* 59 FR 51168 (October 7, 1994).

In accordance with section 773(c) of the Act, foreign market value in NME cases is based on NME producers' factors of production, valued in a market economy country. Consistent with Department practice absent evidence that the PRC government determines which of its factories shall produce for export to the United States, we intend, for purposes of this investigation, to base FMV only on those factories that produced drawer slides sold to the United States during the period of investigation (POI).

In the course of this investigation, parties will have the opportunity to address this NME designation and provide relevant information and argument related to the issues of the PRC's NME status and granting of separate rates to individual exporters. In addition, parties will have the opportunity in this investigation to submit comments on whether FMV should be based on prices or costs in the PRC consistent with section 773(c)(1)(B) of the Act. See *Amendment to Final Determination of Sales at Less Than Fair Value and Amendment to Antidumping Duty Order: Chrome-Plated Lug Nuts from the People's Republic of China,* 57 FR 15052 (April 24, 1992).

The petitioner calculated FMV on the basis of the valuation of the factors of production. The petitioner, claiming that its production process is similar to the Chinese production process, based the factors of production on its own experience. The factors of production were valued, where possible, on publicly available published information pertaining to India. The petitioner argues that India is a country at a comparable level of economic development to the PRC and that India

is a significant producer of comparable merchandise, thus meeting the requirements of section 773(c)(4) of the Act. For purposes of this initiation, we have accepted India as an appropriate surrogate country selection.

Where Indian values were not available, the petitioner valued the factors of production using either a ratio based on its own experience or its own costs.

In accordance with section 773(c)(1)(B) of the Act, the petitioner's FMV consisted of the sum of values assigned to materials, labor, energy, overhead and selling, general and administrative (SG&A) expenses. Certain of these factor values were adjusted for inflation. Pursuant to section 773(e)(1) of the Act, the petitioner added to the cost of manufacturing (COM), overhead and SG&A expenses, the statutory minimum of eight percent for profit.

Based on our analysis of the petition and subsequent amendments, we have made certain adjustments to the petitioner's FMV calculation as follows:

(1) We disallowed all factors valued using the petitioner's own costs;

(2) We recalculated factory overhead and SG&A expenses to account for certain energy and inventory expenses excluded from the petitioner's calculation of COM;

(3) We disallowed an amount included by the petitioner for scrap loss because this cost was already included in the cost of steel.

Fair Value Comparisons

Based on a comparison of USP and FMV, the petitioner's alleged dumping margin, as revised by the Department, is 55.69 percent.

Initiation of Investigation

Pursuant to section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether a petition sets forth an allegation necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegation.

We have examined the petition for drawer slides from the PRC, as amended, and have found that it meets the requirements of section 732(b) of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of drawer slides from the PRC are being, or are likely to be, sold in the United States at less than fair value. If this investigation proceeds normally, we will make our preliminary determination by April 9, 1995.

International Trade Commission (ITC) Notification

Section 732(d) of the Act requires us to notify the ITC of this action and we have done so.

Preliminary Determinations by the ITC

The ITC will determine by December 15, 1994, whether there is a reasonable indication that imports of drawer slides from the PRC are materially injuring, or threaten material injury to, a U.S. industry. Pursuant to section 733(a) of the Act, a negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: November 21, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–29237 Filed 11–25–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–433–806]

Postponement of Preliminary Countervailing Duty Determination: Oil Country Tubular Goods ("OCTG") From Austria

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 28, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Yeske or Daniel Lessard, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0189.

Postponement: On July 20, 1994, the Department of Commerce ("the Department") initiated a countervailing duty investigation of OCTG from Austria which included an allegation of upstream subsidization. We have concluded that additional time is required to make our preliminary determination. Therefore, pursuant to section 703(g)(1) of the Tariff Act of 1930, as amended ("the Act"), we are postponing the preliminary determination in this investigation until no later than January 17, 1995.

This notice of postponement is published pursuant to 19 CFR 355.15(e)(2).

Dated: November 18, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–29238 Filed 11–25–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–475–815]

Preliminary Affirmative Countervailing Duty Determination: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe ("Seamless Pipe") From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 28, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas McGinty or Peter Wilkniss, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–5055 and (202) 482–0588, respectively.

Preliminary Determination

The Department preliminarily determines that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended ("the Act"), are being provided to manufacturers, producers, or exporters of seamless pipe in Italy. For information on the estimated net subsidies, please see the *Suspension of Liquidation* section of this notice.

Case History

Since the publication of the notice of initiation in the **Federal Register** (59 FR 37028, July 20, 1994), the following events have occurred.

On July 26 and 27, 1994, respectively, we issued countervailing duty questionnaires to the Government of Italy ("GOI") and the Commission of the European Communities ("EC"), in Washington, D.C., concerning petitioner's allegations. On August 2, 1994, the GOI responded to the first section of our questionnaire informing us that Dalmine S.p.A. ("Dalmine"), an Italian steel pipe producer, accounted for more than 85 percent of Italian exports of the subject merchandise to the United States during the POI. The GOI, the EC, and Dalmine submitted questionnaire responses on October 3, 1994. On October 18, 1994, we issued deficiency questionnaires to these parties. We received responses from the GOI and the EC on October 31, 1994, and from Dalmine on November 7, 1994.

On August 24, 1994, we postponed the preliminary determination in this

investigation until November 18, 1994 (59 FR 43554, August 24, 1994).

Scope of Investigation

For the purposes of this investigation, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, bevelled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications.

The seamless pipes subject to this investigation are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States ("HTSUS").

The following information further defines the scope of this investigation, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics, and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas, and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the American Society for Testing and Materials ("ASTM") standard A–106 may be used in temperatures of up to 1000 degrees fahrenheit, at various American Society of Engineers ("ASME") code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53, and API 5L specifications. Such triple certifications of pipes is common because all pipes meeting the stringent A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate productions runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants, and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines, and metering runs. A minor application of this product is for use as oil and gas distribution line for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of this investigation includes all multiple-stenciled seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, whether or not also certified to a non-covered specification. Standard, line and pressure applications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the A–106, A–53, or API 5L standards shall be covered if used in an A–106, A–335, A–53, or API 5L application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this investigation.

Specifically excluded from this investigation are boiler tubing, mechanical tubing, and oil country tubular goods except when used in a standard, line or pressure pipe application. Also excluded from this investigation are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, our written description of the scope of this proceeding is dispositive. This scope description is currently under review and may be altered in the preliminary determination of the companion antidumping duty investigation of seamless pipe from Italy.

Injury Test

Because Italy is a "country under the Agreement" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission ("ITC") is required to determine whether imports of seamless pipe from Italy materially injure, or threaten material injury to, a U.S. industry. On August 3, 1994, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from Italy of the subject merchandise (59 FR 42286, August 17, 1994).

Petitioner

The petition in this investigation was filed by Gulf States Tubes, a division of Quanex Corporation.

Corporate History of Respondent Dalmine

Prior to its liquidation in 1988, Finsider S.p.A. ("Finsider") was the holding company for all state-owned steel companies in Italy. Dalmine was an operating company wholly owned by Finsider. After Finsider's liquidation, a new government-owned holding company, ILVA S.p.A. ("ILVA"), was created. ILVA took over the former Finsider companies, among them Dalmine, which became a subsidiary of ILVA in 1989, when Finsider's shareholding in Dalmine was transferred to ILVA.

Between 1990 and 1993, Dalmine itself was restructured. Dalmine became a financial holding company, with industrial, trading, and service shareholdings. As part of its restructuring, Dalmine made several asset purchases, sold two of its subsidiaries to private parties, and closed several manufacturing facilities.

As of December 31, 1993, the Dalmine Group consisted of a holding company (Dalmine S.p.A.), four wholly-owned, and one majority-owned, manufacturing companies, and a number of sales and service subsidiaries.

During the POI, ILVA was owned by the Istituto per la Ricostruzione Industriale ("IRI"), a holding company which was wholly-owned by the GOI.

Spin-offs

In its questionnaire response, Dalmine reported that between 1990 and 1991, as part of its overall restructuring process, the company sold two "productive units" to private buyers. According to Dalmine, these sales involved assets that do not produce the subject merchandise. Based on our analysis of Dalmine's response with respect to the productive units sold, we preliminarily determine that the amount of potentially spun-off benefits is insignificant. Therefore, we have not evaluated whether these benefits are attributable to sales of the subject merchandise for purposes of this preliminary determination. (*See* Final Concurrence Memorandum dated November 18, 1994.)

Equityworthiness

Petitioner has alleged that Dalmine was unequityworthy in 1989, the year it received an indirect equity infusion from the GOI, through ILVA S.p.A. ("ILVA"), and that the equity infusion was, therefore, inconsistent with commercial considerations.

In its questionnaire response, Dalmine has provided evidence that private investors, unrelated to Dalmine or the GOI, purchased a significant percentage of the 1989 equity offering, on the same terms as ILVA. Therefore, the Department preliminarily determines that ILVA's purchase of Dalmine's shares was consistent with commercial considerations. (*See* section 355.44(e)(1)(i) of the *Proposed Regulations*.)

Creditworthiness

Petitioner has alleged that Dalmine was uncreditworthy in every year between 1979 and 1993. In accordance with section 355.44 of the *Proposed Regulations*, we examined Dalmine's current, quick, times interest earned, and debt-to-equity ratios, in addition to its profit margin. Based on this analysis, we preliminarily determine that Dalmine was creditworthy from 1979 through 1993. (*See* Creditworthy Memorandum, November 18, 1994). Specifically, although a number of the financial indicators are weak for certain years, none of the indicators are weak over the medium or long term, and when examined together on a yearly basis, the indicators support the determination that Dalmine was creditworthy in every year examined. In addition, Dalmine received comparable long-term, commercial loans from private lenders in several of the years examined. While we have based our preliminary creditworthiness determination on the company's financial indicators, the fact that Dalmine received a number of long-term commercial loans during this period supports our finding.

Benchmarks and Discount Rates

Dalmine did not take out any long-term fixed rate lira denominated loans or other debt obligations in any of the years of the government loans under investigation. Therefore, in accordance with section 355.44(b)(4) of the *Proposed Regulations*, we used, as the benchmark interest rate, the Bank of Italy reference rate. We have determined that this rate constitutes the best approximation of the cost of long-term borrowing in Italy and the only long-term fixed interest rate commonly available in Italy. (*See Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Italy* ("*Certain Steel from Italy*"), 58 FR, 37327 (July 9, 1993).)

We have also used this rate as the discount rate for allocating over time the benefit from non-recurring grants for the same reasons as explained in *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Spain*, 58 FR 37374, 37376 (July 9, 1993).

For long-term loans denominated in other currencies, we used, as the benchmark interest rate, the average long-term fixed interest rate denominated in the same currency. (See section E—Article 54 Loans below.)

Calculation Methodology

For purposes of this preliminary determination, the period for which we are measuring subsidies (the POI) is calendar year 1993. In determining the benefits received under the various programs described below, we used the following calculation methodology. We first calculated the benefit attributable to the POI for each countervailable program, using the methodologies described in each program section below. For each program, we then divided the benefit attributable to Dalmine in the POI by Dalmine's total sales revenue, as none of the programs was limited to either certain subsidiaries or products of Dalmine. Next, we added the benefits for all programs, including the benefits for programs which were not allocated over time, to arrive at Dalmine's total subsidy rate. Because Dalmine is the only respondent company in this investigation, this rate is also the country-wide rate.

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, however, are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

I. Programs Preliminarily Determined to be Countervailable

A. Benefits Provided Under Law 675/77

Law 675/77 was enacted in 1977 to bring about restructuring and reconversion in the following industrial sectors: (1) electronic technology; (2) the manufacturing industry; (3) the agro-food industry; (4) the chemical industry; (5) the steel industry; (6) the pulp and paper industry; (7) the fashion sector; and (8) the automobile and aviation sectors. Law 675/77 also sought to promote optimal exploitation of energy resources, and ecological and environmental recovery.

A primary goal of this legislation was to bring all government industrial assistance programs under a single law. Other goals were (1) to reorganize and develop the industrial sector as a whole; (2) to increase employment in the South; and (3) to maintain employment in depressed areas. Among other measures taken, the Interministerial Committee for the Coordination of Industrial Policy ("CIPI") was created as a result of Law 675/77. CIPI approves individual projects in each of the industrial sectors listed above.

Six main programs were provided under Law 675/77: (1) interest contributions on bank loans; (2) mortgage loans provided by the Ministry of Industry at subsidized interest rates; (3) interest contributions on funds raised by bond issues; (4) capital grants for projects in the South; (5) personnel retraining grants; and (6) VAT reductions on purchases of capital

goods by companies in the South. Dalmine reported that it received benefits under items (1), (2), and (5) above.

In its response, the GOI asserts that the steel and automobile industries did not receive a "disproportionate" share of benefits associated with interest contributions when the extent of government investment in those industries is compared to the extent of investment in other industries. However, in keeping with past practice, we did not consider the level of investment in the individual industries receiving benefits under Law 675/77. Instead, we followed the analysis outlined in *Grain-Oriented Electrical Steel* and *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Brazil*, 58 FR 37295, 37295 (July 9, 1993), of comparing the share of benefits received by the steel industry to the collective share of benefits provided to other users of the programs.

According to the information provided by the GOI, the two dominant users of the interest contribution program were (1) the Italian steel industry which accounted for 33 percent of the benefits, and (2) the auto industry which accounted for 34 percent of the benefits. Likewise, with respect to the mortgage loans, the two dominant users were the auto and steel industries which received 45 percent and 31 percent of the benefits, respectively.

In light of the above evidence, we preliminarily determine that the steel industry was a dominant user of both the interest contribution and the mortgage loan programs under Law 675/77 because the steel industry has been a dominant user of these programs. (*See* section 355.43(b)(2)(iii) of the *Proposed Regulations*.) Therefore, we preliminarily determine that benefits received by Dalmine under these programs are being provided to a specific enterprise or industry or group of enterprises or industries. On this basis, we preliminarily find Law 675/77 financing to be countervailable.

Under the interest contribution program, Italian commercial banks provided loans to industries designated under Law 675/77. According to the responses of the GOI and Dalmine, the interest owed by the recipient companies was partially offset by interest contributions from the GOI. Dalmine received bank loans with interest contributions under Law 675/77 which were outstanding in the POI.

Because Dalmine knew that it would receive the GOI interest contributions over the life of the loan when it obtained the loans, we consider the contributions to constitute reductions in the interest rates charged rather than grants (*see Certain Steel from Italy* at 37335).

Under the mortgage loan program, the GOI provides long-term loans at subsidized interest rates. Dalmine received financing under this program which was outstanding in the POI.

To determine whether these programs conferred a benefit, we compared the effective interest rate paid by Dalmine to the benchmark interest rate, discussed above. Based on this comparison, we preliminarily determine that the financing provided under these programs is inconsistent with commercial considerations, *i.e.*, on terms more favorable than the benchmark financing.

To calulcate the benefit from these programs, we used our standard long-term loan methodology as described in section 355.49(c)(1) of the *Proposed Regulations*. We then divided the benefit allocated to the POI for each program by Dalmine's total sales in 1993. On this basis, we determine the net subsidy from these programs to be 0.47 percent *ad valorem* for all manufacturers, producers, and exporters in Italy of the subject merchandise.

With respect to retraining grants provided to Dalmine under Law 675/77, it is the Department's practice to treat training benefits as recurring grants. (*See Certain Steel General Issues Appendix* at 37226). Since the only grant reported under this program was received by Dalmine in 1986, any benefit to Dalmine as a result of this grant cannot be attributed to the POI. Therefore, we determine that retraining benefits provided under Law 675/77 conferred no benefit to Dalmine during the POI.

B. Grants Under Law 193/84

According to the GOI, Articles 2, 3, and 4 of Law 193/84 provide for subsidies to close steel plants. As stated in Art. 20 of Law N. 46 of 17/2/1982, steel enterprises, including enterprises producing seamless pipes, welded pipes, conduits and welded pipes for water and gas, are the recipients of these subsidies. As benefits under this program are limited to the steel industry, we preliminary determine that Law 193/84 is *de jure* specific and, therefore, countervailable. In this investigation, information provided by Dalmine indicates that the company received grants under Law 193/84.

To calculate the benefit during the POI, we used our standard grant methodology (*see* section 355.49(b) of the *Proposed Regulations*). We then divided the benefits attributable to Dalmine under Law 193/84 in the POI by Dalmine's total sales. On this basis, we determine the estimated net subsidy to be 0.75 percent *ad valorem* for all manufacturers, producers, and exporters in Italy of the subject merchandise.

C. Exchange Rate Guarantee Program

This program, which was enacted by Law 796/76, provides exchange rate guarantees on foreign currency loans from the European Coal and Steel Community ("ECSC") and *The Council of European Resettlement Fund ("CER")*. Under the program, repayment amounts are calculated by reference to the exchange rate in effect at the time the loan is agreed upon. The program sets a ceiling and a floor on repayment to limit the effect on the borrower of exchange rate changes over time. For example, if the lire depreciates five percent against the DM (the currency in which the loan is taken out), borrowers would normally find that they would have to repay five percent more (in lire terms). However, under the Exchange Rate Guarantee Program, the ceiling would act to limit the increased repayment amount to two percent. There is also a floor in the program which would apply if the lire appreciated against the DM. The floor would limit any windfall to the borrower.

In *Grain-Oriented Electrical Steel*, the Department found this program to be not countervailable because of incomplete information regarding the specificity of the program. The Department stated that, because the determination was reached while lacking certain important information, the finding of non-countervailability would not carry over to future investigations.

In this investigation, information provided by the GOI shows that the steel industry received 25% of the benefits under the program. Based on this information, the Department preliminarily determines that the steel industry was a dominant user of exchange rate guarantees under Law 796/76 and, thus, that benefits received by Dalmine under this law are being provided to a specific enterprise or industry or group of enterprises or industries. (*See* section 355.43(b)(2)(iii) of the *Proposed Regulations*.) Therefore we preliminarily determine that the exchange rate guarantees offered under the program are countervailable to the extent they are provided on terms inconsistent with commercial considerations.

Dalmine provided information that it could have purchased an exchange rate

guarantee from commercial sources. However, Dalmine's information pertained to 1993, not to the period when the government-provided guarantees were taken out. The GOI's response indicates that commercial exchange rate guarantees were not available in 1986, the year in which the loan and the guarantee were received. Therefore, we preliminarily determine the benefit to Dalmine to be the total amount of GOI payments on these loans made during the POI by the GOI. (Because the amount the government will pay in any given year will not be known until that year, benefits can only be calculated on a year-by-year basis.) We divided the GOI's payments in 1993 by Dalmine's 1993 total sales. On this basis, we determine the estimated net subsidy from this program to be 0.20 percent ad valorem for all manufacturers, producers, and exporters in Italy of the subject merchandise.

II. Programs Preliminarily Determined to be Not Countervailable

A. 1988/89 Equity Infusion

In November 1989, Dalmine completed an equity rights offering which allowed existing shareholders to purchase 7 new shares for every 10 shares they already owned. The new shares were offered at a price of LIT 300 per share. At that time, ILVA owned 81.7 percent of Dalmine's equity, with the remaining 18.3 percent owned by private investors. Pursuant to the rights offering, ILVA subscribed to its full allotment of the new shares. The remainder of the new shares were purchased by private shareholders. All shares were purchased at LIT 300 per share.

Petitioner argues that although Dalmine's shares were nominally publicly traded, the vast majority of Dalmine shares were indirectly owned by the GOI and, therefore, shares were not purchased in adequate volume by private investors to establish a valid benchmark. Specifically, petitioner contends that in 1991 ILVA owned 99.9 percent of Dalmine and, therefore, Dalmine's shares were in fact not publicly traded. Consequently, because essentially no private purchases were being made, the market price at the time of the equity infusion cannot serve as a valid benchmark. Furthermore, petitioner asserts that it is highly likely that the remaining shares not purchased by ILVA were purchased indirectly by the GOI through other holding companies.

In response to our questionnaire, Dalmine provided a list of all purchasers of shares in the 1989 offering. There is no evidence to indicate that the shares not purchased by ILVA were purchased by other government controlled or owned entities, as petitioner suggests. Moreover, the extent of ILVA's ownership in 1991 is not relevant to the choice of a benchmark for the equity investment in 1989.

We have preliminarily determined that, because 18.3 percent of the equity infusion was purchased by private shareholders, the sale of these shares provides the market-determined price for Dalmine's equity. Furthermore, in accordance with section 355.44 (e)(1) of the Department's Proposed Regulations, we preliminarily determine that the equity infusion is not countervailable because the market-determined price for Dalmine's shares is not less than the price paid by ILVA for those shares.

B. European Social Fund ("ESF") Grants

The ESF was established by the 1957 European Economic Community Treaty to increase employment and help raise worker living standards.

As described in *Grain-Oriented Electrical Steel*, the ESF receives its funds from the EC's general budget whose main revenue sources are customs duties, agricultural levies, value-added taxes collected by the member states, and other member state contributions.

The member states are responsible for selecting the projects to be funded by the EC. The EC then disburses the grants to the member states which manage the funds and implement the projects. According to the EC, ESF grants are available to (1) people over 25 who have been unemployed for more than 12 months; (2) people under 25 who have reached the minimum school-leaving age and who are seeking a job; and (3) certain workers in rural areas and regions characterized by industrial decline or lagging development.

The GOI has stated that the ESF grants received by Italy have been used for vocational training. Certain regions in the South are also eligible for private sector re-entry and retraining schemes. Since 1990, the vocational training grants have been available to unemployed youths and long-term unemployed adults all over Italy, according to the GOI. Before 1990, however, the GOI gave preference to certain regions in Italy.

In *Grain-Oriented Electrical Steel*, we determined that this program was not regionally specific and not otherwise limited to a specific enterprise or industry, or group of enterprises or industries. Furthermore, we noted that to the extent there is a regional preference (*i.e.*, southern Italy) in the distribution of ESF benefits, it has not resulted in a countervailable benefit to the production of the subject merchandise, which is produced in northern Italy.

The GOI's response in this investigation is consistent with the information provided in *Grain-Oriented Electrical Steel*. Therefore, we preliminarily determine that this program is not limited to a specific enterprise or industry, or group of enterprises or industries and, therefore, is not countervailable.

C. ECSC Article 54 Loans

Under Article 54 of the 1951 ECSC Treaty, the European Commission provides loans directly to iron and steel companies for modernization and the purchase of new equipment. The loans finance up to 50 percent of an investment project. The remaining financing needs must be met from other sources. The Article 54 loan program is financed by loans taken by the Commission, which are then re-lent to iron and steel companies in the member states at a slightly higher interest rate than that at which the Commission obtained them.

Consistent with the Department's finding in *Grain-Oriented Electrical Steel*, we preliminarily determine that this program is limited to the iron and steel industry. As a result, loans under this program are specific.

Of the Article 54 loans Dalmine had outstanding during the POI, some were denominated in U.S. dollars and others were in Dutch guilders ("NLG"). To determine whether the loans were provided on terms inconsistent with commercial considerations, we used benchmark interest rates for the currencies in which the loans were denominated. That is, for the U.S. dollar loans we used the average interest rate on long-term fixed-rate U.S. dollar loans obtained in the United States, as reported by the Federal Reserve. For the NLG denominated loan, we used the average long-term bond rate for private borrowers in the Netherlands, as reported by the Organization for Economic Cooperation and Development ("OECD").

Because the interest rates paid on Dalmine's Article 54 loans are higher than the benchmark interest rates, the Department preliminarily determines that loans provided under this program are not preferential and, therefore, not countervailable.

D. 1989 Provisional Payment in Connection With 1989 Equity Infusion

In March 1989, ILVA made a payment to Dalmine in anticipation of purchasing new shares in Dalmine. The payment was provisional in nature because EC authorization of the capital increase was necessary, and if authorization was not granted, the money would have been repaid to ILVA. The capital increase was not finalized until November 1989, due to delays in EC approval. At that time, the payment became equity capital.

Consistent with the Department's position in *Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel from Italy (Grain-Oriented Electrical Steel)*, 59 FR 18357 (April 18, 1994), we preliminarily determine that the funds provided by ILVA to Dalmine are countervailable.

During the period March-November 1989, Dalmine had use of the money and paid no interest on it. Therefore, we have treated the funds provided by ILVA to Dalmine as an interest-free short-term loan from March 1989 to November 1989.

Because any benefit from this interest-free loan would be allocable entirely to 1989, no benefit is attributable to the POI.

III. Programs Preliminarily Determined to be Not Used

Based on the information provided in the responses, we preliminarily determine that the following programs were not used. This determination is subject to verification.

1. *Preferential IMI Export Financing Under Law 227/77*
2. *Preferential Insurance Under Law 227/77*
3. *Retraining Grants under Law 181/89*
4. *Benefits under ECSC Article 56*

Verification

In accordance with section 776(b) of the Act, we will verify the information submitted by respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of seamless pipe from Italy, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated below. This suspension will remain in effect until further notice.

Seamless Pipe

Country-Wide *Ad Valorem* Rate—1.42 percent

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 355.38, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing will be held on January 18, 1995, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Individuals who wish to request a hearing must submit a written request within ten days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of the business proprietary version and five copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than January 9, 1995. Ten copies of the business proprietary version and five copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than January 16, 1995. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with section 355.38 of the Commerce Department's regulations and will be considered if received within the time limits specified above.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: November 18, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–29239 Filed 11–25–94; 8:45 am]

BILLING CODE 3510–DS–P

Environmental Technologies Trade Advisory Committee (ETTAC); Meeting

ACTION: Notice of Open Meeting.

SUMMARY: Pending availability of the Environmental Technologies Trade Advisory Committee (ETTAC) members, ETTAC will hold its inaugural meeting to outline the function and agenda of the committee as well as discuss future projects and current issues which influence U.S. Environmental Technologies Trade policy.

DATES: Wednesday, December 14, 1994, 9:00 am–12:00 pm.

ADDRESSES: If held, the meeting will be held at the Grand Hyatt Hotel, 1000 H Street, N.W., Washington, D.C.

PUBLIC PARTICIPATION: If held, the meeting will be open to the public. Seating is limited and will be on a first come, first serve basis.

FOR FURTHER INFORMATION CONTACT: Anne Alonzo, Office of Environmental Technologies Exports, Room 4324, U.S. Department of Commerce, Washington, D.C. (202) 482–5225.

Dated: November 21, 1994.

Anne L. Alonzo,

Deputy Assistant Secretary for Environmental Technologies Exports.

[FR Doc. 94–29160 Filed 11–25–94; 8:45 am]

BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

Modernization Transition Committee

ACTION: Notice of Public Meeting.

TIME AND DATE: December 14–15, 1994 from 8:00 a.m. to 4:00 p.m. and 8:00 a.m. to 3:30 p.m. respectively.

PLACE: This meeting will take place at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

Status

The meeting will be open to the public. The last 60 minutes of the second day will be set aside for oral comments or questions from the public. Approximately 50 seats will be available on a first-come first-served basis for the public.

Matters To Be Considered

This meeting will cover: Consultation on the FY1996 National Implementation Plan (FY1996 NIP) and an update on the NOAA/Cramer Agreement. Briefings will be presented on the: NRC NEXRAD Coverage Study; Automation/ASOS update; AWIPS update; Modernization Budget Outlook; and Certification Outlook.

CONTACT PERSON FOR MORE INFORMATION: Mr. Nicholas Scheller, National Weather Service, Modernization Staff, 1325 East-West Highway, SSMC2, Silver Spring, Maryland 20910. Telephone: (301) 713–0454.

Nicholas R. Scheller,

Manager, Transition Implementation Group.

[FR Doc. 94–29200 Filed 11–25–94; 8:45 am]

BILLING CODE 3510–12–M

[I.D. 111494D]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of final action on application (P572) and inclusion in General Authorization (GA No. 1).

SUMMARY: Notice is hereby given that Florida Institute of Technology, 150 West University Boulevard, Melbourne, FL 32905 (Principal Investigator: Dr. John G. Morris), is included under the General Authorization to take Atlantic bottlenose dolphins (*Tursiops truncatus*) for purposes of scientific research.

ADDRESSES: The documentation is available for review upon written request or by appointment, in the following offices:

Chief, Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Southeast Region, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813/893–3141).

SUPPLEMENTARY INFORMATION: On September 26, 1994, notice was published in the **Federal Register** (59 FR 49062) that a request for a scientific research permit to harass Atlantic bottlenose dolphins during photo-identification and observational activities had been submitted by the above-named organization.

NMFS published an Interim Final Rule (50 CFR parts 215 and 216, General Authorization for Scientific Research, 59 FR 50372, October 3, 1994, establishing a General Authorization for scientific research activities that involve only Level B harassment of marine mammals. Level B harassment is defined as "any act of pursuit, torment, or annoyance which has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to migration, breathing, nursing, breeding, feeding, or sheltering but which does not have the potential to injure a marine mammal or marine mammal stock in the wild." Research activities that are likely to involve only Level B harassment are identified as photo-identification, behavioral observations, and vessel and aerial surveys. NMFS has confirmed that the General Authorization applies to the proposed scientific research as described in the application.

Dated: November 21, 1994.

P. A. Montanio,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–29162 Filed 11–25–94; 8:45 am]

BILLING CODE 3510–22–F

National Technical Information Service

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States of America to practice the inventions embodied in the following series of U.S. Patents: 4,127,528, 4,127,518, 4,127,535, 4,127,534, 4,127,531, 4,127,532, 4,127,533, 4,139,504, 4,127,541, 4,127,523, 4,127,524, 4,127,525, 4,127,526, 4,127,527, 4,127,519, 4,127,520, 4,127,529, 4,127,530, 4,127,517, 4,127,536, 4,127,537, 4,127,538, 4,127,539, 4,127,540, 4,127,521, 4,127,522, 4,180,501, 4,213,968, and 4,312,857, to Trans-Neuro, Inc., having a place of business in Wilmette, Illinois. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. While the primary purpose of this notice is to announce NTIS' intent to grant an exclusive license to practice the noted patents, it also serves to publish said patents' availability for licensing in accordance with law. The prospective exclusive license may be granted unless, within 90 days from the date of this published notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The series of related inventions expressed in the patents cited above describe various peptides, endorphins and enkephalins believed to be beneficial in the therapeutic treatment of a range of conditions believed to be caused by defective brain mechanisms, including various forms of mental illness.

Copies of the instant patents are available from the Commissioner of Patents and Trademarks, Box 9, Washington, DC at a cost of $3.00 each.

Any inquiries and comments relating to the contemplated license must be submitted to Neil L. Mark, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, Virginia 22151. Properly filed competing license applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Director, Office of Federal Patent Licensing.

[FR Doc. 94–29133 Filed 11–25–94; 8:45 am]

BILLING CODE 3510–04–M

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in Canada and Australia to practice the invention embodied in Patent Nos. 1,311,527 (Canada) and 618088 (Australia), titled "Electromagnetic Fire Warning System for Underground Mines," to VLF Magnetic Systems, Inc., having a place of business in Ontario, Canada. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. While the

primary purpose of this notice is to announce NTIS' intent to grant an exclusive license to practice the noted foreign patents, it also serves to publish said patents' availability for licensing in accordance with law. The availability of the invention for licensing was published as U.S. patent application, S.N. 7–201, 235, in the **Federal Register** of September 22, 1988 (Vol. 53, No. 184, p. 36875). The prospective exclusive license may be granted unless, within 90 days from the date of this published notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The present invention describes an electromagnetic warning system for miners working in underground mines wherein the warning system comprises: a transmitter unit for transmitting an ultra-low frequency signal through the strata that define the mine openings; an ultra-low frequency receiver unit equipped with a high permeability ferrite core antenna which is tuned to the frequency of the transmitter unit for producing a warning signal to the miners within an underground mine.

Information concerning the above-identified invention may be obtained from the NTIS at the address below.

Any inquiries and comments relating to the contemplated license must be submitted to Neil L. Mark, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, Virginia 22151. Properly field competing license applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Director, Office of Federal Patent Licensing.

[FR Doc. 94–29132 Filed 11–25–94; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

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 a proposal to add to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 28, 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 addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities 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 to the Government.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. 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 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 have been proposed for addition to Procurement List for production by the nonprofit agency listed:

Coveralls, Disposable
8415–01–092–7529
8415–01–092–7530
8415–01–092–7531
8415–01–092–7532
8415–01–092–7533
(Additional 25% of the Government's requirement)

NPA: Tradewinds Rehabilitation Center, Gary, Indiana

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–29205 Filed 11–25–94; 8:45 am]

BILLING CODE 6820–33–M

Procurement List Addition

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

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 28, 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 August 19, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (59 F.R. 42820) of proposed addition to the Procurement List. Comments were received from the current contractor for the janitorial service, four other disadvantaged businesses in Utah, the Utah office of the Small Business Administration (SBA), and a legal defense fund representing disadvantaged businesses. All the commenters opposed the proposal to add the service to the Procurement List.

The current contractor indicated that its contract for the service represented a sizeable part of its sales for the last quarter, and noted that not being allowed to perform the remaining option year of its contract could affect its survival. The contractor cited its quality performance on the contract, as evidenced by an award it had received. The legal defense fund seconded the contractor's comments.

The four other Utah disadvantaged businesses noted that the service had long been in the Federal disadvantaged business (8(a)) program. Its removal from the program, along with closures of two other military bases in Utah, would, they claimed, eliminate about a fifth of the 8(a) contracting business in Utah, requiring disadvantaged businesses to go outside of the State to do Federal work in the program. Accordingly, they indicated that addition of this contract to the Procurement List would negatively impact them.

The SBA district office also indicated that this service has been in the 8(a) program for many years. The office indicated that the service is a substantial part of the program in Utah, representing at least ten percent of program dollars and nearly fifty percent

of program dollars in janitorial services. The office also seconded the current contractor's comments concerning its option and its performance on the contract.

Additions to the Procurement List do not affect contracts in being before the effective date of the addition, or options exercised under those contracts. The decision to exercise an option is solely at the discretion of the Government contracting activity. Consequently, if an option is not exercised, any resulting impact on a contractor is because of the contracting activity's decision and not the Committee's action in adding an item to the Procurement List. In this particular case, the option in question has already been exercised, so the contractor will retain the work for the coming year.

A comparison of the comments by the SBA district office and the four Utah businesses with information available from Hill Air Force Base contracting staff indicates that the commenters have exaggerated the impact on the 8(a) program of adding this service to the Procurement List. Based on FY 1994 data, this contract represents only six percent of all 8(a) contracts at Hill Air Force Base. Since there are other 8(a) contracts in Utah, such as a General Services Administration contract for janitorial services at the Federal building in Salt Lake City, this contract clearly represents an extremely small percentage of all the 8(a) contracts in Utah.

With respect to 8(a) janitorial contracts in Utah, the Committee recognizes that there are a limited number of opportunities to clean Federal facilities. However, it also knows that many 8(a) janitorial contracts are competed among 8(a) contractors on a regional or national basis. Consequently, the Federal business opportunities for 8(a) janitorial firms in Utah are not limited to contracts for facilities within Utah. Moreover, adding this service to the Procurement List is not taking business away from the current contractor or the other 8(a) contractors which commented, but only removing the opportunity for 8(a) firms other than the current contractor to obtain the work in the future.

Taking into account all these factors, the Committee does not believe that addition of this service to the Procurement List will have a severe impact on the 8(a) program and its Utah contractors. The Committee's action will also create a very large number of jobs for people with severe disabilities, well beyond the average for a Procurement List addition.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the service 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 service to the Government.'

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

3. The action will result in authorizing small entities to furnish the service 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 service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List: Janitorial/Custodial (Remaining buildings not on Procurement List) Hill Air Force Base, Utah.

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

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–29203 Filed 11–25–94; 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 services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 28, 1994.

ADDRESS: 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 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 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.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

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

Janitorial/Custodial, Navy Post Graduate School, Weather Forecast Office, Building 712, 21 Grace Hopper Avenue, Monterey, California

NPA: Hope Rehabilitation Services, Santa Clara, California

Janitorial/Grounds Maintenance, Naval Industrial Reserve Ordnance Plant, Rochester, New York

NPA: Rochester Rehabilitation Center, Rochester, New York

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–29204 Filed 11–25–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Additions

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

ACTION: Additions to 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.

EFFECTIVE DATE: December 28, 1994.

ADDRESS: 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 June 24, August 26 and September 2, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 FR 32686, 44133 and 45667) of proposed additions to the Procurement List.

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:

Administrative Services, Waterways Experiment Station, Vicksburg, Mississippi

Janitorial/Custodial, North Island Naval Air Station Commissary, San Diego, California

Janitorial/Custodial, Naval Air Warfare Center, Aircraft Division, 6000 E. 21st Street, Indianapolis, Indiana

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

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–29206 Filed 11–25–94; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Final Programmatic Environmental Impact Statement (FPEIS) for the Ballistic Missile Defense (BMD) Program

AGENCY: Ballistic Missile Defense Organization (BMDO).

ACTION: Notice of availability.

SUMAMRY: The BMDO has finished and is now making available the Ballistic Missile Defense (BMD) Final Programmatic Environmental Impact Statement (FPEIS). The purpose of the BMD Program is to develop the capabilities to protect both the United States, and those areas of vital interest to the United States (e.g., U.S. troops, allies, and friends) from ballistic missile attack. The BMD FPEIS analyzes the potential environmental impacts associated with the Preferred Action and three alternatives.

The BMD Program consists of two segments, Theater Missile Defense (TMD) and National Missile Defense (NMD). TMD, though part of the BMD Program, has independent utility and is evaluated in its own PEIS. Under all alternatives in the BMD FPEIS, the acquisition of TMD system capabilities will continue as described in the TMD Record of Decision published in the **Federal Register** on August 11, 1994. Additional details about the TMD program may be found in the Final Theater Missile Defense Programmatic Life-Cycle Environmental Impact Statement prepared by the U.S. Army Space and Strategic Defense Command.

The Preferred Action in the BMD FPEIS is to continue a focused approach to long-lead time technology development in the form of the NMD Technology Readiness Program. The Preferred Action is also the No Action Alternative as it is a continuation of current BMDO policy. The NMD Technology Readiness Program involves the development of existing and new technologies and test systems for ground- and space-based elements (excluding Space-Based interceptors). Research is to be focused to ensure the capability to deploy a limited NMD system in the next decade. Basic technology efforts will continue to infuse new advances as the program proceeds. Contingency planning and options development will also continue to be conducted to meet unexpected threats.

The FPEIS also analyzes three System Acquisition Alternatives for the continued research and development of a BMD system capability by the Department of Defense (DoD). The environmental impacts of later life-cycle phases beyond research, development, and testing for these alternatives are discussed in the FPEIS to enhance future decision-making on whether and how the DoD could proceed with a BMD system. Alternatives to the Preferred Action analyzed in the FPEIS include:

- *Ground-and Space-Based Sensors and Ground and Space-Based Interceptors System Acquisition Alternative.* Under this alternative, BMDO would proceed with research, development, and testing activities similar to the Preferred Action but at a more intense level of effort. This alternative would also allow for the acquisition of a Ground-and Space-Based NMD system to proceed to the development of a system capability.

- *All Ground-Based System Acquisition Alternative.* Under this alternative, BMDO would also proceed with research, development, and testing activities similar to the Preferred Action but at a more intense level of effort. This alternative would allow for the acquisition of an All Ground-Based NMD system to proceed to the development of a system capability.

- *Ground-and Space-Based Sensors and Ground-Based Interceptors System Acquisition Alternative.* Under this alternative, BMDO would proceed with research, development, and testing activities similar to the Proposed Action but at a more intense level of effort. This alternative would allow for the acquisition of a Ground-and Space-Based NMD system (without Space-Based Interceptors) to proceed to the development of a system capability.

A Record of Decision on the BMD PEIS' alternatives will be made available no earlier than 30 days after this Notice of Availability (of the FPEIS) is published in the **Federal Register**.

LEAD AGENCY: Ballistic Missile Defense Organization.

COOPERATING AGENCIES: Department of Energy, National Aeronautical and Space Administration, U.S. Air Force, U.S. Army, U.S. Navy.

FOR FURTHER INFORMATION CONTACT: Major Thomas LaRock, OATSD/PA, Pentagon, Washington, DC 20301–7100, (703) 697–5131.

Dated: November 21, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–29145 Filed 11–25–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Notice of Availability Record of Decision (ROD); KC–135 Combat Crew Training School (CCTS) Relocation

The Air Force has prepared a classified environmental impact statement (EIS) assessing the potential cumulative environmental effects of a Defense Base Closure and Realignment Commission (Commission) 1993 recommendation to relocate specified KC–135 CCTS units to Altus AFB, OK. The EIS also analyzed classified C–17 actions that will take place at Altus. Consideration of cumulative impacts, when associated with the Commission recommendations, required portions of the EIS to be classified. A ROD was prepared in compliance with the National Environmental Policy Act of 1969 (NEPA) and summarizes the decision of the Air Force on the proposals.

Commission actions in 1991 recommended the closure of Castle AFB and the relocation to Fairchild AFB, Washington, of the 398 OG, which is the Air Force's KC–135 CCTS. In 1993, Commission recommendations redirected the relocation of the 398 OG from Fairchild AFB to Altus AFB.

The President accepted, and the Congress did not reject, the recommendations of the Commission; therefore Public Law 101–510 requires the Secretary of Defense, as a matter of law, to implement the realignment. The movement of the specified units to Altus AFB is by law, a final decision, therefore, no other beddown alternative locations were assessed.

The CCTS conducts formal flying training in the KC–135 aircraft for pilots, navigators, and boom operators. The CCTS also provides instructor training in each of these aircrew positions. Locating the CCTS at Altus AFB will increase the number of KC–135s at the base by two for a total of 24 primary assigned aircraft (PAA). The Air Mobility Command's 457 OG, an Altus Tenant that currently operates KC–135 aircraft, will inactivate before the CCTS starts training.

Tulsa, Clinton-Sherman, and Will Rogers World (Oklahoma City) Airports, all in Oklahoma, as well as the Midland International Airport, Texas, may be used as auxiliary training airfields for some CCTS flying training missions.

Requests for copies of the ROD or other information regarding this action should be directed to: Mr. Jack C. Bush, Headquarters Air Force, Environmental Planning Division, 1260 Air Force Pentagon, Washington, DC 20330–1260, (703) 695–1236.

List of Subjects

Environmental Protection, Environmental Impact Statement, US Air Force, Altus AFB, Realignment, Defense Base Closure and Realignment Commission.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94–29134 Filed 11–25–94; 8:45 am]

BILLING CODE 3910–01–P

Office of the Secretary

Defense Partnership Council Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense (DoD) announces the first meeting of the Defense Partnership Council. Notice of this meeting is required under the Federal Advisory Committee Act. This meeting is open to the public. The topics to be discussed are procedures and operations of the Council, and ways of promoting partnership.

DATES: The meeting is to be held Monday, December 12, 1994 in room 5C1042 the Pentagon from 10:00 a.m. until 12 noon. Comments should be received by December 6, in order to be considered at the December 12 meeting.

ADDRESSES: We invite interested persons and organizations to submit written comments or recommendations. Mail or deliver your comments or recommendations to Mr. Kenneth Oprisko at the address shown below. Seating is limited and available on a first-come, first-served basis. Individuals wishing to attend who do not possess an appropriate Pentagon building pass should call the below listed telephone number to obtain instructions for entry into the Pentagon. Handicapped individuals wishing to attend should also call the below listed telephone number to obtain appropriate accommodations.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Oprisko, Chief, Labor Relations Branch, Field Advisory Services Division, Defense Civilian Personnel Management Service, 2461 Eisenhower Ave., Hoffman Building #1, Suite 152, Alexandria, VA 22331–0900, (703) 325–1380.

Dated: November 21, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–29146 Filed 11–25–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Coast of Florida Erosion and Storm Effects Study in Palm Beach, Broward, and Dade Counties, Florida

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers intends to prepare a Draft Environmental Impact Statement for Region III of the Coast of Florida Erosion and Storm Effects Study. The study is a cooperative effort between the Corps of Engineers and the Florida Department of Environmental Protection, the study sponsor, to investigate coastal processes on a regional basis to recommend modifications for existing shore protection and navigation projects.

ADDRESSES: U.S. Army Corps of Engineers, Jacksonville District, Environmental Branch, Planning Division, P.O. Box 4970, Jacksonville, Florida 32232–0019.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Dupes, (904) 232–1689.

SUPPLEMENTARY INFORMATION: 1. The Coast of Florida Erosion and Storm Effects Study was authorized on 16 July 1984, by Section 104 of the 1985 Appropriations Act (Public Law 98–360). The study area includes most of the Atlantic and Gulf coast of Florida and has been divided into five coastal regions. The region currently being studied, and is the focus of the DEIS, is Region III which consists of 92 miles of Atlantic Ocean coastline within Palm beach, Broward, and Dade counties. Several alternatives are being considered in the study and will be addressed in the DEIS. These include:

a. Continued renourishment of existing projects,

b. Design modifications to existing projects where needed,

c. Sand bypassing at inlets using sand transfer plants and/or conventional dredging,

d. Nearshore placement of suitable maintenance dredged material to feed adjacent beaches,

5. Use of suitable maintenance dredged material as beach fill,

6. Construction of groins and/or offshore breakwaters,

7. Dune construction,

8. Construction of sand traps at inlets to aid in sand bypassing,

9. Sand tightening existing jetties where the need has been identified. Sources of sand that have been identified include offshore borrow areas, upland sand sources, suitable material from maintenance dredging and the possible use of Bahamian aragonite.

2. Scoping: The scoping process will involve Federal, State, county and municipal agencies, and other interested persons and organizations. A scoping letter (November 8, 1994) has been sent to interested Federal, State, county and municipal agencies requesting their comments and concerns. Any persons and organizations wishing to participate in the scoping process should contact the U.S. Army Corps of Engineers at the above address. Significant issues that are anticipated include concern for offshore hard bottom communities, fisheries, water quality, sea turtles and cultural resources.

3. Coordination with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service will be accomplished in compliance with section 7 of the Endangered Species Act. Coordination required by applicable Federal and State laws and policies will be conducted. Since the project will require the discharge of material into waters of the United States, the discharge will comply with the provisions of section 404 of the Clean Water Act as amended.

4. DEIS Preparation: It is estimated that the DEIS will be available to the public during May of 1995.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–29135 Filed 11–25–94; 8:45 am]

BILLING CODE 3710–AJ–M

Availability for Exclusive, Partially Exclusive, or Nonexclusive Licensing of a U.S. Patent Concerning a Shaping Apparatus for an Explosive Charge

AGENCY: U.S. Army Engineer Waterways Experiment Station, DOD.

ACTION: Notice of availability.

SUMMARY: In accordance with 37 CFR 404.7(a)(1)(i), announcement is made of the availability of U.S. Patent 5,323,681 for licensing. This patent has been assigned to the United States of America as represented by the Secretary of the Army, Washington, D.C.

ADDRESSES: U.S. Army Corps of Engineers, Waterways Experiment Station, ATTN: CEWES–CT–C, Vicksburg, MS 39180–6199.

FOR FURTHER INFORMATION CONTACT:

Mr. Jack A. Little, (601) 634–3175.

SUPPLEMENTARY INFORMATION: The invention provides a shaping apparatus for an explosive charge to be used with an Explosively Formed Penetrator (EFP). The shaping apparatus comprises a nonmetal mold in the form of a frustrum of a cone with a latch and hinge attached thereto. The mold is hand packed with a plastic bonded explosive to form an explosive charge. Current EFPs are limited in performance due to poor projectile formation partially caused by nonuniform application of the explosive into the rear portion of the EFP. This invention discloses a design of an explosive shaping apparatus which provides uniform application of the explosive on to the EFP, resulting in improved EFP slug formation and flight characteristics. The EFP standoff range is increased by as much as 400%. Standoff munitions, like the EFP, have wide potential application for military use, including demolition of bridges and bunkers and off-road mine use. Additionally, the EFP could be used by the mining industry to clear rock jams.

Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and section 207 of title 35, U.S. Code, the Department of the Army, Corps of Engineers, Waterways Experiment Station wishes to license the above United States Patent in an exclusive, partially exclusive, or non-exclusive manner to any party interested in using the technology described in the above mentioned patent. Any interested party is requested to submit a proposal for an exclusive, partially exclusive, or non-exclusive license. The proposals for using this technology will be evaluated using the following criteria: technical capability, size of business, and developmental plan.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–29136 Filed 11–25–94; 8:45 am]

BILLING CODE 3710–PU–M

DEPARTMENT OF ENERGY

Advisory Committee on Human Radiation Experiments

AGENCY: U.S. Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

DATE AND TIME: December 15, 1994, 9:00 a.m.–5:00 p.m.; December 16, 1994, 8:00 a.m.–5:00 p.m.

PLACE: Omni Shoreham Hotel, 2500 Calvert Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Steve Klaidman, Advisory Committee on Human Radiation Experiments, 1726 M Street, NW., Suite 600, Washington, DC 20036. Telephone: (202) 254–9795 Fax: (202) 254–9828.

SUPPLEMENTARY INFORMATION: *Purpose of the Committee:* The Advisory Committee on Human Radiation Experiments was established by the President, Executive Order No. 12891, January 15, 1994, to provide advice and recommendations on the ethical and scientific standards applicable to human radiation experiments carried out or sponsored by the United States Government. The Advisory Committee on Human Radiation Experiments reports to the Human Radiation Interagency Working Group, the members of which include the Secretary of Energy, the Secretary of Defense, the Secretary of Health and Human Services, the Secretary of Veterans Affairs, the Attorney General, the Administrator of the National Aeronautics and Space Administration, the Director of Central Intelligence, and the Director of the Office of Management and Budget.

Tentative Agenda

Thursday, December 15, 1994

9:00 a.m.—Call to Order and Opening Remarks.
9:10 a.m.—Discussion, Committee Strategy and Direction.
12:15 p.m.—Lunch.
1:30 p.m.—Discussion, Committee Strategy and Direction (continued).
5:00 p.m.—Meeting Adjourned.

Friday, December 16, 1994

8:00 a.m.—Opening Remarks.
8:10 a.m.—Discussion, Committee Strategy and Direction.
10:15 a.m.—Public Comment (5 minute rule).
12:00 p.m.—Lunch.
1:15 p.m.—Discussion, Committee Strategy and Direction (continue).
5:00 p.m.—Meeting Adjourned.

A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. The chairperson is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make a five-minute oral statement should contact Kristin Crotty of the Advisory Committee at the address or telephone number listed above. Requests must be received at least five business days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript: Available for public review and copying at the office of the Advisory Committee at the address listed above between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Dated: November 22, 1994.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 94–29199 Filed 11–25–94; 8:45 am]

BILLING CODE 6450–01–M

DOE Response to Recommendation 94–3, Rocky Flats Seismic and Systems Safety, of the Defense Nuclear Facilities Safety Board

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: Section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b) requires the Department of Energy to publish its response to Defense Nuclear Facilities Safety Board recommendations for notice and public comment. The Defense Nuclear Facilities Safety Board published Recommendation 94–3, concerning Rocky Flats Seismic and Systems Safety, in the **Federal Register** on October 4, 1994 (59 FR 50581).

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before December 28, 1994.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Grumbly, Assistant Secretary for Environmental Management, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585.

Issued in Washington, DC, on November 21, 1994.

Mark B. Whitaker,

Departmental Representative to the Defense Nuclear Facilities Safety Board.

November 18, 1994.

The Honorable John T. Conway,
Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, N.W., Suite 700, Washington, DC 20004.

Dear Mr. Conway: The Department of Energy accepts the Defense Nuclear Facilities Safety Board Recommendation 94–3, Rocky Flats Building 371 Plutonium Storage Safety. An implementation plan is being prepared which will respond to specific recommendations and will describe the integrated planning for development of the safety basis for Rocky Flats Building 371 plutonium storage.

The Department agrees in principle with your assessment of the unique safety importance of the projected storage mission. The implementation plan will describe the systems approach to the preparation of the documentation needed to support the facility mission, including determination of cost-beneficial design upgrades. The evaluation of seismic hazards will include assessment of the facility's seismic margin. Safety analysis will consider consequences of "beyond design basis accidents".

We will work closely with you and your staff to develop a responsive implementation plan. That plan will be forwarded to you in accordance with 42 U.S.C. section 2286d.

Sincerely,

Hazel R. O'Leary.

[FR Doc. 94–29198 Filed 11–25–94; 8:45 am]

BILLING CODE 6450–01–M

DOE Response to Recommendation 94–4, Deficiencies in Criticality Safety at Oak Ridge Y–12 Plant, of the Defense Nuclear Facilities Safety Board.

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: Section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b) requires the Department of Energy to publish its response to Defense Nuclear Facilities Safety Board recommendations for notice and public comment. The Defense Nuclear Facilities Safety Board published Recommendation 94–4, concerning deficiencies in criticality safety at Oak Ridge Y–12 Plant, in the **Federal Register** on October 5, 1994 (59 FR 50732).

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before December 28, 1994.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, D.C. 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Victor H. Reis, Assistant Secretary for Defense Programs, Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585.

Issued in Washington, D.C., on November 21, 1994.

Mark B. Whitaker,

Departmental Representative to the Defense Nuclear Facilities Safety Board.

November 18, 1994

The Honorable John T. Conway
Chairman, Defense Nuclear Facilities Safety Board, Suite 700, 625 Indiana Avenue, N.W., Washington, DC 20004

Dear Mr. Chairman: On September 27, 1994, the Defense Nuclear Facilities Safety Board issued Recommendation 94–4, dealing with deficiencies in Criticality Safety at the Oak Ridge Y–12 Plant. The Department accepts the recommendation.

The Department has initiated actions to resolve nuclear criticality safety and conduct of operations deficiencies at the Y–12 Plant. Shutdown nuclear operations will not resume until all necessary corrective and compensatory measures are in place. The Assistant Secretary for Defense Programs has provided, under separate cover, a plan detailing specific requirements for restart of operations, as well as a report explaining how the deficiencies remained undetected.

In addition, the Department will develop an implementation plan to: 1) evaluate compliance with Operational Safety Requirements and Criticality Safety Approvals; 2) comprehensively review the Y–12 Plant's nuclear criticality safety program; 3) assess the current level of conduct of operations at the Y–12 Plant; 4) evaluate the experience, training, and performance of key Department of Energy and contractor personnel involved in safety-related activities at the Y–12 Plant; and 5) correct any identified deficiencies.

We will work closely with you and your staff to develop a responsive Implementation Plan. The Implementation Plan will be forwarded to you in accordance with 42 U.S.C. § 22864. The Implementation Plan will provide specific milestones for accomplishing the commitments described in the preceding paragraph.

Sincerely,

Hazel R. O'Leary.

[FR Doc. 94–29197 Filed 11–25–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project Nos. 10981, 2712 and 2534–ME]

Bangor-Hydro Electric Co.; Intent to Hold a Public Meeting in Bangor, Maine, to Discuss the Draft Environmental Impact Statement (DEIS) for the Proposed Basin Mills Project and Existing Stillwater and Milford Projects

November 21, 1994.

On November 10, 1994, the Commission staff mailed the Lower Penobscot River Basin DEIS to the Environmental Protection Agency, resource and land management agencies, and interested organizations and individuals. This document evaluates the environmental consequences of: (1) Constructing and operating the license applicant's proposed Basin Mills project which consists of a new 38 mega-watt (MW) Basin Mills hydroelectric development, expansion of the existing Veazie hydroelectric development from 8.4 to 16.4 MW and decommissioning of the existing 2.3 MW Orono development; (2) continuing operation of the applicant's existing 1.95 MW Stillwater project; (3) expanding the applicant's existing Milford project from 6.4 MW to 8 MW; and (4) alternatives to the applicant's proposals.

The DEIS evaluates five alternatives for the Basin Mills proposal: No action (deny Basin Mills license, continue existing operation of Veazie and Orono); BHE's proposal; BHE's proposal with additional staff-recommended mitigation; not constructing Basin Mills but relicensing Veazie, with or without increased capacity, in combination with decommissioning or refurbishing Orono; and not constructing Basin Mills, decommissioning and removing Veazie dam, and refurbishing Orono.

Alternatives for the Stillwater and Milford projects include: No action; applicant's proposal; and applicant's proposal with staff-recommended mitigation.

The public meeting, which will be recorded by an official stenographer, is scheduled for 7:00 p.m. on Tuesday, December 13, 1994, at the Ramada Inn, 357 Odlin Road (Exit 45B off I–95), in Bangor, Maine.

At the meeting, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the DEIS for the Commission's public record.

For further information, please contact Sabina Joe at (202) 219–1648.

Lois D. Cashell,

Secretary.

[FR Doc. 94–29189 Filed 11–25–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–219–000]

Columbia Gulf Transmission Co.; Informal Settlement Conference

November 21, 1994.

Take notice that an informal settlement conference will be convened in this proceeding on November 29, 1994, at 9 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Edith A. Gilmore at (202) 208–2158 or Hollis J. Alpert at (202) 208–0783.

Lois D. Cashell,

Secretary.

[FR Doc. 94–29187 Filed 11–22–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP92–182–007]

Florida Gas Transmission Co.; Compliance Filing

November 17, 1994.

Take notice that on October 28, 1994, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing.

FGT states that by orders issued January 15, 1993 (January 15 Order), April 21, 1993 (April 21 Order), and September 15, 1993 (September 15 Order), the Federal Energy Regulatory Commission (FERC or Commission) approved the Stipulation and Agreement filed August 25, 1992 (Settlement) in Docket Nos. CP92–182, *et al.* and authorized FGT to construct and operate a major expansion of its system (Phase III Expansion). These orders also authorized FGT to provide firm transportation service through the expanded capacity pursuant to a proposed new firm transportation rate schedule, FTS–2.

FGT state the initial orders in the Phase III proceedings were issued prior to final resolution of the issues in FGTs restructuring proceeding in Docket No. RS92–16–000. Ordering Paragraph H of the Janaury 15 Order provided that proposed Rate Schedule FTS–2 must comply with any general modifications made by the Commission in FGT's restructuring proceeding. Ordering Paragraph C of the September 15 Order required that Florida Gas shall submit for filing, not less than thirty days and not more than 60 days prior to the proposed effective date or commencement of operations authorized herein, revised tariff sheets in accordance with the Commission's January 15 and April 21 orders and this order.

FGT states that although service under Rate Schedule FTS–2 is not expected to commence before February 1, 1995, it is filing the tariff sheets required to incorporate FTS–2 service into FGT's currently effective tariff. FGT states that it believes it is important that the terms and conditions affected by FTS–2 service be known to FGT and all shippers on its system as soon as possible and that it is in the interest of all parties to have final resolution of all issues related to FTS–2 service prior to the commencement of this service.

FGT states the instant filing is being made in compliance with the Settlement and the above-referenced orders.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 25, 1994. Protests will be considered by the Commission in determining the appropriate actions to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–29185 Filed 11–25–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–220–000]

Northwest Pipeline Corp.; Informal Settlement Conference

November 21, 1994.

Take notice that an informal settlement conference will be convened in the above-captioned proceeding at 10:00 a.m. on December 7 and 8, 1994, at the offices of the Federal Energy

Regulatory Commission, 810 First Street, NE, Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214) prior to attending.

For additional information please contact Michael D. Cotleur, (202) 208–1076, or Donald Williams (202) 208–0743.

Lois D. Cashell,

Secretary.

[FR Doc. 94–29186 Filed 11–25–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–72–009]

Texas Eastern Transmission Corporation; Filing of Report of Refund

November 18, 1994.

Take notice that on September 23, 1994, Texas Eastern Transmission Corporation (Texas Eastern), filed with the Commission in Docket No. RP91–72–009, its Report of Distribution of Refunds of Order No. 528 Take-or-Pay refunds from Koch Gateway Pipeline Company.

Texas Eastern states that it refunded $68,621,515.91 to the Texas Eastern Customer Group on September 23, 1994. Texas Eastern states that the refund is in compliance with the provisions of §§ 3.1 and 3.2 of Article III of the Stipulation and Agreement approved by Commission Order issued August 4, 1994 in Docket No. RP91–72 et al.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before November 28, 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–29158 Filed 11–25–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–72–010]

Texas Eastern Transmission Corporation; Filing of Report of Refund

November 18, 1994.

Take notice that on October 7, 1994, Texas Eastern Transmission Corporation (Texas Eastern), filed with the Commission in Docket No. RP91–72–010, its Report of the Distribution of Refunds of Order No. 528 Take-or-Pay refunds from Texas Gas Transmission Corporation.

Texas Eastern states that it refunded $4,062,145.78 to the Texas Eastern Customer Group on October 7, 1994. Texas Eastern states that the refund is in compliance with the provisions of § 3.3 of Article III of the Stipulation and Agreement approved by Commission Order issued August 4, 1994 in Docket No. RP91–72 et al.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before November 28, 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–29159 Filed 11–25–94; 8:45 am]

BILLING CODE 6717–01–M

[RP94–164–000]

Trunkline Gas. Co.; Informal Settlement Conference

November 21, 1994.

Take notice that an informal settlement conference will be convened in these proceedings on November 30, 1994 at 9:00 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, D.C., 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Marc G. Denkinger (202) 208–2215 or Edith A. Gilmore (202) 208–2158.

Lois D. Cashell,

Secretary.

[FR Doc. 94–29188 Filed 11–25–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. EA–66–B]

Application To Export Electricity; Citizens Utilities Company

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Application.

SUMMARY: Citizens Utilities Company (Citizens) has requested authorization to export electric energy to Canada.

DATES: Comments, protests, or requests to intervene must be submitted on or before January 27, 1995.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael T. Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act.

On October 12, 1994, Citizens filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to Canada pursuant to section 202(e) of the Federal Power Act. Citizens has requested authority to export up to 50,000 megawatt-hours (MWH) per year of electric energy to Hydro-Quebec at a maximum rate of transmission of 50 megawatts (MW). Citizens proposes to use the existing 120,000-volt transmission facilities at Derby Line, Vermont, to affect the export. The construction, connection, operation, and maintenance of these facilities were authorized by Presidential Permit PP–66, issued by the DOE on June 21, 1979.

Citizens and Hydro-Quebec have had an interconnection agreement since January 25, 1988, which among other things, provides for mutual assistance during emergencies. On March 31, 1993, in Order DOE/FE EA–66, and again on May 28, 1993, in Order DOE/FE EA–66–A, FE granted Citizens temporary

authority to export to Hydro-Quebec in order to supply electric service to Canadian customers during a maintenance outage of Hydro-Quebec's Stanstead substation. Citizens now seeks permanent authority to export to Hydro-Quebec under circumstances similar to those authorized in Orders EA–66 and EA–66–A or because of emergency conditions.

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protests also should be filed directly with: Craig A. Marks, Senior Counsel, Citizens Utilities Company, 1233 West Bank Expressway, Harvey, La. 70059, (504) 367–7000, ext. 235; Kimberly M. Kiener, Director Regulatory Affairs, Electric, Citizens Utilities Company, 4255 Stockton Hill Road, Kingman, Az. 86401, (602) 692–2787; and James P. Avery, Vice President, Energy, Citizens Utilities Company 1233 West Bank Expressway, Harvey, La. 70059, (504) 367–7000, ext. 210.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or a security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on this application after a determination is made by the DOE that the proposed action will not impair the sufficiency of electric supply within the United States or will not impede or tend to impede the coordination in the public interest of facilities in accordance with section 202(e) of the Federal Power Act.

Before an export authorization may be issued, the environmental impacts of the proposed DOE action (i.e., granting the export authorization, with any conditions and limitations, or denying it) must be evaluated pursuant to the National Environmental Policy Act of 1969.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC, on November 18, 1994.

Anthony J. Como,

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

[FR Doc. 94–29196 Filed 11–25–94; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5113–3]

Acid Rain Program; Notice of Final Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of permits.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is approving 5-year sulfur dioxide compliance plans, according to the Acid Rain Program regulations (40 CFR part 72), for the following 15 utility plants: Collins, Crawford, Fisk, Joliet 9, Joliet 29, Powerton, Waukegan and Will County in Illinois; Petersburg and State Line in Indiana; Allen S King, Black Dog in Minnesota, High Bridge, Riverside, and Sherburne County in Minnesota; and Poston in Ohio.

These final permits were initially issued as direct final actions and were subsequently withdrawn and re-proposed as draft permits because of the submission of significant, adverse comments objecting to the issuance of the direct final permits. EPA's responses to the original objections and to all comments submitted during the comment periods for these permits can be found in the public dockets for each permit. Contact the Regional staff listed below for more information.

The final permits set forth in this notice are based on and are consistent with the Partial Settlement Agreement in *Environmental Defense Fund* v. *Carol M. Browner*, No. 93–1203 (D.C. Cir. 1993), which the Administrator determined to be a reasonable resolution of certain litigation issues concerning the Acid Rain regulations and which was signed on behalf of the Administrator on May 4, 1994. Further, the final permit for Petersburg is also consistent with provisions in § 72.42 of the Acid Rain regulations that have been challenged in a petition for review. Pursuant to the delegation of authority from the Administrator, it has been found, under section 307(b)(1) of the Clean Air Act, that each of these permits is based on a determination of nationwide scope and effect. Consequently, under section 307(b)(1), petitions for judicial review of final agency action in these proceedings must be filed in the United States Court of Appeals for the District of Columbia Circuit within 60 days after the date that a notice of the final agency action is published in the **Federal Register**. Filing a petition for reconsideration of the Administrator of the final agency action does not affect the finality of the action for the purposes of judicial review, extend the time within which a petition for judicial review may be filed, or postpone the effectiveness of the action. Under section 307(b)(2) of the Act, the final agency action may not be challenged later in proceedings to enforce its requirements.

FOR FURTHER INFORMATION: Contact the following persons for more information about a permit listed in this notice: For plants in Illinois, Cecilia Mijares, (312) 886–0968; in Indiana, Genevieve Nearmyer, (312) 353–4761; in Minnesota, Allan Batka, (312) 886–7316; and in Ohio, Franklin Echevarria, (312) 886–9653.

ADDRESS: EPA Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Dated: November 14, 1994.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 94–29151 Filed 11–25–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5113–6]

Clean Air Scientific Advisory Committee Science Advisory Board; Notification of Public Advisory Committee Meeting; Open Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Clean Air Scientific Advisory Committee (CASAC) of the Science Advisory Board (SAB) will meet on December 12 and 13, 1994 at the Sheraton Imperial Hotel and Convention Center, 4700 Emperor Boulevard, Morrisville, NC (919) 941–5050. The meeting will begin at 9:00 a.m. and end no later than 5:00 p.m. on

both days (times noted are Eastern Time). The meeting is open to the public. Due to limited space, seating at the meeting will be on a first-come first-served basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are *not* available from the SAB Office— information concerning document availability from the relevant Program area is included.

Purpose of the Meeting

The Committee will meet to:

1—Review and provide advice to the EPA on the October 1994 draft EPA document, Review of the National Ambient Air Quality Standards for Nitrogen Dioxide: Assessment of Scientific and Technical Information - Draft Staff Paper (this issue is presently scheduled for the morning session on December 12th). Single copies of this document may be obtained from Chebryll C. Edwards, Air Quality Strategies and Standards Division, Office of Air Quality Planning and Standards (MD–12), U.S. EPA, Research Triangle Park, NC 27711. Mrs. Edwards can also be reached by phone at (919) 541–5428 or by FAX at (919) 541–0237. Written comments on the draft staff paper will be accepted through January 15, 1995. Comments should be sent to Mrs. Chebryll C. Edwards at the previously stated address.

2—Discuss EPA plans for development of the document Air Quality Criteria for Airborne Particulate Matter. That document is being prepared by EPA as part of the process to meet Clean Air Act statutory requirements for the periodic review and revision, as appropriate, of criteria and National Ambient Air Quality Standard for Particulate Matter. The process for developing the subject criteria document is described in a draft document entitled Program Work Plan for Preparation of Air Quality Criteria for Particulate Matter, which will be summarized and discussed at the meeting. Single copies of the draft Work Plan can be obtained from Ms. Diane Ray, Environmental Criteria and Assessment Office (MD–52), U.S. EPA, Research Triangle Park, NC 27711. Ms. Ray can also be reached by phone at 919–541–3637 or by FAX at 919–541–1818. In addition, the CASAC will be briefed on the plan for the development of the associated particulate matter staff paper. Questions concerning the Staff Paper Development Plan should be addressed to Mr. Eric Smith, Air Quality Strategies and Standards Division (MD–15), U.S. EPA, Research Triangle Park, NC 27711. Mr. Smith can also be reached by phone at 919–541–5135 or by FAX at 919–541–0237.

3—Finally, a summary of the EPA's Particulate Matter (PM) Research Strategy for Health Exposure Issues will also be presented to the Committee. A strategy document has been prepared which briefly describes the problem of concern, the research mission, the research program goals and objectives, presents a research planning framework, lists criteria for ranking research and identifies research priorities. The strategy articulated in the document will be used: (a) To focus EPA's PM research efforts on issues surrounding recent mortality and morbidity observations associated with PM; (b) to structure and guide EPA's research activities over the next five years; and (c) to communicate and coordinate with other public and private research organizations and, thereby, help shape a national PM research agenda. Copies of the strategy document can be obtained from Ms. Diane Ray, Environmental Criteria and Assessment Office (MD–52), U.S. EPA, Research Triangle Park, NC 27711. Ms. Ray can also be reached by phone at 919–541–3637 or by FAX at 919–541–1818.

The Committee anticipates a full, formal review of the document Air Quality Criteria for Airborne Particulate Matter at a meeting in the summer of 1995. Further information on that meeting will be available in early spring 1995. Please contact the SAB staff at one of the numbers listed below at that time for further information.

For Further Information

Members of the public desiring additional information about the meeting should contact Mr. Robert Flaak, Assistant Staff Director and Acting Designated Federal Official, Clean Air Scientific Advisory Committee, Science Advisory Board (1400F), U.S. EPA, 401 M Street, SW., Washington, DC 20460, by telephone at (202) 260–6552, or by FAX at (202) 260–7118, or via the INTERNET at FLAAK.ROBERT@EPAMAIL.EPA.GOV. Those individuals requiring a copy of the draft Agenda should contact Ms. Lori Anne Gross at (202) 260–8414 or by FAX at (202) 260–1889 or by way of INTERNET at GROSS.LORI@EPAMAIL.EPA.GOV. Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found in The Annual Report of the Staff Director which is available by contacting Ms. Gross at the previously stated address.

Members of the public who wish to make a brief oral presentation to the Committee must contact Mr. Flaak in writing (by letter or by fax - see previously stated information) no later than 12 noon Eastern Time, Friday, December 2, 1994 in order to be included on the Agenda. Public comments will be limited to five minutes per speaker or organization. The request should identify the name of the individual who will make the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g., overhead projector, 35mm projector, chalkboard, etc.), and at least 35 copies of an outline of the issues to be addressed or a copy of the presentation itself.

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 are limited to no more than five minutes per speaker and no more than fifteen minutes total. Written comments of any length (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 its meeting, unless other publicly announced arrangements have been made.

Dated: November 16, 1994.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 94–29153 Filed 11–25–94; 8:45 am]

BILLING CODE 6560–50–P

[OPP–50799; FRL–4903–9]

Receipt of a Notification to Conduct Small-Scale Field Testing of a Genetically-Engineered Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from American Cyanamid Company of New Jersey a notification (241–NMP–E) of intent to conduct small-scale field testing involving a baculovirus

Autographa californica Multiple Nuclear Polyhedrosis Virus (ACMNPV) which has been genetically engineered to contain an insect-specific protein toxin from the venom of the scorpion *Androctonus australis*. American Cyanamid intends to test this microbial pesticide on lettuce, cabbage and leafy vegetables in the states of Florida and Texas. Target pests for these field trials include the cabbage looper and the tobacco budworm. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on this application.

DATES: Written comments must be received on or before December 28, 1994.

ADDRESSES: Comments in triplicate, must bear the docket control number OPP–50799 and be submitted to: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked, will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and all written comments will be available for public inspection in Rm. 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phil Hutton, Product Manager (PM) 18, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703–305–7690).

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to EPA's Statement of Policy entitled, "Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act," published in the **Federal Register** of June 26, 1986 (51 FR 23313), was received on September 29, 1994, from American Cyanamid Company of New Jersey (NMP No. 241–NMP–E). The proposed small-scale field trial involves the introduction of a genetically-engineered isolate of the baculovirus *Autographa californica* Multiple Nuclear Polyhedrosis Virus (AcMNPV). The strain to be tested (VEGTDEL-AaIT) has been genetically modified with approximately 1 kilobase internal deletion in the ecdysteroid UDP-glucosyltransferase gene and an inserted gene which encodes an insect specific toxin protein from the venom of the scorpion *Androctonus australis*.

The purpose of the proposed testing will be to evaluate the efficacy of this genetically-altered AcMNPV (relative to the gene-deleted construct and a commercial *Bacillus thuringiensis* insecticide) against certain lepidopteran species (*Trichoplusia ni* (cabbage looper and *Heliothis virescens* (tobacco budworm)) on lettuce, cabbage, and leafy vegetables.

The proposed program consists of two field trials to be conducted late 1994 or early 1995 (depending upon pest infestation levels) in Florida and Texas. Both sites will be located on secured research farmland. The test will consist of a maximum of four treatments with four plots per treatment and a maximum of six applications per treatment. The maximum size of a given treatment plot in each test will be 0.018 acres (4 rows wide x 60 ft. long). The total acreage treated with the genetically modified construct will consist of 0.44 acres. Treatments will be applied to plots in the test area using ground equipment: small tractor sprayers or CO_2 driven back pack sprayers.

Soil monitoring will take place both during the test and approximately 1 month after the crops are destroyed. Baculovirus present in the soil (if any) will be detected via bioassay and identified genetically using Polymerase Chain Reaction (PCR) technique. Upon completion of the trial, crops will undergo crop destruction at the test site and adjacent buffer zones. Wild-type ACMNPV will be oversprayed if the genetic construct is detected in the area 100 feet from the site of application. Following the review of American Cyanamid Company's application and any comments received in response to this notice, EPA will decide whether or not an experimental use permit is required.

Dated: November 14, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–29150 Filed 11–25–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

November 16, 1994.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 418–0214. Persons wishing to comment on these information collections should contact Timothy Fain, Office of Management and Budget, Room 10214 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0029.

Title: Application for TV Broadcast Station License.

Form Number: FCC Form 302–TV.

Action: Revision of a currently approved collection.

Respondents: Non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 54 responses, 20.25 hours average burden per response, 1,094 hours total annual burden.

Needs and Uses: On 7/16/92, the OMB approved for use a new FCC Form 302–FM (3060–0506) to be used by licensees and permittees to apply for a new or modified FM license. The FCC Form 302–FM was created through the Total Quality Management (TQM) process. At the time of approval, the current FCC 302 was to be used only for the AM and TV services. At this time, the Commission is separating the AM and TV services into separate forms. The FCC Form 302–TV will use the current OMB control number (3060–0029). Licensees and permittees of TV broadcast stations are required to file FCC Form 302–TV to obtain a new or

modified station license, and/or to notify the Commission of certain changes in the licensed facilities of these stations. The data is used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit, and to update FCC station files. Data is then extracted from the FCC Form 302–TV for inclusion in the subsequent license to operate the station. The FCC Form 302–AM will be submitted to OMB as a new collection and will require a new OMB control number.

OMB Number: 3060–0484.

Title: Amendment of Part 63 of the Commission's Rules to Provide for Notification by Common Carriers of Service Disruptions (Section 63.100).

Action: Revision of a currently approved collection.

Respondents: Businesses or other for-profit.

Frequency of Response: On occasion reporting requirement and Other: Initial report due 120 minutes or three days after incident depending on the number of potentially affected customers and type of disruption. Final report due 30 days after initial report.

Estimated Annual Burden: 208 responses; 5 hours average burden per response; hours total annual burden.

Needs and Uses: Section 63.100 previously required that "any local exchange or interexchange common carrier that operates transmission or switching facilities and provides access service or interstate or international telecommunications service that experiences an outage which potentially affects 50,000 or more of its customers on any facilities which it owns or operates must notify the Commission if such service outage continues for 30 or more minutes. Satellite carriers and cellular carriers were exempt from this reporting requirement." An initial and a final report is required for each outage. In addition to those changes made in Section 63.100 in the Memorandum Opinion and Order (MO&O) and Further Notice of Proposed Rulemaking (NPRM) adopted by the Commission on 11/5/93, pursuant to the present Order and previously approved by OMB, the amendments to this rule requires carriers to report 911 outages when more than 25% of the lines serving a PSAP are affected; to indicate, when specifying the types of services affected by any reportable outage and 911 is one of those services, whether more than 25% of the lines to any PSAP were disrupted; to provide 911 managers, when more than 25% of the lines to a 911 PSAP are affected, with any available information that will help those managers mitigate the effects of the outage on 911 callers; and to report all fire-related incidents affecting 1,000 or more lines. In the NPRM, it was proposed that carriers report fire-related incidents affecting 100 or more lines, 911 outages were to be reported under different criteria, carriers were not specifically asked to include information as to the percentage of affected lines serving a PSAP in their reports (though "all available information" was required), the carriers were not asked to give PSAP management available information that would help mitigate the affects of an outage. See Appendix A for the rules and requirements.

These changes will eliminate confusion in the proposed 911 reporting requirements that resulted in unnecessary and even false 911 outage reports, eliminate unnecessary reports of small unavoidable fires not related to any carrier activity, provide the Commission with information as to the severity of the 911 effects of large outages that are reported under numerical thresholds rather than as special facilities outages. As a whole, the amendments to Section 63.100 will enable the Commission to become aware of significant outages at the earliest possible time so that we may monitor developments; to serve as a source of information for the public; to encourage and, where appropriate, to assist in dissemination of information to those affected; to take immediate steps, as needed, and after analyzing the information submitted, to determine what, if any, other action is required. After extensive study, the additional reporting requirements will increase the monitoring capacity of the FCC to include all *tandems* that form the major interexchange carrier networks and 41% of the total access lines of the twelve major local exchange carriers. In addition, the reporting of outages affecting "special" facilities will add another 9.5 million lines to the FCC's monitoring capacity. This will allow the FCC to monitor through the required reports outages affecting approximately half of the total access lines of the twelve major local exchange carriers, almost a tripling of present coverage. With the additional coverage, the FCC will be able to perform the functions mentioned above far more efficiently. The reports for fire-related incidents will allow the Commission to monitor the efficiency of network fire prevention and control systems in the absence of major fire-caused outages. This is necessary because fire-caused outages are especially rare but especially extensive. The extent and gravity of outages over the last few years shows the depth of the need for FCC monitoring of outages to maintain a reliable telecommunications network.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–29119 Filed 11–25–94; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Fee for Services To Support FEMA's Offsite Radiological Emergency Preparedness (REP) Program

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: In accordance with FEMA's interim rule, 44 CFR part 354, published in the **Federal Register** on July 1, 1993 (58 FR 35770), FEMA has established a fiscal year (FY) 1994 hourly rate of $120.79 for assessing and collecting fees from Nuclear Regulatory Commission (NRC) licensees for services provided by FEMA personnel for FEMA's REP Program.

DATES: The user fee hourly rate is effective for FY 1994 (October 1, 1993 to September 30, 1994).

FOR FURTHER INFORMATION CONTACT: Linda Vasta, Chief, Regulatory Services Coordination Unit, Preparedness, Training and Exercises Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4570.

SUPPLEMENTARY INFORMATION: As authorized by Public Law 103–124 (107 Stat. 1297), an hourly user fee rate of $120.79 will be charged to NRC licensees of commercial nuclear power plants for all site-specific and generic services provided by FEMA personnel for FEMA's REP Program under the interim rule, 44 CFR part 354, published in the **Federal Register** on July 1, 1993 (58 FR 35770). All funds collected under this rule will be deposited in the U.S. Department of the Treasury to offset appropriated funds obligated by FEMA for its REP Program.

The hourly rate is established on the basis of the methodology set forth in the referenced FEMA interim rule at 44 CFR 354.4(a), "Determination of costs for FEMA personnel," and will be used to assess and collect fees for site-specific and generic services rendered by FEMA personnel. For FY 1994, the total Salaries and Expenses funds obligated for FY 1994 was $5,941,306.82 and the total number of site-specific hours

expended was 49,186. Applying the formula set forth in the interim rule, the FY 1994 hourly rate is $120.79.

The establishment of this hourly rate is intended only to address charges to NRC licensees for services provided by FEMA personnel, not FEMA charges for services provided by FEMA contractors, which will be charged under the interim rule at 44 CFR 354.4 (b) and (c) for the recovery of appropriated funds obligated for the Emergency Management Planning and Assistance (EMPA) portion of FEMA's REP Program budget.

On May 19, 1994, FEMA published in the **Federal Register** (59 FR 26350) a notice continuing the FY 1993 methodology to establish the fee for services to support FEMA's offsite REP activities. This notice stated that FEMA would be doing a mid-year user fee billing for FY 1994 using the FY 1993 hourly user fee rate of $122.88 and that any billing adjustments necessary after calculating the actual FY 1994 hourly rate would be made after the end of FY 1994. The hourly rate of $120.79 is the final hourly rate for FY 1994 and adjustments will be made using this rate.

On July 27, 1994, FEMA published in the **Federal Register** (59 FR 38306) a proposed final user fee rule that revised the methodology contained in the interim rule. The final rule will be published when FEMA has completed its analysis of public comments received in response to the proposed rule.

Dated: November 22, 1994.

Kay C. Goss,

Associate Director.

[FR Doc. 94–29180 Filed 11–25–94; 8:45 am]

BILLING CODE 6718–20–M

FEDERAL RESERVE SYSTEM

First Deposit 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 December 9, 1994.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Deposit Bancshares, Inc., Tompkinsville, Kentucky; to engage *de novo* in South Central Savings Bank, FSB, Edmonton, Kentucky. Applicant is proposing to establish, own, control and operate a *de novo* federal savings bank, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 21, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–29177 Filed 11–25–94; 8:45 am]

BILLING CODE 6210–01–F

First State Bancorporation, Inc.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 94-25276) published on page 51979 of the issue for Thursday, October 13, 1994.

Under the Federal Reserve Bank of Kansas City heading, the entry for First State Bancorporation, Inc., is revised to read as follows:

1. First State Bancorporation, Inc., Taos, New Mexico; to retain 33 percent limit partnership interest in Credit Card Services, Ltd., Las Vegas, Nevada, whose general partner is Anderson's Advisors, Inc., a Nevada corporation, and thereby engage *de novo* through a joint venture in providing services related to credit card transactions and extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y (12 CFR § 225.25(b)(1)). These services would consist of processing applications for credit cards, embossing, encoding, and delivering credit cards to approved customers, sending bills to cardholders, receiving payments from cardholders and remitting such payments to issuing banks, and processing credit card transactions initiated at merchant locations (including authorization and payment functions).

Comments on this application must be received no later than December 12, 1994.

Board of Governors of the Federal Reserve System, November 21, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–29178 Filed 11–25–94; 8:45 am]

BILLING CODE 6210–01–F

West Town Bancorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to

produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 19, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. West Town Bancorp, Inc., Cicero, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of West Town Savings Bank, Cicero, Illinois (a mutual savings bank that will convert to a stock form of ownership and thereby convert from a savings and loan association to a state savings bank).

In connection with this application, Applicant also has applied to engage in making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 21, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–29179 Filed 11–25–94; 8:45 am]

BILLING CODE 6210–01–F

[Docket No. R–0856]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board has approved a private sector adjustment factor (PSAF) for 1995 of $94.7 million, as well as 1995 fee schedules for Federal Reserve priced services. These actions were taken in accordance with the requirements of the Monetary Control Act of 1980, which requires that, over the long run, fees for Federal Reserve priced services be established on the basis of all direct and indirect costs, including the PSAF.

DATES: The PSAF and the fee schedules become effective January 3, 1995.

FOR FURTHER INFORMATION CONTACT: For questions regarding the private sector adjustment factor: Elizabeth Averill, Accounting Analyst (202/452–2303), or Gwendolyn Mitchell, Senior Accounting Analyst (202/452–3841), Division of Reserve Bank Operations and Payment Systems; for questions regarding fee schedules: Edith Collis, Financial Services Analyst, Check Payments (202/452–3638), Michele Braun, Senior Financial Services Analyst, Automated Clearing House (202/452–2819), Darrell Mak, Financial Services Analyst, Funds Transfer and Book-Entry Securities (202/452–3223), Ken Buckley, Manager, Information Technology (electronic connections) (202/452–3646), Michael Bermudez, Financial Services Analyst, Noncash Collection (202/452–2216), Ruth Robinson, Senior Financial Services Analyst, Cash (202/452–3944), Division of Reserve Bank Operations and Payment Systems; for the hearing impaired *only:* Telecommunication Device for the Deaf, Dorothea Thompson (202/452–3544).

Copies of the 1995 fee schedules for check, automated clearing house, funds transfer and net settlement, book-entry securities, noncash collection, special cash services, and electronic connections to the Federal Reserve are available from the Reserve Banks.

SUPPLEMENTARY INFORMATION:

Private Sector Adjustment Factor

The Board has approved a 1995 PSAF for Federal Reserve Bank priced services of $94.7 million. This amount represents a decrease of $8.9 million or 8.6 percent from the PSAF of $103.6 million targeted for 1994.

As required by the Monetary Control Act (MCA) (12 U.S.C. 248a), the Federal Reserve's fee schedule for priced services includes "taxes that would have been paid and the return on capital that would have been provided had the services been furnished by a private business firm." These imputed costs are based on data developed in part from a model comprised of the nation's 50 largest (in asset size) bank holding companies (BHCs).

The methodology first entails determining the value of Federal Reserve assets that will be used in producing priced services during the coming year. Short-term assets are assumed to be financed by short-term liabilities; long-term assets are assumed to be financed by a combination of long-term debt and equity derived from the BHC model. The mix of long-term debt and equity was modified slightly to ensure an imputed equity to asset ratio of 4 percent as required for adequately capitalized institutions under provisions of Regulation F (12 CFR 206).

Imputed capital costs are determined by applying related interest rates and rates of return on equity (ROE) derived from the bank holding company model. The rates drawn from the BHC model are based on consolidated financial data for the 50 largest BHCs in each of the last five years. Because short-term debt, by definition, matures within one year, only data for the most recent year are used for computing the short-term debt rate.

The PSAF comprises capital costs, imputed sales taxes, expenses of the Board of Governors related to priced services, and an imputed Federal Deposit Insurance Corporation (FDIC) insurance assessment on clearing balances held with the Federal Reserve to settle transactions.

Asset Base

The estimated value of Federal Reserve assets to be used in providing priced services in 1995 is reflected in Attachment Table A–1. Table A–2 shows that the assets assumed to be financed through debt and equity are projected to total $622.9 million. As shown in Table A–3, this represents a net decrease of $28.6 million or 4.4 percent from 1994. This decrease results primarily from lower priced asset base levels at the Reserve Banks and Federal Reserve Automation Services (FRAS).

Cost of Capital, Taxes, and Other Imputed Costs

Table A–3 shows the financing and tax rates, as well as the other required PSAF recoveries proposed for 1995, and compares the 1995 rates with the rates used for developing the PSAF for 1994. The pre-tax return on equity rate decreased from 12.7 percent in 1994 to 12.1 percent for 1995. The decrease is a result of 1993 BHC financial performance included in the 1995 BHC model, relative to the stronger 1988 BHC financial performance in the 1994 BHC model.

The decrease in the FDIC insurance assessment from $19.8 million in 1994 to $19.0 million in 1995, shown in Table A–3, is attributable to lower adjusted gross cash items in process of collection (CIPC) and lower clearing balances. The FDIC rate of $0.26 for every $100 in clearing balances remains unchanged from the rate used in the 1994 final PSAF.

Net income on clearing balances for 1995 is projected to be $21.3 million, down from $25.4 million estimated for 1994. This decrease of $4.1 million is

due to the decrease in excess clearing balance levels, partially offset by a wider spread between income, which is earned at the 90-day Treasury bill rate, and expense or interest, which is paid at the federal funds rate.

Capital Adequacy

As shown in Table A–4, the amount of capital imputed for the proposed 1995 PSAF totals 35.9 percent of risk-weighted assets, well in excess of the 8 percent capital guideline for state member banks and BHCs.

1995 Fee Schedules

Overview

Based on the Reserve Banks' estimates of costs, volumes, and revenues, the proposed 1995 fees for priced services are expected to yield net income of $36.0 million for the year, compared with a targeted ROE of $31.5 million. Thus, the Reserve Banks project that 100.6 percent of total expenses, including targeted ROE, will be recovered. In addition, during 1995, approximately $19.1 million of automation consolidation special project costs, including about $0.8 million that were deferred in prior years, will be recovered. Additional finance charges for 1995 on accumulated deferred special project balances will be $2.5 million, resulting in accumulated special project costs to be recovered in the future of $36.7 million.[1]

For the most part, 1995 fees approved by the Board do not include significant changes in the level or structure of fees for priced services. For the electronic payment services—funds transfer, book-entry securities, and the automated clearing house (ACH)—all operating costs and imputed expenses, including targeted ROE, are expected to be recovered. Some electronic connection fees will be raised to reflect the higher costs associated with the higher service levels available through the Fednet® communications network. The Board, however, has approved a modest reduction in the funds transfer fee.

The check service also is expected to achieve full cost recovery, including targeted ROE, in 1995. Although continued volume losses are anticipated due to depository institutions' growing use of direct presentments under the same-day settlement rule and continued consolidation of the banking industry, the Reserve Banks expect the decline in volume to be more moderate than it was in 1994. The Board was able to approve modest increases in fees because the Reserve Banks are taking aggressive steps to reduce costs. For example, the Reserve Banks are reducing staff and making greater use of automation to improve operating efficiency. In addition, the Reserve Banks are improving deposit deadlines, promoting electronic presentment and deposit products, and developing products using image technology.

The noncash collection service has faced rapidly declining volume levels since the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) was enacted. Due to significant volume losses, the Reserve Banks incurred an operating loss in 1993 and project operating losses in 1994 and 1995. The service should realize lower and more stable costs once all operations are consolidated at two sites in 1995.

In November 1993, when the Board considered the 1994 fee schedules, volume-based fees were approved for selected check products and the noncash collection service. The Board also has requested the staff to develop criteria for the use of volume-based fees.[2] Econometric studies of the cost structure of Federal Reserve payment services are being conducted to determine if criteria based on scale efficiency are relevant. Preliminary results indicate that the use of volume-based fees is not appropriate for paper-based check services. A similar study of the cost structure of the noncash collection service was deemed impractical because of the rapidly declining volume levels. Analysis of the cost structure of electronic payment products is in progress. The Board has approved:

(1) Eliminating the volume-based fees for paper check products, which were introduced by the Minneapolis Reserve Bank in 1994;

(2) Permitting the Richmond and Minneapolis Reserve Banks to retain the volume-based fees for the selected electronic check products that were approved by the Board until scale efficiency studies of electronic payment products are completed; and

(3) Retaining the present volume-based fees for the noncash collection service because they are enabling the Federal Reserve to maintain a stabilizing presence in the noncash collection market.

The Board expects the results of its econometric studies to be available during 1995.

Although the Reserve Banks acknowledge that their cost, volume, and revenue projections are somewhat uncertain due to the continuing changes in the interbank check collection market and the implementation of FRAS, as well as Fednet®, the Board believes that the Reserve Banks' proposed 1995 fee schedules are reasonable.

Discussion

The 1994 fees approved by the Board were expected to recover 98.2 percent of the costs of providing priced services, including imputed expenses, automation consolidation special project costs budgeted for recovery, and targeted ROE. Through September 1994, the System recovered 97.1 percent of total priced services expenses, including targeted ROE. The Reserve Banks now estimate that priced services revenues will yield net income of $2.5 million for the year, compared with a targeted ROE of $34.6 million. The recovery rate after targeted ROE is expected to be 96.0 percent. Approximately $8.8 million in automation consolidation special project costs will be recovered in 1994 and an additional $20.5 million will be financed and recovered later.

Although the Reserve Banks' current estimate of 1994 performance appears conservative, two significant factors contribute to the expected shortfall compared to the original plan. First, credits arising from accounting for pensions under FASB Statement 87 were revised downward by $21.3 million, pre-tax, from the estimate used to set fees. Final actuarial data became available following the adoption of 1994 fees that reflected (1) a lower discount rate used to value pension plan assets and (2) the costs of early retirement plans offered by the Reserve Banks during 1993 and 1994. If the actual pension credit had not changed from the estimate, the Reserve Banks' estimated full-year cost recovery would have been 97.8 percent, or 1.8 percentage points higher than now forecast. Estimated net income would have been $17.3 million, compared with the $20.2 million originally budgeted.

Second, the check service's volume loss due to the implementation of the same-day settlement regulation in January 1994 and the continuing consolidation of the banking industry has been greater than anticipated. The lower check volume levels account for most of the Reserve Banks' $12 million shortfall in revenues compared to the original projections.

[1] In 1981, the Board adopted a policy that permits the Reserve Banks to defer and finance development costs if the development costs would have a material effect on unit costs, provided a conservative time period is set for full cost recovery and a financing factor is applied to the deferred portion of development costs.

[2] For the notice approving the use of volume-based fees for certain check and noncash products, see 58 FR 60649, November 17, 1993. For the announcement of the 1994 PSAF and fee schedules, see 58 FR 60639, November 17, 1993.

In 1995, priced services expenses before special project costs are projected to decrease 5.7 percent compared with estimated 1994 levels. Approximately $18.3 million of current automation consolidation special project costs and $0.8 million of costs that were deferred and financed in prior years will be recovered, leaving $36.7 million of accumulated special project costs to be recovered in the future.

Total revenues in 1995 are projected to increase by 0.2 percent compared with 1994 revenues.[3] Based on the Reserve Banks' estimates of costs, volumes, and revenues, the proposed 1995 fees will yield net income of $36.0 million for the year, compared with a targeted return on equity of $31.5 million. These estimates result in a 100.6 percent recovery rate, including targeted ROE.

Table 1 summarizes the cost and revenue performance for priced services since 1989.

TABLE 1.—PRO FORMA COST AND REVENUE PERFORMANCE (a)

[In millions of dollars]

Year	Revenue (1)	Operating costs and imputed expenses (b) (2)	Special project costs recovered (3)	Total expense [2+3] (4)	Net income (ROE) [1–4] (5)	Target ROE (c) (6)	Recovery rate after target ROE (percent) [1/(4+6)] (7)	Special project costs deferred and financed (d) (8)
1989 (e)	718.6	692.1	4.6	696.7	21.9	32.9	98.5	0
1990	746.5	698.1	2.8	700.9	45.6	33.6	101.6	0
1991	750.2	710.0	1.6	711.6	38.6	32.5	100.8	0
1992	760.8	728.4	11.2	739.6	21.2	26.0	99.4	1.6
1993	774.5	721.3	27.1	748.4	26.1	24.8	100.2	12.5
1994 (Est)	762.0	750.7	8.8	759.5	2.5	34.6	96.0	34.9
1995 (Bud)	763.4	708.3	19.1	727.4	36.0	31.5	100.6	36.7

(a) Details may not sum to totals because of rounding. The revenues and expenses for 1989–93 include the definitive safekeeping service, which was discontinued in 1993. The table includes revised revenue and expense data for 1989–92.

(b) Imputed expenses include interest on debt, taxes, FDIC insurance, and the cost of float. Credits for prepaid pension costs under FASB 87 and the charges for post-retirement benefits in accordance with FASB 106 are included beginning in 1993.

(c) Targeted ROE has not been adjusted to reflect automation consolidation expenses deferred and financed. The Reserve Banks plan to recover these costs in the future.

(d) Totals are cumulative and include financing costs.

(e) Net income was less than targeted ROE during 1989 due to structural adjustments associated with implementing Regulation CC in 1988.

Check

Table 2 presents actual 1993, estimated 1994, and projected 1995 cost recovery performance for the check service.

TABLE 2.—PRO FORMA COST AND REVENUE PERFORMANCE

[In millions of dollars]

Year	Revenue (1)	Operating costs and imputed expenses (2)	Special project costs recovered (3)	Total expense [2+3] (4)	Net income (ROE) [1–4] (5)	Target ROE (6)	Recovery rate after target ROE (percent) [1/(4+6)] (7)	Special project costs deferred and financed (8)
1993	596.9	557.2	14.1	571.3	25.7	18.6	101.2	0.1
1994 (Est)	578.9	579.8	0	579.8	(0.9)	26.3	95.5	11.3
1995 (Bud)	579.1	550.0	5.0	555.0	24.0	24.0	100.0	12.0

1993 Performance

Revenues from the check service recovered 101.2 percent of total expenses in 1993, including image and automation consolidation special project costs and targeted ROE. The volume of checks collected decreased 0.1 percent from 1992 levels and return item volume decreased 1.3 percent.

1994 Performance

Through September 1994, the check service recovered 96.4 percent of total expenses, including targeted ROE but excluding automation consolidation special projects costs. The volume of checks collected decreased 12 percent from 1993 levels, reflecting a 4 percent decrease in processed volume and a 33 percent decrease in fine sort volume.

The Reserve Banks now project an operating loss of $0.9 million, compared with the $14.8 million return on equity budgeted for 1994. Although the Board believes that the Reserve Banks' current estimate of 1994 performance is conservative, several significant factors are contributing to the variation. First, the check service's share of the pre-tax reduction in pension credits increased expenses by $16.8 million, compared

[3] The revenue forecasts include net income on clearing balances (NICB) based on the methodology used in previous years. The Board requested public comment on a proposed change to the NICB methodology on August 16, 1994. The Board's staff is currently analyzing several issues raised by the proposal.

with the original budget estimate. Without this unexpected increase in expenses, the Reserve Banks would have been able to achieve the budgeted return on equity for the check service. Second, the Reserve Banks' volume losses due to the implementation of the same-day settlement regulation on January 3 and the continuing consolidation of the banking industry have been greater than anticipated. In particular, the Reserve Banks now project that total check volume for 1994 will decline by about 11 percent (processed check volume by 4 percent and fine sort volume by 31 percent) and that return item volume will decline by 5 percent. Originally, the Reserve Banks projected that total volume would decline 10 percent (2 percent for processed check volume and 33 percent for fine sort volume) and that return item volume would decline 2 percent. Third, severe weather during early 1994 contributed to higher than budgeted float costs.

1995 Issues

The changes occurring in the check environment that will continue to challenge the Reserve Banks include additional volume losses due to increasing direct presentments of checks by depository institutions, expansions of private check clearing arrangements, and further consolidation of the banking industry. Despite these changes, the Reserve Banks are committed to providing efficient, fairly priced check services to the nation's depository institutions.

To accomplish this objective, Reserve Banks are continuing to (1) reduce staff, (2) contain other costs, (3) control increases in fees, (4) improve deposit deadlines, and (5) emphasize the use of electronic presentment and deposit products, which increase the efficiency of the check collection process and can reduce its total costs. In addition, the Reserve Banks are beginning to use image technology in their commercial check operations. Image technology has the potential to increase the acceptance of check truncation and, over the long run, reduce the cost of clearing paper checks.

Total check service operating costs plus imputed expenses are projected to be about 5.1 percent below estimated 1994 expenses. The decline in total check collection volume is expected to moderate somewhat in 1995. Based on the Reserve Banks' projections, a decrease in total volume of 2.4 percent is anticipated, reflecting no change in processed volume, an 11.5 percent decrease in fine sort volume, and a 1.0 percent decrease in return item volume.

1995 Fees

Overall, the 1995 check fees approved by the Board will increase 1.2 percent on a weighted average basis, compared with 1994. For 1995, the Reserve Banks are continuing to adjust fees to reflect more accurately the fixed and variable costs of providing check services. Thus, cash-letter fees and fine sort package fees will increase 5.7 percent and 1.6 percent, respectively. Forward processed item fees will decrease 0.4 percent, on average, while fine sort item fees will increase 2.0 percent, on average. Of the 2,180 forward collection and fine sort fees, almost 68 percent will remain unchanged, 19 percent will increase, and 7 percent will decrease. Additionally, 2.6 percent of all fees represent new products, while 3.7 percent of the fees have been discontinued, due to the elimination of the last remaining blended fees associated with tiered pricing and the elimination of some deadlines.

Fees for return items are increasing 6.2 percent overall, reflecting increases in return cash-letter and package fees. Of the 1,494 return fees, 59 percent are unchanged, 36 percent increased, and 2 percent decreased. The fees for the Interdistrict Transportation System (ITS) are unchanged.

Table 3 highlights selected 1994 and 1995 check collection fees.

TABLE 3.—PRICE RANGES

Products	1994 price ranges	1995 price ranges
Items:	(per item)	(per item)
Forward processed:		
City	$0.003 to 0.049	$0.003 to 0.049
RCPC	$0.005 to 0.077	$0.003 to 0.069
Fine Sort:		
City	$0.002 to 0.012	$0.002 to 0.012
RCPC	$0.002 to 0.012	$0.002 to 0.017
Qualified return items:		
City	$0.100 to 0.530	$0.100 to 0.740
RCPC	$0.120 to 0.600	$0.120 to 1.040
Raw return items:		
City	$0.580 to 1.680	$0.580 to 2.180
RCPC	$0.800 to 1.680	$0.800 to 2.180
Cash Letters:	(per cash letter)	(per cash letter)
Forward processed	$1.50 to 7.50	$1.50 to 8.00
Forward fine-sort package	$3.00 to 11.00	$2.50 to 11.00
Return items: raw and qualified	$1.50 to 7.50	$1.50 to 8.00

In 1994, the Minneapolis Office introduced "option" prices for its Other Fed and city fine sort products.[4] The Minneapolis and Richmond Reserve Banks also adopted option pricing for some electronic payor bank services. The Board has determined that there is no empirical justification to support the use of option pricing for paper check products. As a result, the Minneapolis Office will eliminate its option prices for Other Fed and city fine sort products. Further analysis of the cost structure for electronic products is in progress. At this time, the Board will permit the Richmond and Minneapolis Banks to continue using the option prices adopted for electronic check products in 1994.

Payor bank service revenue is estimated to have grown approximately 16 percent in 1994 and is expected to expand at the same pace in 1995. In 1995, Reserve Banks will continue to encourage the use of basic electronic check presentment products by setting

[4] Under option pricing, depositors have a choice of paying a relatively low cash-letter fee and a relatively high per-item fee, or a relatively high cash-letter fee and a relatively low per-item fee

fees for those products at lower levels than fees for electronic information products. In addition, several Federal Reserve offices will be offering electronic cash-letter (ECL) deposit products, which reduce Reserve Bank processing costs by reducing the number of rejects, adjustments, and other exceptions. To encourage the use of ECL deposit products, Federal Reserve offices will offer either lower per-item fees or later deposit deadlines to depositors than they offer for deposits that are not accompanied by electronic data.

The Reserve Banks project that 1995 revenues will recover 100.0 percent of expenses, including targeted ROE and $5.0 million in automation consolidation special project costs. Approximately $0.2 million of automation consolidation special project costs that were deferred and financed in prior years will be recovered, leaving $12.0 million of accumulated special project costs to be recovered in the future.

Automated Clearing House (ACH)

Table 4 presents the actual 1993, estimated 1994, and projected 1995 cost recovery performance for the commercial ACH service.

TABLE 4.—PRO FORMA COST AND REVENUE PERFORMANCE

[In millions of dollars]

Year	Revenue (1)	Operating costs and imputed expenses (2)	Special project costs recovered (3)	Total expense [2+3] (4)	Net income (ROE) [1–4] (5)	Target ROE (6)	Recovery rate after target ROE (percent) [1/(4+6)] (7)	Special project costs deferred and financed (8)
1993	60.1	62.2	0.0	62.2	(2.1)	2.5	92.9	10.9
1994 (Est)	65.2	66.0	0.0	66.0	(0.8)	3.4	94.0	19.6
1995 (Bud)	70.3	63.9	3.4	67.3	3.1	3.1	100.0	21.8

1993 Performance

Revenues from the ACH service recovered 92.9 percent of total expenses, including targeted ROE, during 1993. The principal factors contributing to the revenue shortfall were (1) higher than planned costs for the development of new ACH processing software to operate in the consolidated automation environment and (2) lower than expected non-automated revenues. Overall, commercial volume increased by 16.4 percent over the 1992 volume level.

1994 Performance

Through September 1994, revenues from the ACH service recovered 97.4 percent of total expenses, including targeted ROE, compared with a targeted recovery rate of 96.9 percent for the year. Due to the planned underrecovery, all $7.6 million of automation consolidation special project costs are being deferred and financed. Year-to-date commercial volume increased 16.9 percent, compared to the same period in 1993.

For 1994, the Reserve Banks now forecast that revenues will recover 94.0 percent of commercial ACH costs, based on estimated volume growth of 14.5 percent for the year. While the Reserve Banks' current estimate may be conservative, the following factors contribute to the Reserve Banks' projected variation from plan:

(1) The ACH service's $1.9 million share of the pre-tax reduction in pension credits;

(2) Faster-than-planned conversion of paper returns and notifications of change (NOCs) to electronic alternatives; and

(3) Lower revenues due to shifting commercial volume from the premium exchange to an earlier exchange, which was made possible by the addition of two ACH processing cycles beginning October 1, 1993.

1995 Issues

The slower, 12.9 percent, rate of increase in commercial ACH transaction volume projected for 1995 reflects anticipated, increased competition from private-sector ACH operators and continued consolidation in the banking industry, which creates more "on-us" transfers. While the volume of commercial ACH transactions has been growing at a decreasing rate, dropping from 24 percent in 1990 to 17 percent for the first nine months of 1994, it is likely that the Reserve Banks' forecast for 1995 understates the potential growth rate.

The Reserve Banks' cost control programs are expected to result in a 3 percent reduction in operating expenses. During 1995, the Reserve Banks will test the new ACH application software developed over the last several years and begin to implement it. Although all Reserve Banks expect to make the transition to the new processing software by year-end 1995, the precise schedule of that transition remains uncertain. Delays in the implementation schedule may cause costs to vary significantly from budget.

1995 Fees

The Board has approved only one change to the current ACH fees for 1995, an increase in the fee for processing government paper NOCs from $5.00 to $10.00, the current fee for commercial paper NOCs.[5] The higher fee better reflects the cost of providing this manual service and would provide an additional incentive for depository institutions to migrate to a more fully electronic ACH processing environment.

Based on the approved fee schedule, the Reserve Banks forecast that the commercial ACH service will recover 100.0 percent of costs, including targeted ROE and $3.4 million of the current year's automation consolidation special project costs. The remaining $0.6 million of current year automation consolidation special project costs and the charges that were incurred and deferred in prior years will continue to be deferred for recovery in future years.

Funds Transfer and Net Settlement

Table 5 presents the actual 1993, estimated 1994, and budgeted 1995 cost recovery performance for the funds transfer and net settlement service.

[5] On October 26, 1994, the Department of the Treasury agreed that the Federal Reserve Banks may assess a fee of $10.00 for government paper NOCs beginning in 1995.

Table 5.—Pro Forma Cost and Revenue Performance

[In millions of dollars]

Year	Revenue (1)	Operating costs and imputed expenses (2)	Special project costs recovered (3)	Total expense [2+3] (4)	Net income (ROE) [1–4] (5)	Target ROE (6)	Recovery rate after target ROE (percent) [1/(4+6)] (7)	Special project costs deferred and financed (8)
1993	90.2	74.2	11.2	85.4	4.8	2.9	102.2	0.6
1994 (Est)	92.1	80.2	7.1	87.3	4.8	3.8	101.1	2.2
1995 (Bud)	89.2	71.2	9.7	80.9	8.2	3.4	105.8	0.0

1993 Performance

Revenues from the funds transfer service recovered 102.2 percent of total expenses, including targeted ROE. Funds transfer volume increased 2.0 percent over 1992 levels.

1994 Performance

Through September 1994, revenues from the funds transfer service recovered 101.8 percent of total expenses, including targeted ROE, compared with a targeted recovery rate of 100.0 percent for the year. During the same period, funds transfer volume increased 4.6 percent over the 1993 volume level.

The Reserve Banks estimate that, in 1994, the funds transfer and net settlement service will recover 101.1 percent after targeted ROE and automation consolidation special project costs that the service had planned to recover, based on estimated transaction volume growth of 4.8 percent for the year. Revenue is 6.5 percent higher than budgeted, primarily because anticipated volume reductions as a result of daylight overdraft pricing did not materialize. Total costs are estimated to be 6.1 percent over budget, due to (1) higher-than-anticipated data processing costs, offset partially by lower data communications costs and (2) the funds transfer services' $2.0 million share of the pre-tax reduction in pension credits.

1995 Issues

The Reserve Banks estimate that funds transfer origination volume will increase 2.8 percent over 1994 levels. Without price changes, the Reserve Banks project that revenues would recover 109.4 percent of expenses, including all current year and deferred automation consolidation special project costs.

1995 Fees

The Board reduced the funds transfer fee to $0.50 from the current $0.53. After this reduction, the service is expected to recover 105.8 percent of its costs, after paying all current year and deferred charges for the automation consolidation special project. Uncertainties remain in the cost projections for 1995, however, because of the continued implementation of the centralized funds transfer application software.

Book-entry Securities [6]

Table 6 presents the actual 1993, estimated 1994, and budgeted 1995 cost recovery performance for the book-entry securities service.

TABLE 6.—PRO FORMA COST AND REVENUE PERFORMANCE

[In millions of dollars]

Year	Revenue (1)	Operating costs and imputed expenses (2)	Special project costs recovered (3)	Total expense [2+3] (4)	Net income (ROE) [1–4] (5)	Target ROE (6)	Recovery rate after target ROE (percent) [1/(4+6)] (7)	Special project costs deferred and financed (8)
1993	14.4	12.2	1.8	14.0	0.4	0.4	100.0	0.8
1994 (Est)	15.5	13.9	1.7	15.6	0.0	0.7	95.5	1.5
1995 (Bud)	15.7	14.0	1.0	15.0	0.7	0.7	100.1	2.6

1993 Performance

Revenues from the book-entry securities service recovered 100.0 percent of total expenses, including targeted ROE in 1993. The volume of government agency securities transfers increased 10.4 percent over the 1992 volume level.

1994 Performance

Through September 1994, revenues from the book-entry securities service recovered 99.1 percent of total expenses plus targeted ROE, compared with a targeted recovery rate of 100.3 percent for the year. During the same period, book-entry securities transfer volume increased 5.9 percent compared with the 1993 level.

The Reserve Banks' staff now expects the book-entry securities service to recover 95.5 percent of total expenses after targeted ROE, based on approximately the same transaction volume as in 1993. The estimated recovery rate is lower than originally projected due to two factors. First, securities transfer volume declined unexpectedly. The increase in mortgage interest rates during 1994 has resulted

[6] Includes Purchase and Sale activity beginning in 1994.

in less refinancing activity and, as a result, fewer mortgages are available to issue additional mortgage-backed security. Higher interest rates have caused securities firms to reconsider investments in existing mortgage-backed securities, resulting in less trading activity. Second, expenses are higher than planned, due to the reduction in pension credits and higher-than-anticipated data processing costs.

1995 Issues

The Reserve Banks believe that mortgage-backed securities volume will stabilize by year-end 1994 and increase modestly in 1995 from the reduced 1994 volume level. This conservative volume increase is reflected in the 3.1 percent volume growth rate forecast for 1995.

1995 Fees

The Board has approved retaining the current fees for the book-entry security service, based on the Reserve Banks' forecast that they will produce sufficient revenue to recover 100.1 percent of costs, including targeted ROE and $1.0 million in automation consolidation special project costs. The remaining $1.0 million of current year automation consolidation special project costs and the charges that were incurred and deferred in prior years will continue to be deferred for recovery in future years.

Electronic Connections

The Federal Reserve charges fees for electronic connections to depository institutions for accessing priced services. The costs and revenues associated with electronic access are allocated to the various priced services based on the relative number of endpoints that access each service.

Electronic connection fees have not increased since 1989, with the exception of the 1991 $100 increase in the monthly dedicated leased-line fee. In light of the increasing costs due to the implementation of Fednet®, the Board has approved increased fees for three types of electronic connections in 1995. The fees for four other types of connections would remain unchanged. Specifically, the Board raised the following fees: 1) receive and send dial connections from $65 to $75; 2) multi-drop leased-line connections from $300 to $450; and 3) dedicated leased-line connections from $700 to $750. Monthly electronic connection fees for receive-only dial, high-speed dial, high-speed 19.2 kbps leased-line, and high-speed 56 kbps leased-line will remain at $30, $350, $850, and $1,000, respectively.

In 1994, the Federal Reserve Board established standard fees for dedicated high-speed 56 kbps and 19.2 kbps connections and high-speed dial 56 kbps connections. In response to requests from several depository institutions that Reserve Banks support connections at speeds higher than 56 kbps for transmission of large data files, the Board has approved standard connection fees for two new categories of high-speed connections; $1,800 and $2,000 per month for high-speed leased connections of 128 kbps and 256 kbps, respectively. These new high-speed connection categories require more expensive signalling, encryption, and circuit components than the 56 kbps and 19.2 kbps connections.

Finally, the Board has approved two new standard connection options to support contingency testing by depository institutions that use dedicated leased-line connections for their production traffic. A dedicated dial test connection will provide additional dial connection equipment to address the needs of those institutions that conduct their contingency testing simultaneously with their production work. A shared dial test connection will address the needs of institutions that test only during off-hours and will provide a necessary subset of dial connection components. These new contingency connection options will be lower cost alternatives to depository institutions than a second dedicated leased-line connection. For these test options, a usage guideline of 120 hours per year will be established. Institutions that exceed this guideline will be asked to establish a dedicated leased-line connection for testing purposes and pay the standard connection fee. The monthly fees for the dedicated and shared contingency testing options are $250 and $150, respectively.

Noncash Collection

Table 7 summarizes actual 1993, estimated 1994, and projected 1995 cost recovery performance for the noncash collection service.

TABLE 7.—PRO FORMA COST AND REVENUE PERFORMANCE

[In millions of dollars]

Year	Revenue	Operating costs and imputed expenses	Special project costs recovered	Total expense [2+3]	Net income (ROE) [1–4]	Target ROE	Recovery rate after target ROE (percent) [1/(4+6)]	Special project costs deferred and financed
	1	2	3	4	5	6	7	8
1993	5.0	5.7	0.0	5.7	(0.7)	0.2	84.4	0.2
1994 (Est)	4.1	4.9	0.0	4.9	(0.8)	0.2	79.1	0.2
1995 (Bud)	3.9	4.0	0.0	4.0	(0.2)	0.2	91.6	0.3

1993 Performance

Revenues from the noncash collection service recovered 84.4 percent of total expenses, including targeted ROE, in 1993. The principal factor contributing to the revenue shortfall was a 38 percent decline in transaction volume caused, in part, by increased called bond activity.

1994 Performance

Through September 1994, the noncash collection service recovered 85.4 percent of total expenses including targeted ROE, compared with a targeted recovery rate of 85.5 percent for the year. During the same period, noncash collection volume decreased 40.1 percent, compared with the 1993 level.

The three Reserve Banks providing noncash collection services now project a recovery rate of 79.1 percent. Although anticipated volume losses are expected to be more moderate, 37.8 percent, through the end of the year due to gaining a new customer, the costs associated with consolidating operations and the $0.2 million reduction in the noncash service's share of the pension credits are expected to reduce the service's recovery rate compared with year-to-date performance.

1995 Issues

Since the mid 1980s, the noncash collection service has faced rapidly

declining volume levels. Following enactment of TEFRA, many bearer municipal securities were "immobilized," or converted to book-entry form, thus eliminating interest coupons. To improve the System's ability to recover costs in a declining market, the Reserve Banks reduced the number of noncash processing sites from four to three in 1994 and will complete the planned consolidation to two sites in 1995. Because of remaining transition costs in New York and the consolidation of Chicago's noncash operation during 1995, the Reserve Banks do not expect to recover costs fully during 1995.

In 1994, the Reserve Banks implemented a new volume-based fee structure with fixed cash-letter and per-envelope fees. The levels of cash-letter and per-envelope fees were based on the number of coupon envelopes contained in the cash letters.[7] The use of a fee structure that includes fixed and variable fees more accurately reflects the structure of costs the Reserve Banks incur in providing noncash collection services than the fee structure that was in place before 1994, which relied solely on variable fees. A detailed study of the cost structure of the noncash collection services, which would be needed to justify the use of volume-based fees, was deemed impractical because of the rapidly declining volume levels. Volume-based fees, however, have been well received by depositors. In addition, they provide incentives for larger institutions to increase the size of their deposits and moderate the impact of the fixed costs of the service for smaller institutions. As a result, the use of volume-based fees permits the Federal Reserve to maintain a presence in the noncash collection business and adds a measure of stability as other service providers continue to withdraw.

1995 Fees

For 1995, the Board has approved a reduction in the return item fees to $15.00 from $20.00 in Cleveland and from $25.00 in Jacksonville and Chicago. The proposed national fee more accurately reflects the costs of return processing at the regional processing sites and is consistent with fees charged by other service providers. All other fees were retained for 1995.

The Reserve Banks forecast the number of noncash coupon envelopes processed to increase 21.5 percent, primarily as a result of new deposits attracted by the lower and uniform return item fee. The proposed 1995 fee schedule is expected to enable the noncash collection service to recover 91.6 percent of its costs, including targeted ROE. Once the consolidation of noncash services is completed, the Reserve Banks' staff believes that the service will be able to reverse the continuing operating losses and to achieve low and stable operating costs.

Cash Services

Cash services that are priced by the Federal Reserve Banks include cash transportation, coin wrapping, nonstandard packaging of currency orders and deposits, and nonstandard frequency of access to cash services.

Data on priced cash services are being included to provide a complete view of Reserve Bank priced service performance. Cash transportation fee changes do not require Board approval. The Board, however, is notified when changes occur. The fees for the other priced cash services have been approved by the Director of the Division of Reserve Bank Operations and Payment Systems under delegated authority.

Table 8 presents actual 1993, estimated 1994, and projected 1995 cost recovery performance for the priced cash services.

TABLE 8.—PRO FORMA COST AND REVENUE PERFORMANCE

[In millions of dollars]

Year	Revenue	Operating costs and imputed expenses	Special project costs recovered	Total expense [2+3]	Net income (ROE) [1–4]	Target ROE	Recovery rate after target ROE (percent) [1/(4+6)]	Special project costs deferred and financed
	1	2	3	4	5	6	7	8
1993	6.4	6.3	0.0	6.3	0.1	0.1	100.2	0.0
1994 (Est)	6.2	6.0	0.0	6.0	0.2	0.1	101.7	0.0
1995 (Bud)	5.3	5.1	0.0	5.1	0.1	0.1	100.7	0.0

The Reserve Banks expect that revenues will recover all costs for cash services, including targeted ROE. Projected revenue for 1995 is less than for 1994 because the number of Reserve Banks that provide priced armored carrier transportation services has declined.

The 1995 fees for wrapped coin, nonstandard packaging, and nonstandard access are shown in Attachment VIII. Fees for other cash transportation services and registered mail fees can be obtained by contacting the individual Federal Reserve offices.

Competitive Impact Analysis

All operational and legal changes considered by the Board that have a substantial effect on payment system participants are subject to the competitive impact analysis described in the March 1990 policy statement "The Federal Reserve in the Payments System." In this analysis, the Board assesses whether the proposed change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar service due to differing legal powers or constraints or due to a dominant market position of the Federal Reserve deriving from such legal differences.

The Board believes that the recommended price and service level changes would not have a substantial effect on payments system participants and would not have a direct and material effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services. The 1995 fees approved by the Board result in a projected return on equity that meets the target return on equity based on the 50 bank holding company model. The Board believes that the recommended fees for the

[7] Small deposits were assessed relatively low cash-letter and high per-envelope fees, while larger deposits were charged higher cash-letter but lower per-envelope fees.

noncash collection services are consistent with the approach that would be used by a private-sector firm, which would absorb the results of structural changes through its retained earnings account. Therefore, the Board does not believe that approval of the proposed fees would have an adverse effect on the ability of other service providers to compete with the Reserve Banks.

ATTACHMENTS—TABLE A–1.—COMPARISON OF PRO FORMA BALANCE SHEETS FOR FEDERAL RESERVE PRICED SERVICES

[Millions of dollars—average for year]

	1995	1994
Short-term assets:		
Imputed reserve requirement on clearing balances	$619.8	$593.6
Investment in marketable securities	5,577.9	5,342.3
Receivables[1]	62.8	64.3
Materials and supplies[1]	5.7	5.5
Suspense & Difference[1]	0.1	0.0
Prepaid expenses[1]	16.1	16.1
Items in process of collection	2,592.5	3,198.9
Total short-term assets	8,874.9	9,220.7
Long-term assets:		
Premises[1 2]	412.1	350.5
Furniture and equipment[1]	113.4	183.1
Leasehold improvements and long-term prepayments[1]	12.6	32.1
Capital leases[1]	3.8	0.6
Total long-term assets	541.9	566.3
Total assets	9,416.8	9,787.0
Short-term liabilities:		
Clearing balances and balances arising from early credit of uncollected items	6,197.7	5,935.9
Deferred credit items	2,592.5	3,198.9
Short-term debt[3]	84.7	85.9
Total short-term liabilities	8,874.9	9,220.7
Long-term liabilities:		
Obligations under capital leases	3.8	0.6
Long-term debt[3]	161.6	174.1
Total long-term liabilities	165.4	174.7
Total liabilities	9,040.3	9,395.4
Equity[3]	376.5	391.5
Total liabilities and equity	9,416.8	9,787.0

Note: Details may not add to totals due to rounding.

[1] Financed through PSAF; other assets are self-financing.

[2] Includes allocations of Board of Governors' assets to priced services of $0.4 million for 1995 and $0.4 million for 1994.

[3] Imputed figures represent the source of financing for certain priced services assets.

TABLE A–2.—DERIVATION OF THE 1995 PSAF

[Millions of dollars]

A. Assets to be Financed:[1]			
Short-term	$84.7		
Long-term[2]	538.2		$622.9
B. Weighted Average Cost:			
1. Capital Structure:[3]			
Short-term Debt	15.4%		
Long-term Debt	25.4%		
Equity	59.2%		
2. Financing Rates/Costs:[3]			
Short-term Debt	3.5%		
Long-term Debt	8.2%		
Pre-tax Equity	12.1%		
3. Elements of Capital Costs:			
Short-term Debt	84.7	× 3.5% =	3.0
Long-term Debt	161.6	× 8.2% =	13.2
Equity	376.5	× 12.1% =	45.6
			61.7

TABLE A–2.—DERIVATION OF THE 1995 PSAF—Continued

[Millions of dollars]

C. Other Required PSAF Recoveries:		
Sales Taxes	11.3	
Federal Deposit Insurance Assessment	19.0	
Board of Governors Expenses	2.7	33.0
D. Total PSAF Recoveries		94.7
As a percent of capital		15.3%
As a percent of expenses[5]		15.7%

[1] Priced service asset base is based on the direct determination of assets method.
[2] Consists of total long-term assets, including the priced portion of FRAS assets, less capital leases, which are self financing.
[3] All short-term assets are assumed to be financed by short-term debt. Of the total long-term assets, 31 percent are assumed to be financed by long-term debt and 69 percent by equity.
[4] The pre-tax rate of return on equity is based on the average after-tax rate of return on equity, adjusted by the effective tax rate to yield the pre-tax rate of return on equity for each bank holding company for each year. These data are then averaged over five years to yield the pre-tax return on equity for use in the PSAF.
[5] Systemwide 1995 budgeted priced service expenses less shipping are $608.5 million.

TABLE A–3. COMPARISON BETWEEN 1995 AND 1994 PSAF COMPONENTS

	1995	1994
A. Assets to be Financed (millions of dollars):		
Short-term	$84.7	$85.9
Long-term	538.2	565.5
Total	622.9	651.5
B. Cost of Capital:		
Short-term Debt Rate	3.5%	4.3%
Long-term Debt Rate	8.2%	8.7%
Pre-tax Return on Equity	12.1%	12.7%
Weighted Average Long-term Cost of Capital	10.9%	11.5%
C. Tax Rate	31.0%	30.4%
D. Capital Structure:		
Short-term Debt	15.4%	15.6%
Long-term Debt	25.4%	26.0%
Equity	59.2%	58.4%
E. Other Required PSAF Recoveries (millions of dollars):		
Sales Taxes	11.3	12.5
Federal Deposit Insurance Assessment	19.0	19.8
Board of Governors Expenses	2.7	2.7
F. Total PSAF:		
Required Recovery	94.7	103.6
As Percent of Capital	15.2%	15.9%
As Percent of Expenses	15.7%	17.0%

TABLE A–4.—COMPUTATION OF CAPITAL ADEQUACY FOR FEDERAL RESERVE PRICED SERVICES

[Millions of dollars]

	Assets	Risk weight	Weight assets
Imputed reserve requirement on clearing balances	$619.8	0.0	$0.0
Investment in marketable securities	5,577.9	0.0	0.0
Receivables	62.8	0.2	12.6
Materials and supplies	5.7	1.0	5.7
Suspense and Difference	0.1	0.2	0.0
Prepaid expenses	16.1	1.0	16.1
Items in process of collection	2,592.5	0.2	518.5
Premises	410.6	1.0	410.6
Furniture and equipment	113.5	1.0	113.5
Leases and long-term prepayments	14.1	1.0	14.1
Total	9,413.2	.....	1,091.1
Imputed Equity for 1995	376.5		
Capital to Risk-Weighted Assets	34.5%		
Capital to Total Assets	4.0%		

By order of the Board of Governors of the Federal Reserve System, November 21, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–29176 Filed 11–25–94; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 941 0074]

Charter Medical Corp; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, Charter Medical Corporation (Charter), a Georgia-based chain of psychiatric hospitals, to modify its agreement with National Medical Enterprises (NME) to rescind Charter's acquisitions of NME psychiatric facilities in four specified localities. In addition, the consent agreement would require, for ten years, the Commission's prior approval before acquiring or divesting psychiatric facilities in those localities.

DATES: Comments must be received on or before January 27, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Robert W. Doyle or Ronald B. Rowe, FTC/S–2105, Washington, DC 20580. (202) 326–2819 or 326–2610.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission ("Commission"), having initiated an investigation into the proposed acquisition of certain assets of National Medical Enterprises, Inc. ("NME") by Charter Medical Corporation ("Charter"), and it now appearing that Charter ("proposed respondent") is willing to enter into an agreement containing an order to cease and desist from making certain acquisitions, and providing for other relief:

It is hereby agreed by and between the proposed respondent by its duly authorized officer and attorney, and counsel for the Commission that:

1. Proposed respondent Charter is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business at 577 Mulberry Street, Macon, Georgia 31298.

2. The proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. The proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondent that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft of complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist, and other relief in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. The proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or this agreement may be used to vary or contradict the terms of the order.

7. The proposed respondent has read the proposed complaint and order contemplated hereby. The proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. The proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that as used in this order, the following definitions shall apply:

A. "Respondent" or "Charter" means Charter Medical Corporation, its partnerships, joint ventures, companies, subsidiaries, divisions, groups and affiliates controlled by respondent, and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

B. "NME" means National Medical Enterprises, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada with its office and principal place of business at 2700 Colorado Avenue, Santa Monica, California 90404.

C. "Commission" means the Federal Trade Commission.

D. "Hospital" means a health care facility, licensed as a hospital, other than a federally-owned facility (such as a military or Veterans Administration hospital), having a duly organized governing body with overall administrative and professional responsibility, and an organized professional staff that provides 24-hour inpatient care, and that may also provide outpatient services.

E. "General acute care hospital" means a health care facility licensed as a hospital, having as a primary function the provision of inpatient services for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities.

F. "Psychiatric hospital" means a hospital licensed or certified as a psychiatric hospital (except for a license or certificate that limits service to residential treatment facility services only), other than a federal, state or county psychiatric hospital that primarily provides long-term, *i.e.*, 30 days or more, treatment of chronic mental illness or short term court ordered detentions and involuntary treatment, that provides 24-hour inpatient services for psychiatric diagnosis, treatment, and care of persons suffering from acute mental illness or emotional disturbance, and may also provide treatment for alcohol or drug abuse.

G. "Psychiatric unit" means a department, unit, or other organizational subdivision of a general acute care hospital licensed or certified as a provider of inpatient psychiatric care (except for a license or certificate that limits service to residential treatment facility services only), other than a federal, state or county psychiatric unit that primarily provides long-term, *i.e.*, 30 days or more, treatment of chronic mental illness or short term court ordered detentions and involuntary treatment, that provides 24-hour inpatient services for psychiatric diagnosis, treatment and care of persons suffering from acute mental illness or emotional disturbance, and may also provide treatment for alcohol or drug abuse.

H. "Psychiatric facility" means either a psychiatric hospital, a general acute care hospital with a psychiatric unit, or a psychiatric unit.

I. "Psychiatric service" means the provision of inpatient services for psychiatric diagnosis, treatment and care of persons suffering from mental illness, emotional disturbance, or alcohol or drug abuse at a psychiatric facility.

J. To "operate" a psychiatric facility means to own, lease, manage, or otherwise control or direct operations of a psychiatric facility, directly or indirectly.

K. To "acquire" a psychiatric facility means to directly or indirectly, through subsidiaries, partnerships, or otherwise:

(1) Acquire the whole or any part of assets used or previously used within the last two years (and still suitable for use) for operating a psychiatric facility from any person presently engaged in, or within the two years preceding such acquisition engaged in, operating a psychiatric facility;

(2) Acquire the whole or any part of the stock, share capital, equity, or other interest in any person engaged in, or within the two years preceding such acquisition engaged in, operating a psychiatric facility;

(3) Acquire or otherwise obtain the right to designate directly or indirectly directors or trustees of a psychiatric facility; or

(4) Enter into any other arrangement to obtain direct or indirect ownership, management or control of a psychiatric facility or any part thereof, including but not limited to, a lease of or management contract for a psychiatric facility.

L. "Residential treatment center" means a treatment center that provides long-term (length of stay of 30 days or more) care in a non-psychiatric facility setting to patients that require long term care for psychiatric diagnosis and treatment for mental illness, emotional disturbance, or alcohol or drug abuse.

M. "Outpatient facility" means a facility that is not licensed as a psychiatric facility and has a primary function of providing outpatient treatment for psychiatric diagnosis, treatment and care of persons suffering from mental illness, emotional disturbance, or alcohol or drug abuse, for patients that do not require inpatient psychiatric services.

N. "Affiliate" means any entity whose management and policies are controlled in any way, directly or indirectly, by the person with which it is affiliated.

O. "Person" means any natural person, partnership, corporation, company, association, trust, joint venture or other business or legal entity, including any governmental agency.

P. "Relevant area(s)" means:

(1) The "Orlando area," consisting of the Florida counties of Orange, Osceola and Seminole;

(2) The "Atlanta area," consisting of the Georgia counties of Fulton, Paulding, Fayette, Clayton, Henry, Rockdale, De Kalb, Gwinnett, Cobb, Cherokee, Forsyth and Douglas;

(3) The "Memphis area," consisting of the Tennessee countries of Shelby, Tipton and Fayette, the Arkansas county of Crittenden, and the Mississippi county of De Soto;

(4) The "Richmond area," consisting of the Virginia city of Richmond and the Virginia counties of Henrico, Hanover, Goochland, Powhatan, Chesterfield, Charles City, and New Kent.

Q. "Relevant facilities" means the following NME psychiatric hospitals, including, without limitation, all related assets and businesses, successors and assigns and all improvements, additions and enhancements made to such assets: MidSouth Hospital, Memphis, Tennessee; Psychiatric Institute of Richmond, Richmond Virginia; Brawner North Medical Health System; Smyrna, Georgia; Crescent Pines Hospital, Stockbridge, Georgia; Laurel Oaks Hospital and Residential Treatment Center, Orlando, Florida.

II

It is further ordered that respondent forthwith modify its Asset Sale Agreement with NME, dated March 29, 1994, to rescind respondent's agreement to acquire the relevant facilities.

III

It is further ordered that, for a period of ten (10) years from the date this order becomes final, respondent shall not, without the prior approval of the Commission:

A. Acquire any psychiatric facility in any of the relevant areas, including the relevant facilities;

B. Permit any psychiatric facility it operates in the relevant areas to be acquired by any person that operates, or will operate immediately following such acquisition, any other psychiatric facility in the relevant areas, including the relevant facilities.

Provided, however, that such prior approval shall not be required for:

1. The acquisition of a facility that is (a) solely licensed as a residential treatment center and not licensed as a psychiatric facility, or (b) solely operated as an outpatient facility and not licensed as a psychiatric facility;

2. Any acquisition that does not involve psychiatric services; or

3. Any acquisition otherwise subject to this Paragraph III of this order if the fair market value of (or, in case of an asset acquisition, the consideration to be paid for) the psychiatric facility or part thereof to be acquired, including assumption by respondent of any liabilities, does not exceed five hundred thousand dollars ($500,000).

IV

It is further ordered that, for a period of ten (10) years from the date this order becomes final, respondent shall not directly or indirectly, through subsidiaries, partnerships or otherwise, without providing advance written notification to the Commission, consummate any joint venture or other arrangement with any other psychiatric facility in the relevant areas, for the joint establishment or operation of any new psychiatric facility, psychiatric service or part thereof, in the relevant areas, including the relevant facilities. Such advance notification shall be filed immediately upon respondent's issuance of a letter of intent for, or execution of an agreement to enter into, such a transaction, whichever is earlier.

Said notification required by this Paragraph IV of this order shall be given on the Notification and Report Form set forth in the appendix to part 803 of title 16 of the Code of Federal Regulations (as amended), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification need not be made to the United States Department of Justice, and notification is required only of respondent and not of any other party to the transaction. Respondent is not required to observe any waiting period for said notification required by this Paragraph IV.

Respondent shall comply with reasonable requests by the Commission staff for additional information concerning any transaction subject to this Paragraph IV of this order, within fifteen (15) days of service of such requests.

Provided, however, that no transaction shall be subject to this Paragraph IV of this order if:

1. The fair market value of the assets to be contributed to the joint venture or other arrangement by the psychiatric facility not operated by respondent does not exceed five hundred thousand dollars ($500,000);

2. The transaction does not involve psychiatric services; or

3. Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a, or prior approval by the Commission is required, and has been requested, pursuant to Paragraph III of this order.

V

It is further ordered that, for a period of ten (10) years from the date this order becomes final, respondent shall not permit all or any substantial part of any psychiatric facility it operates in the relevant areas to be acquired by any other person unless the acquiring person files with the Commission, prior to the closing of such acquisition, a written agreement to be bound by the provisions of this order, which agreement respondent shall require as a condition precedent to the acquisition.

VI

It is further ordered that, within sixty (60) days after the date this order becomes final, and annually thereafter for a period of ten (10) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and it is complying with the requirements of this order.

VII

It is further ordered that, for the purpose of determining or securing compliance with this order, respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

B. Upon five days' notice to respondent and without restraint or interference from it, to interview officers, directors, or employees of respondent.

VIII

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, sale resulting in the emergency of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted provisionally an agreement containing a proposed consent order from Charter Medical Corporation ("Charter"), under which Charter would agree not to acquire certain psychiatric facilities from National Medical Enterprises ("NME").

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Charter has proposed to acquire certain assets and businesses from NME, including 17 psychiatric hospitals, chemical dependency facilities and residential treatment centers.

The proposed complaint alleges that the proposed acquisition, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the market for psychiatric services in several geographic areas in the United States. The proposed Consent Order would remedy the alleged violation by allowing the NME facilities and those geographic areas to remain as viable competitors or be sold to a third party other than Charter.

The proposed Consent Order provides that Charter forthwith modify its Asset Sale Agreement with NME, dated March 29, 1994, to rescind Charter's agreement to acquire the following facilities: MidSouth Hospital, Memphis, Tennessee; Psychiatric Institute of Richmond, Richmond, Virginia; Brawner North Medical Health System, Smyrna, Georgia; Crescent Pines Hospital, Stockbridge, Georgia; and Laurel Oaks Hospital and Residential Treatment Center, Orlando, Florida. Under the terms of a letter of understanding from NME, the Commission will receive advance written notification of sale of any of these facilities.

The Order also requires Charter, for a ten-year period, to obtain prior approval from the Commission before acquiring any psychiatric facility in any of the following geographic areas, as defined in the Order: The Orlando area; the Atlanta area; the Memphis area; and the Richmond area. The Order also requires Charter to obtain prior approval before permitting any psychiatric facility it operates in the four geographic areas to be acquired by any person that operates, or will operate immediately following such acquisition, any other psychiatric facility in the geographic areas, for a ten-year period.

The Order also requires Charter, for a ten-year period to provide advance written notification to the Commission before consummating any joint ventures with any other psychiatric facility in the four geographic areas specified.

Under the provisions of the Order, Charter is required to provide to the Commission a report of compliance with the Order within sixty (60) days following the date the Order becomes final, and annually thereafter for period of ten years.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94–29182 Filed 11–25–94; 8:45 am]

BILLING CODE 6750–01–M

[File No. 941 0116]

American Home Products Corp.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other other things, a New Jersey-based corporation to divest its tetanus and diphtheria vaccine business to a Commission-approved buyer, to license Cyanamid's rotavirus vaccine research to a Commission-approved licensee, and to discontinue reporting arrangements with licensees that may provide competitively sensitive information. The consent agreement also would prohibit, for ten years, the respondent from acquiring any interest in any entity engaged in the clinical development, or manufacture and sale, of tetanus, diphtheria, or rotavirus vaccines in the United States without prior Commission approval.

DATES: Comments must be received on or before January 27, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Claudia Higgins or Ann Malester, FTC/S–2224, Washington, DC 20580. (202) 326–2682

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to divest, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission ("Commission"), having initiated an investigation of the Acquisition of certain stock of American Cyanamid Company ("Cyanamid") by American Home Products Corporation ("AHP"), and it now appearing that AHP, hereinafter sometimes referred to as "Proposed Respondent," is willing to enter into an Agreement Containing Consent Order ("Agreement") to (i) divest certain assets, (ii) license certain assets, (iii) contract manufacture certain products, (iv) cease and desist from certain acts, and (v) provide for certain other relief:

It is hereby agreed By and between Proposed Respondent, by its duly authorized officers and its attorneys, and counsel for the Commission that:

1. Proposed Respondent AHP is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its principal place of business located at Five Giralda Farms, Madison, New Jersey 07940.

2. Proposed Respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this Agreement; and

(d) Any claims under the Equal Access to Justice Act.

4. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify the Proposed Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This Agreement is for settlement purposes only and does not constitute an admission by the Proposed Respondent that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to Proposed Respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following Order to divest and license and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to Order to Proposed Respondent's address as stated in this Agreement shall constitute service. Proposed Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

7. Proposed Respondent has read the proposed Complaint and Order contemplated hereby. Proposed Respondent understands that once the Order has been issued, it will be required to file one or more compliance reports showing it has fully complied with the Order. Proposed Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

Definitions

It is ordered, That, as used in this Order, the following definitions shall apply:

A. "AHP" means American Home Products Corporation, its predecessors, subsidiaries, divisions, groups and affiliates controlled by AHP, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

B. "Cyanamid" means American Cyanamid Company.

C. "Acquirer" means the entity to whom AHP shall divest AHP's Tetanus and Diphtheria Vaccine Assets pursuant to Paragraph II of this Order.

D. "New Acquirer" means the entity to whom the trustee shall divest AHP's Tetanus and Diphtheria Vaccine Assets pursuant to Paragraph IV of this Order.

E. "Rotavirus Licensee" means the entity to whom AHP shall license Cyanamid's Rotavirus Vaccine Research pursuant to Paragraph V of this Order.

F. "Respondent" means AHP.

G. "Commission" means the Federal Trade Commission.

H. "Acquisition" means the acquisition by AHP of the common stock of Cyanamid pursuant to a tender offer commended on August 10, 1994.

I. "AHP's Tetanus and Diphtheria Vaccine Assets" means AHP's assets relating to the manufacture and sale of AHP's Tetanus and Diphtheria Vaccines that are not part of AHP's physical facilities or other tangible assets. "AHP's Tetanus and Diphtheria Vaccine Assets" include but are not limited to all formulations, patents, trade secrets, technology, know-how, specifications, designs, drawings, processes, production information, manufacturing information, testing and quality control data, research materials, technical information, distribution information, customer lists, information stored on management information systems and specifications sufficient for the Acquirer or the New Acquirer, as applicable, to use such information, software used solely in connection with AHP's Tetanus and Diphtheria Vaccines and all data, materials and information relating to United States Food and Drug Administration ("FDA") approvals for Tetanus and Diphtheria Vaccines. "AHP's Tetanus and Diphtheria Vaccine Assets" do not include any manufacturing assets of AHP or any assets acquired by AHP from American Cyanamid as a result of the Acquisition or AHP's Vaccine Filling and Packaging Assets.

J. "AHP's Vaccine Filling and Packaging Assets" means a non-exclusive license to all patents, trade secrets, technology and know-how relating to filling vials, syringes or other forms of filling or packaging used by AHP for Tetanus and Diphtheria Vaccines at any time up to and including the date of the Acquisition, including but not limited to the Tubex® filling system. "AHP's Vaccine Filling and Packaging Assets" do not include any manufacturing assets of AHP or any assets acquired by AHP from American Cyanamid as a result of the Acquisition.

K. "Tetanus and Diphtheria Vaccines" means vaccines used to create and maintain antitoxin levels in human beings to prevent tetanus and/or diphtheria, including tetanus toxoid vaccine, tetanus-diphtheria toxoids vaccine (adult) and diphtheria-tetanus toxoids vaccine (pediatric), approved by the FDA for sale in the United States.

L. "Contract Manufacture" means the manufacture of Tetanus and Diphtheria Vaccines by AHP for sale to the Acquirer or the New Acquirer, as applicable, in Finished Packaged Form, in annual volumes not to exceed: Tetanus Toxoid (fluid) 1,000,000 doses; Tetanus Toxoid (absorbed) 3,000,000 doses; diphtheria-tetanus toxoids vaccine (pediatric) 1,000,000 doses; and tetanus-diphtheria toxoids vaccine (adult) 13,000,000 doses.

M. "Finished Packaged Form" means packaged in a form acceptable for commercial sale in the United States, in each form of packaging, or substantially similar thereto (including Tubex® & prefilled syringes) as that used by AHP (any time up to and including the date of the Acquisition) in the distribution and sale of AHP's Tetanus and Diphtheria Vaccines, with information including but not limited to the name and identification codes of the Acquirer or the New Acquirer, as applicable, inscribed on the packaging of the Tetanus and Diphtheria Vaccines, and packaged in units specified by the Acquirer or the New Acquirer, as applicable, as permitted by AHP's existing FDA approvals.

N. "Cost" means AHP's actual per unit cost of manufacturing AHP's Tetanus and Diphtheria Vaccines, which may be adjusted once annually to reflect any increases in AHP's actual cost, provided, however, that for any year, the total rate of such adjustment with respect to all components of cost other than material and labor shall not exceed the rate of increase in the Consumer Price Index for such year.

O. "Formulation" means any and all information, including both patent and trade secret information, technical assistance and advice, relating to the manufacture of Tetanus and Diphtheria Vaccines that meet United States Food and Drug Administration approved specifications therefor.

P. "Cyanamid's Rotavirus Vaccine Research" means:

(1) All of the patents and patent applications that Cyanamid holds, has an option to hold or is licensed to practice under and that are directed to the development of a vaccine to protect humans against rotavirus disease;

(2) All of the know-how that Cyanamid received from licensors or developed itself that is directed to the development of a vaccine to protect humans against rotavirus disease;

(3) All of the biochemical materials, including, but not limited to, reagents, cell lines, monoclonal antibodies, bacculovirus stocks and rotarvirus stocks that are directed to the development of a vaccine to protect humans against rotavirus disease; and

(4) All documentation, written materials, and other relevant data that are directed to the development of a vaccine to protect humans against rotavirus disease;

as of that date of the licensing pursuant to Paragraph V or VI of this Order, which can be licensed to the Rotavirus Licensee including, but not limited to, those items enumerated in the Confidential Appendix A attached to the Confidential version of this Agreement on file at the Commission.

II

Tetanus and Diphtheria Vaccines Divestiture Provisions

It is further ordered, That:

A. Within four (4) months of the date this Order becomes final, AHP shall divest, absolutely and in good faith, AHP's Tetanus and Diphtheria Vaccine Assets and consummate an agreement that includes the provisions required by Paragraph II.C of this Order, with an Acquirer or a New Acquirer, as applicable, (hereinafter "Divestiture Agreement").

B. Respondent shall divest AHP's Tetanus and Diphtheria Vaccine Assets only to and consummate a Divestiture Agreement only with an Acquirer or New Acquirer, as applicable, that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of AHP's Tetanus and Diphtheria Vaccine Assets and the Divestiture Agreement is to ensure the continuation of AHP Tenanus and Diphtheria Vaccine Assets as an ongoing, independent operation, engaged in the same business in which AHP's Tetanus and Diphtheria Vaccine Assets are presently engaged, and to remedy the lessening of competition resulting from the proposed Acquisition as alleged in the Commission's Complaint.

C. The Divestiture Agreement shall include the following and AHP shall commit to satisfy the following:

1. AHP shall Contract Manufacture and deliver to the Acquirer or the New Acquirer, as applicable, in a timely manner the requirements of the Acquirer or the New Acquirer, as applicable, for Tetanus and Diphtheria Vaccines at AHP's Cost for a period not to exceed five (5) years from the date the Divestiture Agreement (or the New Acquirier's Divestiture Agreement, as applicable) is approved, or six (6) months after the date the Acquirer or the New Acquirer, as applicable, obtains all necessary FDA approvals to manufacture Tetanus and Diphtheria Vaccines for sale in the United States, whichever is earlier; Provided, however, That the five (5) year period shall be extended for a period not to exceed twenty-four (24) months if the trustee submits to the Commission the certification provided for in Subparagraph II.C.10 of this Order.

2. AHP shall commence delivery of Tetanus and Diphtheria Vaccines to the Acquirer or the New Acquirer, as applicable, within two (2) months from the date the Commission approves the Acquirer and the Divestiture Agreement (or the New Acquirer and its Divestiture Agreement).

3. After AHP commences delivery of Tetanus and Diphtheria Vaccine to the Acquirer or the New Acquirer, as applicable, pursuant to Subparagraph II.C.2 of this Order, all inventory of Tetanus and Diphtheria Vaccines produced by AHP at its facility located at Marietta, Pennsylvania, regardless of the date of its production, may be sold by AHP only to the Acquirer or the New Acquirer, as applicable.

4. AHP shall make representations and warranties to the Acquirer or the New Acquirer, as applicable, that the Tetanus and Diphtheria Vaccines contract manufactured by AHP for the Acquirer or the New Acquirer, as applicable, meet the United States Food and Drug Administration approved specifications therefore and are not adulterated or misbranded within the meaning of the Food, Drug, and Cosmetic Act, 21 U.S.C. 321, *et seq.* AHP shall agree to indemnify, defend and hold the Acquirer or the New Acquirer, as applicable, harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses alleged to result from the failure of the Tetanus and Diphtheria Vaccines contract manufacturer by AHP to meet FDA specifications. This obligation shall be contingent upon the Acquirer or the New Acquirer, as applicable, giving AHP prompt, adequate notice of such claim, cooperating fully in the defense of such claim, and permitting AHP to assume the sole control of all phases of the defense and/or settlement of such claim, including the selection of counsel. This obligation shall not require AHP to be liable for any negligent act or omission of the Acquirer or the New Acquirer, as applicable, or for any representations and warranties, express or implied, made by the Acquirer or the New Acquirer, as applicable, that exceed the representations and warranties made by AHP to the Acquirer or the New Acquirer, as applicable.

5. During the term of contract manufacturing, upon reasonable request by the Acquirer or the New Acquirer, as applicable, AHP shall make available to the Acquirer or the New Acquirer, as applicable, all records kept in the normal course of business that relate to the cost of manufacturing Tetanus and Diphtheria Vaccines at its Marietta, Pennsylvania facility.

6. Upon reasonable notice and request from the Acquirer or the New Acquirer, as applicable, AHP shall provide information, technical assistance and advice sufficient to assist the Acquirer or the New Acquirer, as applicable, in obtaining all necessary FDA approvals to manufacturing Tetanus and Diphtheria Vaccines for sale in the United States. Upon reasonable notice and request from the Acquirer or the New Acquirer, as applicable, AHP shall also provide consultation with knowledgeable employees of AHP and training at the Acquirer's facility or the New Acquirer's facility, as applicable, for a period of time, not to exceed one (1) year, sufficient to satisfy the Acquirer's management or the New Acquirer's management, as applicable, that its personnel are adequately trained in the manufacture of Tetanus and Diphtheria Vaccines for sale in the United States. Respondent may require reimbursement from the Acquirer or the New Acquirer, as applicable, for all its direct out-of-pocket expenses incurred in providing the services required by this Subparagraph II.C.6.

7. AHP shall offer an option for a non-exclusive license of AHP's Vaccine Filling and Packaging Assets to the Acquirer or the New Acquirer, as applicable, which option shall be exercisable within one (1) year from the date the Commission approves the Divestiture Agreement and the Acquirer or New Acquirer, as applicable. The license granted pursuant to this Subparagraph: (a) May prohibit any sublicensing by the Acquirer or New Acquirer, as applicable, except as part of a sale of all of the Tetanus and Diphtheria Vaccines assets of the Acquirer or New Acquirer, as applicable, if such sale occurs after the Acquirer or the New Acquirer, as applicable, has obtained all necessary FDA approvals to manufacture tetanus and diphtheria vaccines for sale in the United States; (b) shall terminate if the Acquirer or New Acquirer, as applicable, ceases to produce or sell Tetanus and Diphtheria Vaccines in the United States, unless the license is transferred to a new entity pursuant to Paragraph II.C.7 (a); and (c) may prohibit the Acquirer or the New Acquirer, as applicable, from using AHP's Vaccine Filling and Packaging Assets for any purpose other than for filling and packaging products manufactured or sold by the Acquirer or the New Acquirer, as applicable.

8. The Divestiture Agreement shall require the Acquirer or the New Acquirer, as applicable, to submit to the Commission within sixty (60) days of the approval by the Commission of the Divestiture Agreement with the Acquirer or the New Acquirer, as applicable, a certification attesting to the good faith intention of the Acquirer or the New Acquirer, as applicable, and including an actual plan by the Acquirer or the New Acquirer, as applicable, to obtain in an expeditious manner all necessary FDA approvals to manufacture Tetanus and Diphtheria Vaccines for sale in the United States.

9. The Divestiture Agreement shall require the Acquirer or the New Acquirer, as applicable, to submit to the trustee appointed pursuant to Paragraph III of this order, periodic verified written reports setting forth in detail the efforts of the Acquirer or the New Acquirer, as applicable, to sell contract manufactured Tetanus and Diphtheria Vaccines in the United States and to obtain all FDA approvals necessary to manufacture its own Tetanus and Diphtheria Vaccines for sale in the United States. The Divestiture Agreement shall require the first such report to be submitted 60 days from the date the Divestiture Agreement is approved by the Commission and every 90 days thereafter until all necessary FDA approvals are obtained by the Acquirer or the New Acquirer, as applicable, to manufacture Tetanus and Diptheria Vaccines for sale in the United States. The Divestiture Agreement shall also require the Acquirer or the New Acquirer, as applicable, to report to the Commission and the trustee at least thirty (30) days prior to its ceasing the sale of contract manufactured Tetanus and Diphtheria Vaccines in the United States for any time period exceeding sixty (60) days or

abandoning its efforts to obtain all necessary FDA approvals to manufacture its own Tetanus and Diphtheria Vaccines for sale in the United States.

10. The Divestiture Agreement shall provide that the Commission may terminate the Divestiture Agreement if the Acquirer or the New Acquirer, as applicable: (1) Voluntarily ceases for sixty (60) days or more the sale of Tetanus and Diphtheria Vaccines in the United States prior to obtaining all necessary FDA approvals to manufacture Tetanus and Diphtheria Vaccines for sale in the United States; (2) abandons its efforts to obtain all necessary FDA approvals to manufacture Tetanus and Diphtheria Vaccines for sale in the United States; or (3) fails to obtain all necessary FDA approvals of its own to manufacture Tetanus and Diphtheria Vaccines for sale in the United States within five (5) years from the date the Commission approves the Divestiture Agreement with the Acquirer or the New Acquirer, as applicable; Provided, however, That the five (5) year period may be extended for a period not to exceed twenty-four (24) months if the trustees certifies to the Commission that the Acquirer or the New Acquirer, as applicable, made good faith efforts to obtain all necessary FDA approvals for manufacturing Tetanus and Diphtheria Vaccines for sale in the United States and that such FDA approvals appear likely to be obtained within such extended time period.

11. The Divestiture Agreement shall provide that, if the Divestiture Agreement is terminated, the AHP Tetanus and Diphtheria Vaccine Assets shall be divested by the trustee to a New Acquirer pursuant to the provisions of Paragraph IV of this Order.

D. While the obligations imposed by Paragraphs II, III or IV of this Order are in effect, Respondent shall take such actions as are necessary: (1) To maintain all necessary FDA approvals to manufacture AHP's Tetanus and Diphtheria Vaccines for sale in the United States; (2) to maintain the viability and marketability of AHP's Tetanus and Diphtheria Vaccine Assets as well as all tangible assets, including manufacturing facilities, needed to contract manufacture and sell Tetanus and Diphtheria Vaccines; and (3) to prevent the destruction, removal, wasting, deterioration or impairment of any of AHP's Tetanus and Diphtheria Vaccine Assets or tangible assets including manufacturing facilities needed to contract manufacture and sell Tetanus and Diphtheria Vaccines except for ordinary wear and tear.

III

Tetanus and Diphtheria Vaccines Trustee Auditor Provisions

It is further ordered, That:

A. Within thirty (30) days of the date this Order becomes final, the Commission shall appoint a trustee to ensure that AHP and the Acquirer or the New Acquirer, as applicable, expeditiously perform their respective responsibilities as required by the Divestiture Agreement approved by the Commission and by Paragraph II of this Order. AHP shall consent to the following terms and conditions regarding the trustee's powers, duties, authorities, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of AHP, which consent shall not be unreasonably withheld. IF AHP has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to AHP of the identity of any proposed trustee, AHP shall be deemed to have consented to the selection of the proposed trustee.

2. The trustee shall have the power and authority to assure Respondent's compliance with the terms of Paragraph II of this Order and with the Divestiture Agreement with the Acquirer or the New Acquirer, as applicable.

3. Within ten (10) days after appointment of the trustee, AHP shall execute a trust agreement that, subject to the prior approval of the Commission, confers on the trustee all the rights and powers necessary to permit the trustee to assure Respondent's compliance with the terms of Paragraph II of this Order and with the Divestiture Agreement with the Acquirer or the New Acquirer, as applicable.

4. The trustee shall serve until such time as the Acquirer or the New Acquirer, as applicable, has received all necessary FDA approvals to manufacture Tetanus and Diphtheria Vaccines for sale in the United States, or for fifteen years, whichever is shorter.

5. The trustee shall have full and complete access to the personnel, books, records, facilities and technical information related to the manufacture of AHP's Tetanus and Diphtheria Vaccines, or to any other relevant information, as the trustee may reasonably request, including but not limited to all records kept in the normal course of business that relate to the cost of manufacturing Tetanus and Diphtheria Vaccines. Respondent shall cooperate with any reasonable request of the trustee. Respondent shall take no action to interfere with or impede the trustee's ability to assure Respondent's compliance with Paragraph II of this Order and the Divestiture Agreement with the Acquirer or the New Acquirer, as applicable.

6. The trustee shall serve, without bond or other security, at the cost and expense of AHP, on such reasonable and customary terms and conditions as the Commission may set. The trustee shall have authority to employ, at the cost and expense of AHP, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all expenses incurred. The Commission shall approve the account of the trustee, including fees for his or her services.

7. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparations for, or defense of any claim whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from the misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

8. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III of this Order.

9. The commission may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of Paragraph II of this Order and the Divestiture Agreement with the Acquirer or the New Acquirer, as applicable.

10. The trustee shall evaluate reports submitted to it by the Acquirer or the New Acquirer, as applicable, with respect to the efforts of the Acquirer or the New Acquirer, as applicable, to obtain all necessary FDA approvals to manufacture Tetanus and Diphtheria Vaccines for sale in the United States and shall report in writing to the Commission every six months concerning compliance by the Respondent and the Acquirer or the New Acquirer, as applicable, with the provisions of Paragraph II of this Order and the efforts of the Acquirer or the New Acquirer, as applicable, to receive all necessary FDA approvals to manufacture Tetanus and Diphtheria Vaccines for sale in the United States.

B. Respondent shall comply with all reasonable directives of the trustee regarding:

1. Respondent's obligations to contract manufacture and deliver the Acquirer's requirements or the New Acquirer's requirements, as applicable, for Tetanus and Diphtheria Vaccines, pursuant to Paragraphs II.C.1 and II.C.2 of this Order;

2. Respondent's obligations to provide representations and warranties regarding Tetanus and Diphtheria Vaccines, pursuant to Paragraph II.C.4 of this Order; and

3. Respondent's obligations to provide information, technical assistance and advice, pursuant to Paragraph II.C.6 of this Order.

C. If the Commission terminates the Divestiture Agreement pursuant to Paragraph II.C.10, the Commission may direct the trustee to seek a New Acquirer, as provided for in Paragraph IV of this Order.

IV

Tetanus and Diphtheria Vaccines Trustee Divestiture Provisions

It is further ordered, That:

A. (1) If AHP fails to divest absolutely and in good faith AHP's Tetanus and Diphtheria Vaccine Assets and to consummate a Divestiture Agreement with an Acquirer within four (4) months from the date this Order becomes final, then any executed Divestiture Agreement with the Acquirer shall be terminated and the Commission may direct the trustee appointed pursuant to Paragraph II of this Order (a) to divest AHP's Tetanus and Diphtheria Vaccine Assets and (b) to enter into a Divestiture Agreement that satisfies the requirements of Paragraph II of this Order with a New Acquirer. The trustee shall have the same authority and responsibilities pursuant to Paragraph III of this Order with respect to the New Acquirer.

(2) If the Commission terminates the Divestiture Agreement pursuant to Paragraph II.C.10, the Commission may direct the trustee appointed under Paragraph III of this Order (a) to divest AHP's Tetanus and Diphtheria Vaccine Assets to a New Acquirer and (b) to enter into a new Divestiture Agreement with such New Acquirer. In any case under this subparagraph IV.A(2), the trustee shall have the same authority and responsibilities with respect to the New Acquirer as those described in Paragraph III of this Order.

Neither the decision of the Commission to direct the trustee nor the decision of the Commission not to direct the trustee to divest AHP's Tetanus and Diphtheria Vaccine Assets under subparagraph IV.A(1) of this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondent to comply with this order.

B. If the trustee is directed under subparagraph A of this Paragraph to divest the AHP Tetanus and Diphtheria Vaccine Assets to a New Acquirer and to enter into a Divestiture Agreement with the New Acquirer, Respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall extend the authority and responsibilities of the trustee appointed under Paragraph III of this Order to include divesting AHP's Tetanus and Diphtheria Vaccine Assets and directing AHP to enter into a Divestiture Agreement with the New Acquirer, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If respondent has not opposed, in writing, including the reasons for opposing, the extension of the authority and responsibilities of the trustee selected under Paragraph III of this Order within ten (10) days after notice by the staff of the Commission to Respondent that the trustee's authority and responsibilities are to be extended pursuant to this paragraph, respondent shall be deemed to have consented to the extension of the trustee's authority and responsibilities.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest AHP's Tetanus and Diphtheria Vaccine Assets to a New Acquirer pursuant to the terms of Paragraph II of this Order and to enter into a Divestiture Agreement with the New Acquirer pursuant to the terms of Paragraph II of this Order, which Divestiture Agreement shall be subject to the prior approval of the Commission. The trustee will have the authorities and responsibilities as described in Paragraph III with respect to the New Acquirer.

3. Within ten (10) days after extension of the trustee's authority and responsibilities, respondent shall amend the existing trust agreement, that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to divest AHP's Tetanus and Diphtheria Vaccine Assets to a New Acquirer and to enter into a Divestiture Agreement with the New Acquirer.

4. The trustee shall have six (6) months from the date the Commission extends his or her authority and responsibilities under Paragraph IV A.(1) of this Order to divest AHP's Tetanus and Diphtheria Vaccines Assets and to enter into a Divestiture Agreement with the New Acquirer that satisfies the requirements of Paragraph II of this Order.

5. The trustee shall have full and complete access to the personnel, books, records and facilities of AHP related to the manufacture, distribution, or sale of Tetanus and Diphtheria Vaccines or to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of his or her responsibilities.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondent's absolute and unconditional obligation to divest at no minimum price; to assure that AHP enters into a Divestiture Agreement that complies with the provisions of paragraph II.A; to assure that AHP complies with the remaining provisions of paragraph II of this Order; and to assure that the New Acquirer obtains all necessary FDA approvals to manufacture Tetanus and Diphtheria Vaccines for sale in the United States. The divestiture and the Divestiture Agreement shall be made to the New Acquirer in the manner set forth in Paragraph II of this Order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity selected by respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall

account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondent. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's locating a New Acquirier and assuring compliance with this Order.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to comply with the terms of this Order.

11. The trustee shall have no obligation or authority to operate or maintain AHP's Tetanus and Diphtheria Vaccine Assets.

12. The trustee shall report in writing to respondent and the Commission every sixty (60) days concerning his or her efforts to divest AHP's Tetanus and Diphtheria Vaccine Assets, AHP's compliance with the terms of this Order, and the New Acquirer's efforts to obtain all necessary FDA approval to manufacture Tetanus and Diphtheria Vaccines for sale in the United States.

13. If, within five (5) years from the date on which the Commission approves the New Acquirer, the New Acquier has not obtained all necessary FDA approvals to manufacture Tetanus and Diphtheria Vaccines for sale in the United States, then the Divestiture Agreement between AHP and the New Acquirer shall terminate.

V

Rotavirus Vaccine Research Licensing Provisions

It is further ordered That:

A. Within twelve (12) months after the date this Order becomes final, Respondent shall: (1) Grant a non-exclusive license, in perpetuity, and in good faith, of any technical information and patent rights included in Cyanamid's Rotavirus Vaccine Research (see Paragraphs A & C of Confidential Appendix A); and (2) provide samples for research, adequate to satisfy the needs of the Rotavirus Licensee, of any physical assets included in Cyanamid's Rotavirus Vaccine Research (see Paragraph B of Confidential Appendix A) that are owned by AHP; *Provided, however,* That such license shall be limited: (i) To use solely in developing, producing and selling a vaccine to protect humans against rotavirus disease; and (ii) to preclude its use to develop a vector for a vaccine intended to protect against a disease other than rotavirus.

B. Respondent shall license Cyanamid's Rotavirus Vaccine Research only to a Rotavirus Licensee that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the licensing of Cyanamid's Rotavirus Vaccine Research is to ensure the continuation of Cyanamid's Rotavirus Vaccine Research as an ongoing research project for a rotavirus vaccine to be approved by the FDA for sale in the United States and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

C. Upon reasonable notice and request from the Rotavirus Licensee, Respondent shall provide reasonable assistance to the Rotavirus Licensee regarding the Cyanamid Rotavirus Vaccine Research. Such assistance shall include reasonable consultation with knowledgeable employees of AHP and training at the Rotavirus Licensee's facilities or at such other place as is mutually satisfactory to Respondent and the Rotavirus Licensee for a period of time sufficient to satisfy the Rotavirus Licensee's management that its personnel are appropriately trained to proceed with the Cyanamid Rotavirus Vaccine Research. However, AHP shall not be required to continue providing such assistance for more than six (6) months from the date the licensing is finally approved by the Commission. AHP may require reimbursement from the Rotavirus Licensee for all its direct out-of-pocket expenses incurred in providing the assistance to the Rotavirus Licensee.

D. Pending licensing of Cyanamid's Rotavirus Vaccine Research, Respondent shall take such actions as are necessary to maintain the viability and marketability of Cyanamid's Rotavirus Vaccine Research and to prevent the destruction, removal, wasting, deterioration, or impairment of Cyanamid's Rotavirus Vaccine Research except for ordinary wear and tear.

VI

Rotavirus Vaccine Research Trustee Exclusive Licensing Provisions

It is further ordered, That:

A. If AHP has not, within twelve (12) months of the date this Order becomes final, complied with the requirements of Paragraph V of this Order, the Commission may appoint a trustee to (1) grant an exclusive license, in perpetuity, and in good faith, of any technical information and patent rights included in Cyanamid's Rotavirus Vaccine Research (see Paragraphs A & C of Confidential Appendix A); and (2) provide samples for research, adequate to satisfy the needs of the Rotavirus Licensee, of any physical assets included in Cyanamid's Rotavirus Vaccine Research (see Paragraph B of Confidential Appendix A) that are owned by AHP; *Provided, however,* That: (i) Such exclusive license shall be limited to use solely in developing, producing and selling a vaccine to protect humans against rotavirus disease; (ii) such license shall be limited to preclude its use to develop a vector for a vaccine intended to protect against a disease other than rotavirus; and (iii) AHP shall have the right to retain and use all of the Cyanamid Rotavirus Vaccine Research assets, including samples of the assets in Paragraph B of Confidential Appendix A, for the purpose of using them to develop a vector for a vaccine intended to protect against a disease other than rotavirus and for any other purpose other than developing and producing a vaccine to protect humans against rotavirus disease. In the event the Commission or the Attorney General brings an action against Respondent pursuant to section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45(1), or any other statute enforced by the Commission, AHP shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court appointed trustee,

pursuant to section 5(1) of the FTC Act, or any other statute enforced by the Commission, for any failure by Respondent to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph VI.A of this Order, AHP shall consent to the following terms and conditions regarding the trustee's powers, duties, authorities, and responsibilities.

1. The Commission shall select the trustee, subject to the consent of AHP, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in licensing technology. If AHP has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to AHP of the identity of any proposed trustee, AHP shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to grant an exclusive license of Cyanamid's Rotavirus Vaccine Research as described in Paragraph VI.A. ("the Rotavirus Exclusive License").

3. Within ten (10) days after appointment of the trustee, AHP shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to enter into the Rotavirus Exclusive License as required by this Order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph VI.C.3 to accomplish the Rotavirus Exclusive License required by Paragraph VI of this Order, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the trustee has submitted a plan of licensing or believes that exclusive licensing can be achieved within a reasonable time, the twelve (12) month period may be extended by the Commission or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend the twelve (12) month period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records, data, facilities, and technical information related to the Rotavirus Vaccine Research, or to any other relevant information, as the trustee may reasonably request. Respondent shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's ability to accomplish the exclusive licensing of Cyanamid's Rotavirus Vaccine Research required by this Order. Any delays in exclusively licensing Cyanamid's Rotavirus Vaccine Research required by this Order caused by Respondent shall extend the time under Paragraph VI.C.4 for accomplishing the exclusive licensing of Cyanamid's Rotavirus Vaccine Research required by this Order in an amount equal to the delay, as determined by the Commission or, for the court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to AHP's absolute and unconditional obligation to grant an exclusive license to Cyanamid's Rotavirus Vaccine Research as required by this Order at no minimum price. The exclusive license shall be made in the manner and to the Rotavirus Licensee as set out in this Order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall grant an exclusive license to the acquiring entity selected by Respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of AHP, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of AHP, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of AHP and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's ability to grant an exclusive license of Cyanamid's Rotavirus Vaccine Research.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparations for, or defense of any claim whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from the misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph VI.A. of this Order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to enter into the Rotavirus Exclusive License required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain the Cyanamid Rotavirus Vaccine Research.

12. The trustee shall report in writing to AHP and to the Commission every sixty (60) days concerning the trustee's efforts to grant an exclusive license of Cyanamid's Rotavirus Vaccine Research as required by this Order.

VII

GM–CSF and IL–3 Royalties

It is further ordered, That:

A. Within thirty (30) days of the date on which the FDA approves any product that includes in whole or in part GM–CSF, as identified in the October 9, 1987 Technology Transfer and GM–CSF Supply Agreement between AHP and Sandoz, Ltd. ("GM–CSF Agreement"), AHP shall take such action as may be necessary to ensure that the royalty payments made pursuant to Section 10.2(b) of the GM–CSF Agreement and any reports of such payments are made on a worldwide aggregated basis.

B. Within thirty (30) days of the date on which the FDA has approved both (1) any product that includes in whole or in part IL–3, as identified in the August 17, 1987 License Agreement for IL–3 between AHP and Sandoz, Ltd. ("IL–3 Agreement"); and (2) any product that includes in whole or in part Pixy321, also identified as rhIL–3/rhGM–CSF *S. cerevisiae* fusion protein, AHP shall take such action as may be necessary to ensure that the royalty payments made pursuant to Section 3.2 of the IL–3 Agreement and any reports of such payments are made on a worldwide aggregated basis.

VIII

Prior Approval

It is further ordered, That, for a period of ten (10) years from the date this Order becomes final or until Respondent satisfies the requirements of Paragraphs II, III or IV, whichever is later, Respondent shall not without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire more than 1% of the stock, share capital, equity, or other interest in any concern, corporate or non-corporate, presently engaged in, or within the two years preceding such acquisition engaged in, the (1) clinical development or (2) manufacture and sale of tetanus or diphtheria vaccines in the United States;

B. Acquire any assets currently used for or previously used for (and still suitable for use for) the (1) clinical development or (2) manufacture and sale of tetanus or diphtheria vaccines in the United States;

C. Acquire more than 1% of the stock, share capital, equity, or other interest in any concern, corporate or noncorporate, presently engaged in, or within the two years preceding such acquisition engaged in, the (1) clinical development or (2) manufacture and sale in the United States of a vaccine to protect humans against rotavirus disease; or

D. Acquire any assets currently used for or previously used for (and still suitable for use for) the (1) clinical development or (2) manufacture and sale in the United States of a vaccine to protect humans against rotavirus disease.

IX.

Reports

It is further ordered, That:

A. Within sixty (60) days after the date this Order becomes final and every six (6) months after the date this Order becomes final until AHP has fully complied with the provisions of Paragraphs II, IV, V and VI of this Order, AHP shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with these Paragraphs of this Order. AHP shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with these Paragraphs of this Order, including a description of all substantive contacts or negotiations for accomplishing the divestitures and entering into the Divestiture Agreement required by this Order, including the identity of all parties contacted. AHP shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the Divestiture Agreement required by Paragraph II of this Order.

B. One (1) year from the date this Order becomes final and annually for the next nine (9) years on the anniversary of the date this Order becomes final or until the Acquirer or New Acquirer, as applicable, has obtained all necessary FDA approvals to manufacture Tetanus and Diphtheria Vaccines for sale in the United States, whichever is later, and at such other times as the Commission may require, Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with this Order.

X.

Access

It is further ordered, That, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Respondent, Respondent shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondent, relating to any matters contained in this consent order; and

B. Upon five (5) days' notice to Respondent, and without restraint or interference from Respondent, to interview officers or employees of Respondent, who may have counsel present, regarding such matters.

XI.

Corporate Change

It is further ordered, That Respondent shall notify the Commission at least thirty (30) days prior to any change in Respondent such as dissolution, assignment or sale resulting in the emergence of a successor, the creation or dissolution of subsidiaries or any other change that may affect compliance obligations arising out of the Order.

XII.

Sunset

It is further ordered, That, notwithstanding any other provision of this Order, this Order shall terminate twenty years from the date this Order becomes final.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted subject to final approval an agreement containing a proposed Consent Order from American Home Products Corporation ("AHP") which requires AHP to divest its tetanus and diphtheria vaccines business to a Commission-approved purchaser. Further, AHP would be required to license American Cyanamid Company's ("Cyanamid") rotavirus vaccine research and to aggregate royalty payment information relating to sales of particular cytokines used for white blood cell and platelet restoration once FDA approval is obtained for these products.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

Pursuant to an August 17, 1994, Agreement and Plan of Merger, AHP will acquire all of Cyanamid's voting stock. The proposed complaint alleges that the proposed acquisition would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the following five markets in the United States:

(1) Combined tetanus and diphtheria vaccines approved for use for adults and children at least seven years old, known as "adult Td";

(2) Combined diphtheria and tetanus vaccines for children between the ages of two months and seven years old, known as "pediatric DT";

(3) Uncombined tetanus vaccines, known as "tetanus toxoid";

(4) Rotavirus vaccine research and development; and

(5) Cytokine research, development, and production.

The proposed Consent Order would remedy the alleged violation in each of these markets. In the area of tetanus and diphtheria vaccines, AHP would be required to divest, within four months, its tetanus and diphtheria vaccines business to a Commission approved purchaser. Because that purchaser will need to obtain FDA approval before it can begin selling tetanus and diphtheria vaccines, the proposed Consent Order also requires AHP to manufacture these

vaccines for the approved purchaser for a period of five years or until the purchaser gains FDA approvals to manufacture its own tetanus and diphtheria vaccines. AHP will be required to sell tetanus and diphtheria vaccines to the purchaser at cost, with annual adjustments (exclusive of materials and labor) indexed to the Consumer Price Index. In addition, under the proposed Consent Order, AHP is required to provide technical assistance and advice to assist the purchaser in obtaining FDA approval to manufacture and sell tetanus and diphtheria vaccines. The proposed Order also provides for a trustee to assure that AHP appropriately divests its tetanus and diphtheria vaccines business. If AHP fails to divest its tetanus and diphtheria business within four months, or if the acquirer abandons its effort to obtain FDA approval to manufacture and sell tetanus and diphtheria vaccines, then the trustee may be directed to find another acquirer.

The proposed Consent Order also requires AHP to license, within one year, on a nonexclusive basis, the Cyanamid rotavirus vaccine research assets to a Commission-approved licensee. If AHP fails to find an approved licensee within one year, then the Commission may appoint a trustee to license the Cyanamid rotavirus vaccine research assets on an exclusive basis to an approved licensee. AHP is also required under the proposed Order to provide technical advice, assistance and training to enable the licensee to continue the Cyanamid rotavirus research as an ongoing project.

The proposed Consent Order prohibits AHP from receiving information relating to the market for cytokines for white blood cell and platelet restoration, unless the information is aggregated on a worldwide basis. This provision of the proposed Consent Order does not become operative until the FDA approves AHP's products in this area.

The proposed Consent Order will also prohibit AHP, for a period of ten (10) years, from acquiring any interest in any entity engaged in the clinical development, or manufacture and sale of tetanus, diphtheria or rotavirus vaccines in the United States without prior approval from the Commission. The proposed Order will also require AHP to provide to the Commission a report of its compliance with the provisions of the Order within sixty (60) days following the date this Order becomes final, and every six (6) months thereafter until the Commission has approved a purchaser and licensee.

One year from the date the Order becomes final and annually thereafter for nine (9) years, AHP will be required to provide to the Commission a report of its compliance with the Consent Order. The Consent Order also requires AHP to notify the Commission at least thirty (30) days prior to any change in the structure of AHP resulting in the emergence of a successor. A sunset provision is also included which terminates the order after 20 years.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Mary L. Azcuenaga

In *American Home Products Corp.*, File No. 941–0116

Today, the Commission accepts for public comment a consent agreement settling charges that American Home Products' proposed acquisition of American Cyanamid Company is likely substantially to lessen competition in the markets for three existing diphtheria and tetanus vaccines and substantially to lessen competition to develop a new rotavirus vaccine and to develop and produce cytokines. This appears to be a strong antitrust case, but I seriously question whether the remedy is sufficient.

Under the order, the divestiture of tetanus and diphtheria vaccine assets is limited to certain intellectual property, including formulations, patents, trade secrets, technology, and know-how. The divestiture is structured so that, as a practical matter, the only firms that could acquire the assets in question are firms that in my opinion already would satisfy the tests under the law for potential entrants. In short, the order will not restore the competition lost as a result of the acquisition. Instead, the Commission should require the divestiture of a viable business unit, even if that business unit produces and sells products other than the vaccines in question.

[FR Doc. 94–29181 Filed 11–25–94; 8:45 am]

BILLING CODE 6750–01–M

[File No. 941–0102]

Eli Lilly and Company, Inc.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, an Indiana producer of pharmaceutical products to: Ensure that PCS Health Systems (PCS) maintains an open formulary; appoint an independent Pharmacy and Therapeutics (P&T) Committee of health care professionals to objectively evaluate drugs for inclusion in the PCS open formulary; ensure that PCS accepts all discounts, rebates or other concessions offered by Eli Lilly's competitors for drugs that are accepted for listing on the open formulary, and to accurately reflect such discounts in ranking the drugs on the formulary; and, for five years, obtain Commission approval before acquiring an interest in any firm that provides formulary services to more than 2 million people in the United States. In addition, the consent agreement would prohibit PCS and Eli Lilly from sharing proprietary or other non-public information, such as price data, from competitors whose drugs may be placed on a PCS formulary.

DATES: Comments must be received on or before January 27, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael McNeely, FTC/S–3308, Washington, DC 20580. (202) 326–2904.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission ("Commission"), having initiated an investigation of the acquisition by Eli Lilly and Company ("Lilly") of the PCS Health Systems ("PCS") business of McKesson Corporation ("McKesson"), and it now appearing that Lilly, hereinafter sometimes referred to as "proposed respondent," is willing to enter into an agreement containing an Order to remedy the alleged lessening of competition resulting from such

acquisition, and providing for other relief:

It is hereby agreed by and between proposed respondent, by its duly authorized officer and its attorney, and counsel for the Commission that:

1. Proposed respondent Lilly is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at Lilly Corporate Center, Indianapolis, Indiana 46285.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following Order in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The compliant may be used in construing the terms of the Order, and no agreement, understanding, representation or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondent has read the draft of compliant and order contemplated hereby. Proposed respondent understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It is ordered, That the following definitions shall apply herein:

A. "Respondent" or "Lilly" means Eli Lilly and Company, its predecessors, divisions, subsidiaries, affiliates, partnerships, joint ventures, successors and assigns, and all directors, officers, employees, agents and representatives of the foregoing.

B. "McKesson" means McKesson Corporation, its predecessors, divisions, subsidiaries, affiliates, partnerships, joint ventures, successors and assigns, and all directors, officers, employees, agents and representatives of the foregoing.

C. "PCS" means PCS Health Systems, Inc., its predecessors, divisions, subsidiaries, affiliates, partnerships, joint ventures, successors and assigns, and all directors, officers, employees, agents and representatives of the foregoing.

D. "Commission" means the Federal Trade Commission.

E. "Formulary" means a listing, by therapeutic category, of branded and generic ambulatory drug products that are approved for use by the U.S. Food & Drug Administration ("FDA"), and which is made available to pharmacies, physicians, third-party payors, or other persons involved in the healthcare industry, to guide in the prescribing or dispensing of pharmaceuticals. An "Open Formulary" is a formulary that allows the inclusion of any ambulatory prescription drug product approved by the FDA for use in the United States, which the P&T Committee (defined below) determines is appropriate for inclusion in such formulary. For purposes of this Order, an Open Formulary may provide truthful information stating or indicating the relative costs or benefits of drugs on the formulary.

F. "Pharmacy Benefit Management Services" or "PBM Services" means services provided by a pharmacy benefits manager, such as formulary services, negotiation of rebates or discounts from pharmaceutical manufacturers, prescription claims processing, and drug utilization review.

G. "Formulary Services" means the provision, development, establishment, management or maintenance of a formulary by a pharmacy benefits manager. For purposes of this Order, "management" of a formulary includes the negotiation and administration of rebate or discount agreements with pharmaceutical manufacturers for drugs included on a formulary.

H. "Lilly Non-Public Information" means information not in the public domain that is provided to Lilly in its capacity as a pharmaceutical manufacturer by a supplier of PBM Services and that concerns bids, proposals, contracts, prices, rebates, discounts, or other terms or conditions of sale of any person other than PCS.

I. "PCS Non-Public Information" means information not in the public domain that is provided to PCS in its capacity as a supplier of PBM Services by a manufacturer or seller of prescription drug products and that concerns bids, proposals, contracts, prices, rebates, discounts, or other terms or conditions of sale of any person other than Lilly.

J. "Pharmacy and Therapeutics Committee" or "P&T Committee" means a group of healthcare professionals, such as doctors, pharmacists, and pharmacologists, appointed for the purpose of evaluating prescription drug products for inclusion on a formulary.

II

It is ordered, That:

A. Within thirty (30) days from the date this Order becomes final, Lilly shall cause PCS to maintain an Open Formulary. As of the date this Order becomes final, the PCS "Clinical

Formulary and Prescribing Guidelines 1994–1995," a copy of which is attached hereto as Appendix A, on file at the Commission, shall be deemed an Open Formulary that complies with this Paragraph II.A.

B. Within thirty (30) days from the date this Order becomes final, Lilly shall cause PCS to appoint an independent P&T Committee with the authority and responsibility to maintain the Open Formulary required by Paragraph II.A above. Such P&T Committee shall make all decisions concerning the inclusion of drugs on such Open Formulary, the exclusion of drugs from such Open Formulary, and the clinical and therapeutic advice and evaluation concerning drugs on such Open Formulary, and shall operate according to the following provisions:

1. Such P&T Committee shall consist of at least nine (9) members, all of whom shall be physicians, pharmacists, pharmacologists, or other healthcare professionals.

2. A majority of the P&T Committee shall consist of persons who are not employees, officers, directors, or agents of, and who have no financial interest in: (a) Lilly, (b) PCS, or (c) any other person who has an ownership interest in Lilly or PCS. Such persons shall be referred to herein as "independent" members of the P&T Committee.

3. each independent member of the P&T Committee shall have one vote on all decisions of the P&T Committee.

4. All members of the P&T Committee who are employees, officers, directors, or agents of, or who have a financial interest in, Lilly, PCS, or any other person who has an ownership interest in Lilly or PCS, shall not be entitled to vote on decisions of the P&T Committee.

5. All independent members of the P&T Committee shall be appointed for three-year terms, except that for the initial board, one-third of the independent members shall be appointed for one-year terms, one-third shall be appointed for two-year terms, and the remaining independent members shall be appointed for three-year terms. At the expiration of their terms, or upon the occurrence of a vacancy, members may be reappointed, or new members may be appointed, by a majority of the then-appointed independent members of the P&T Committee.

6. No independent member of the P&T Committee may be removed except for cause by vote of a majority of the independent members of the P&T Committee.

7. In performing its responsibilities in maintaining the Open Formulary, the P&T Committee shall utilize only criteria relating to safety, efficacy, FDA approved indications, side effects, contraindications, pharmacokinetics, patient compliance, physician follow-up requirements, effect on emergency room visits and hospitalizations, laboratory tests, cost, and similar objective factors. Such P&T Committee shall give no preference to the products of Lilly, or of any other person with an ownership interest in PCS, except on the basis of such objective criteria.

8. Lilly shall cause PCS to cover the costs and expenses of the P&T Committee, and Lilly shall cause PCS to indemnify the P&T Committee against any losses or claims of any kind that might arise out of its performance of functions under this Order, except to the extent that such losses or claims result from misfeasance, gross negligence, willful or wanton acts, or bad faith.

9. Such P&T Committee shall maintain written records, for five (5) years from the date thereof, explaining the basis and rationale for all P&T Committee decisions relating to the exclusion of any products from, or the ranking of products on, the Open Formulary required by Paragraph II.A.

C. Lilly shall cause PCS to accept all discounts, rebates or other concessions offered by any manufacturer, seller or distributor of pharmaceutical products included by the P&T Committee on the Open Formulary, and Lilly shall cause PCS to ensure that all such discounts, rebates, or concessions are truthfully and accurately reflected in determining relative rankings of products on the Open Formulary.

D. Nothing in this Order shall preclude PCS from offering any formulary other than the Open Formulary to any customer.

E. Lilly shall cause PCS to provide a copy of this Order to each member of the P&T Committee on or before the date of each such person's appointment to such P&T Committee.

III

It is further ordered, that:

A. Lilly shall not provide, disclose, or otherwise make available to PCS any Lilly Non-Public Information; and

B. PCS shall not provide, disclose, or otherwise make available to Lilly any PCS Non-Public Information.

IV

It is further ordered, That Lilly shall retain all documents, and shall cause PCS to separately retain all documents, that relate to (A) the exclusion of any prescription drug products from the Open Formulary required by Paragraph II.A above, (B) any preference or ranking accorded to any prescription drug product on the Open Formulary required by Paragraph II.A above, or (C) statements or indications of discounts, rebates, or other concessions, as described in Paragraph II.C above, for a period of five (5) years from the date such document is created or received.

V

It is further ordered, That Lilly shall disclose the availability of the Open Formulary as follows:

A. Lilly shall cause PCS to disclose the availability of the Open Formulary to all persons who currently have an agreement with PCS concerning PBM services or concerning the inclusion of pharmaceuticals on a formulary, by providing to each such person a letter containing the following statement within ten (10) days after initiation of contact between PCS and such person regarding renewal or extension of such person's existing agreement with PCS:

PCS maintains an Open Formulary that allows, subject to the determination of an independent Pharmacy and Therapeutics Committee, the inclusion of any ambulatory prescription drug product approved by the FDA for use in the United States. This Open Formulary will be provided to you upon request.

B. For a period of five (5) years from the date this Order becomes final, Lilly shall cause PCS to provide in writing the statement set forth in Paragraph V.A above to each prospective customer of PCS at the time of PCS's response to such prospective customer's request for proposal, or at the time of PCS's initial written proposal to such prospective customer, whichever occurs first.

VI

It is further ordered, That, for a period of five (5) years from the date this Order becomes final, respondent shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity, leasehold or other interest in any person, corporate or non-corporate, engaged in the providing of Formulary Services in the United States, if such person has more than two (2) million lives covered by its Formulary Services in the United States;

B. Acquire any assets used for, or previously used for (and still suitable for use for), the providing of Formulary Services in the United States from any person who has (or had within the two years preceding such acquisition) more than two (2) million lives covered by its Formulary Services in the United States; or

C. Enter into any agreement, understanding, or condition with McKesson or any other wholesaler of pharmaceutical products that Lilly will sell or distribute pharmaceutical products bearing any brand or trade name used by Lilly, in the United States or any part of the United States, exclusively through such wholesaler.

VII

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the Order.

VIII

It is further ordered, That:

A. Within sixty (60) days after the date this Order becomes final, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order.

B. One year (1) from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with this Order.

C. Respondent shall include in its compliance reports a copy of the Open Formulary required by Paragraph II.A above, and all written communications, internal memoranda, and reports and recommendations concerning compliance with the Order.

IX

It is further ordered, That, for the purpose of determining or securing compliance with this Order, respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this Order; and

B. Upon five days' notice to respondent and without restraint or interference from it, to interview officers, directors, or employees of respondent.

X

It is further ordered, That this Order shall terminate ten (10) years from the date this Order becomes final.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an Agreement Containing Consent Order from Eli Lilly and Company ("Lilly" or "Proposed Respondent") in resolution of antitrust concerns arising from Lilly's proposed acquisition of PCS Health Systems, Inc. ("PCS") from McKesson Corporation ("McKesson").

The proposed consent order ("Order") has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the Agreement and the comments received and will decide whether it should withdraw from the Agreement or make final the Agreement's proposed Order.

The Commission has reason to believe that Lilly's acquisition of PCS would substantially lessen competition in violation of section 7 of the Clayton Act, as amended, 15 U.S.C. 18 and section 5 of the FTC Act, as amended, 15 U.S.C. 45. The Order, if issued by the Commission, would settle the allegations of the proposed Complaint ("Complaint").

The Complaint in this matter alleges that Lilly is engaged in the development, production and sale of pharmaceutical products, including Prozac, an antidepressant (specifically, a selective serotonin reuptake inhibitor); Humulin, an injectable insulin; Ceclor, an oral antibiotic; and Axid, an anti-ulcer product (specifically, an H2 antagonist). It further alleges that through its subsidiary PCS, McKesson is engaged in the business of providing pharmacy benefit management ("PBM") services to insurance companies, third party payors, and other members of the healthcare industry.

The Complaint further alleges that a relevant line of commerce within which to analyze the effects of this acquisition is the provision of PBM services by national full-service PBM firms, and any narrower markets contained therein. Other relevant lines of commerce within which to analyze the effects of this acquisition are the development, manufacture and sale of pharmaceutical products in specific therapeutic categories, and narrower markets contained therein (including, but not limited to, the markets for injectable insulin, selective serotonin reuptake inhibitors, H2 antagonists, and anti-ulcer drugs). It further alleges that the relevant market for PBM services by national full-service PBM firms, as well as the relevant markets for pharmaceutical products in specific therapeutic categories, are highly concentrated.

The Complaint further alleges that there are substantial entry barriers into the relevant markets. Even if new entry were to occur, it would take a long time, during which time substantial harm to competition could occur.

The Complaint further alleges that as part of its PBM services, PCS maintains a drug formulary, which is a listing, by therapeutic category, of ambulatory drug products that are approved for use by the U.S. Food & Drug Administration, and which is made available to pharmacies, physicians, third-party payors, and other persons, to guide in the prescribing and dispensing of pharmaceuticals. Lilly pharmaceutical products are included on the PCS formulary. PCS provides a variety of other PBM services, including claims processing, drug utilization review, pharmacy network administration, and related services. PCS negotiates with pharmaceutical manufacturers, including Lilly, concerning placement on the PCS formulary, rebates, discounts, prices to be paid for pharmaceutical products purchased pursuant to pharmacy benefit plans managed by PCS, and other issues. PCS thereby influences the prices of pharmaceutical products and the availability of such products under the PCS pharmacy benefit plans.

The Complaint further alleges that the Agreement and Plan of Merger contains a Memorandum of Understanding ("MOU") in which Lilly and McKesson agreed to investigate closing Lilly's distribution centers and having McKesson handle physical distribution of Lilly products to wholesalers and possibly be the sole distributor of Lilly products. Implementation of this MOU would force wholesalers to deal with McKesson to obtain Lilly products or deny them access to Lilly products.

The Complaint further alleges that the effects of the proposed acquisition of McKesson by Lilly may be substantially to lessen competition in the relevant markets in violation of section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

(a) Products of manufacturers other than Lilly are likely to be foreclosed from the PCS formulary;

(b) Reciprocal dealing, coordinated interaction, interdependent conduct, and tacit collusion among Lilly and other vertically integrated pharmaceutical companies will be enhanced;

(c) PCS will be eliminated as an independent negotiator of pharmaceutical prices with manufacturers;

(d) Incentives of other manufacturers to develop innovative pharmaceuticals will be diminished;

(e) Entry into the relevant markets may be more difficult because it will require entry at more than one level;

(f) Competition among drug wholesalers may be reduced because of the competitive advantage that control over Lilly drugs will provide McKesson; and,

(g) The price of pharmaceuticals is likely to increase and the quality of the pharmaceuticals available to consumers is likely to diminish.

The Complaint further alleges that the proposed acquisition of McKesson by Lilly would, if consummated, violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. It further alleges that the Agreement and Plan of Merger between Lilly and McKesson violates section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

The Order requires Lilly to maintain an open formulary, and provides that the existing open PCS formulary will comply with this provision. A copy of this formulary is appended to the Order. For the purposes of the Order an open formulary is defined as a formulary that allows the inclusion of any ambulatory (*i.e.*, non-hospital) prescription drug product which the PCS independent Pharmacy and Therapeutics Committee ("P&T Committee) determines is appropriate for inclusion in such formulary.

The Order requires that Lilly appoint an independent P&T Committee to administer the open formulary. This committee will make all decisions concerning the inclusion and exclusion of drugs on the open formulary. The order sets forth the parameters under which the P&T Committee is to operate.

The Order also requires that Lilly cause PCS to accept all discounts, rebates or other concessions offered by any other manufacturer of pharmaceutical products on the open formulary, and requires that all such discounts, rebates and concessions be truthfully and accurately reflected in determining relative rankings of products on the open formulary. Nothing in the Order prohibits Lilly from offering closed formularies as well as the open formulary.

The Order also prohibits Lilly and PCS from providing, disclosing, or otherwise making available to each other Non-Public Information. This includes information concerning other persons' bids, proposals, contracts, prices, rebates, discounts, or other terms and conditions of sale.

The Order also requires Lilly to retain all documents, and cause PCS to separately retain all documents, for five years, relating to the exclusion of any prescription drugs from the open formulary, any preference or ranking accorded to any prescription drug on the open formulary, and statements or indications of discounts, rebates or other concessions.

The Order also requires Lilly to make known the availability of the open formulary to persons who currently have a PBM service agreement of formulary agreement with PCS, and (for a period of five years) to prospective customers.

The Order also prohibits Lilly, for a period of five (5) years from the date the Order becomes final, from: Acquiring, without the prior approval of the Commission, any stock, share capital, equity, leasehold or other interest in any person, corporate or non-corporate, engaged in the providing of Formulary Services in the United States, if such person has more than two (2) million lives covered by its Formulary Services in the United States; acquiring any assets used for, or previously used for (and still suitable for use for), the providing of Formulary Services in the United States from any person who has (or had within the two years preceding such acquisition) more than two (2) million lives covered by its Formulary Services in the United States; or entering into any agreement, understanding, or condition with McKesson or any wholesaler of pharmaceutical products that Lilly will sell or distribute pharmaceutical products bearing any brand or trade name used by Lilly, in the United States or any part of the United States, exclusively through such wholesaler.

The Order also compels Lilly to fulfill certain standard notification, reporting and inspection requirements.

The Order terminates ten years from the date it becomes final.

It is anticipated that the Order would resolve the competitive problems alleged in the Complaint. The purpose of this analysis is to facilitate public comment on the Order, and it is not intended to constitute an official interpretation of the agreement and Order or to modify it in any way.

The proposed consent order has been entered into for settlement purposes only, and does not constitute an admission by the respondent that the law has been violated as alleged in the complaint.

Donald S. Clark,

Secretary.

Joint Statement of Chairman Janet D. Steiger and Commissioner Christine A. Varney in Eli Lilly/McKesson, File No. 941–0102

We voted in favor of the proposed consent agreement with Eli Lilly and Company ("Lilly") in connection with its acquisition of PCS Health Systems, Inc. from McKesson Corporation. We believe the consent agreement offers immediate effective relief, avoids protracted litigation, and represents the best non-structural relief available to remedy the potential anticompetitive consequences of the transaction. Moreover, the proposed consent achieves these goals and allows potential efficiency gains to be realized.

However, we remain concerned about the overall competitive impact of vertical integration by drug companies into the pharmacy benefits management market. Through monitoring this proposed order and through analysis of these evolving markets, the Commission intends to assess all the ramifications of vertical integration here.

Dissenting Statement of Commissioner Mary L. Azcuenaga

Eli Lilly and Company, Inc., File No. 941–0102

Today, the Commissioner accepts a consent order for public comment that exudes a lack of conviction in the underlying theory of competitive harm on which the order is based. The order does not cure the competitive problems alleged in the complaint. Three of the four primary provisions in the order are inadequate, and the fourth, which addresses a memorandum of understanding between Lilly and McKesson, is based on no colorable factual showing of a violation of law. In addition, there is no justification for making the duration of the order half that of other Commission orders. Finally, imposing this order without addressing similar acquisitions raises a question of evenhandedness and leaves unanswered the broader question of the competitive effect of vertical integration in this industry.

I dissent.

[FR Doc. 94–29183 Filed 11–25–94; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Office of Acquisition Policy, GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to approve an extension for the information collection for Multiple Award Schedule Policy Statements (MAS)—Discount Schedule and Marketing Data (DSMD). Extension is requested through October 31, 1995. DSMD sheets are used to collect data about certain sales, discounts, and marketing. The data are used to determine the commerciality of items offered, set the Government's negotiation objective, and determine price reasonableness. The extension is necessary because recent enactment of the Federal Acquisition Streamlining Act is likely to have a significant impact on the conduct of Federal procurement especially those aspects relating to the acquisition of commercial items. The MAS Program, which is intended specifically for the acquisition of commercial items, will be affected by the legislation. However, specific impacts cannot be determined until the Federal Acquisition Regulation is revised to implement the new statute. Current plans call for those revisions to be effected during April, 1995.

It is emphasized that this extension is an interim measure. Given the likelihood of significant changes to the Federal Acquisition Regulation in the near future, the Agency has determined that it would be inappropriate to make any long term decision on the DSMD at this time. After regulations have been promulgated to implement the new statute, GSA will evaluate the impact on the MAS program and take action as appropriate.

ADDRESSES: Send comments to Ed Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration, (CAIR), 18th and F Streets, NW, Washington, DC 20405.

Annual Reporting Burden: 4000 respondents; 15 average hours per respondent; 60,000 burden hours.

FOR FURTHER INFORMATION CONTACT: Les Davison, 202–501–4768. Copy of proposal may be obtained from the Information Collection Management Branch (CAIR), Room 7102, GSA Building, 18th and F Streets, NW, Washington, DC 20405. Telephone requests to 202–501–1659, or fax 202–501–2727.

Dated: November 17, 1994.

Mary L. Cunningham,

Acting Director, Information Management Division.

[FR Doc. 94–29140 Filed 11–25–94; 8:45 am]

BILLING CODE 6820–61–M

GOVERNMENT PRINTING OFFICE

Public Meeting for Federal Agencies and Others Interested in the Implementation of the Government Printing Office (GPO) Electronic Information Access Enhancement Act of 1993

The Superintendent of Documents will hold two public meetings for Federal agencies and others interested in the implementation of the Government Printing Office Electronic Information Access Enhancement Act of 1993 (Pub. L. 103–40). The meetings will be held on Friday, December 9, 1994, from 9 a.m. to 10:30 a.m., and 11 a.m. to 12:30 p.m., in the Carl Hayden Room at the U.S. Government Printing Office (GPO), 732 North Capitol Street NW., Washington, D.C.

Under P.L. 103–40, the Superintendent of Documents is required to provide a system of online access to the Congressional Record, the **Federal Register**, and other appropriate information. The purpose of this meeting is to demonstrate the online services made available under the initial phase of implementation of the Act, and to consult with Federal agencies and other potential users in order to assess the quality and value of these interim services.

The initial online services include access to a WAIS Server at GPO offering the following databases: the **Federal Register**, Volume 59 (1994), the Congressional Record, Volume 140 (1994), the Congressional Record Index, Volumes 138 to 140 (1992–1994), and Congressional Bills from the 103d Congress (1993–1994).The **Federal Register**, Congressional Record and Congressional Bills databases provide ASCII text files, with all graphics included as individual files in TIFF format. Brief ASCII text summaries of each **Federal Register** entry are also available. The Congressional Record Index provides ASCII text files with all graphics included as individual files in TIFF format. The Congressional Bills are available as ASCII text files and as Adobe Acrobat Portable Document Format (PDF) files. Users with Acrobat viewers can display and print typeset page facsimiles of enrolled bills.

Seating is limited to 60 people per session. Individuals interested in attending should contact the GPO's Office of Electronic Information Dissemination Services on 202–512–1530 or (FAX) 202–512–1262.

Reservations can also be made by Internet e-mail at john@eids06.eids.gpo.gov. Limited parking is available if arrangements are made in advance.

Michael F. DiMario,

Public Printer.

[FR Doc. 94–29045 Filed 11–25–94; 8:45 am]

BILLING CODE 1505–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Termination of Temporary Deferment of Activities Relating to Biologics. Submissions and Notice of New Mailing Address; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of September 23, 1994 (59 FR 48895). The document announced the new address for submissions and identified the exact period which action on pending submissions was temporarily deferred. The agency also announced the installation of automated systems to make information available to the public and to help callers identify the new telephone numbers of Center for Biologics and Evaluation staff involved in review activities. The document was published with a typographical error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

In FR Doc. 94–23617, appearing on page 48895, in the **Federal Register** of September 23, 1994, the following correction is made:

On page 48895, in the second column, in the fourth line from the bottom, the phone number "549–5656" is corrected to read "594–5656".

Dated: November 17, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 94–29115 Filed 11–25–94; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Meeting of the National Eye Institute Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Eye Institute (NEI), December 5 and 6, 1994 in the NEI Conference Room, Building 31, Room 6A35, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on December 5 from 9 a.m. until approximately 4 p.m. for general remarks by the Director, Intramural Research Programs, NEI, on matters concerning the intramural programs of the NEI. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on December 5 from approximately 4 p.m. until recess and on December 6 from 8:30 a.m. until adjournment for the review, discussion, and evaluation of individual projects conducted by the Division of Biometry and Epidemiology. These evaluations and discussions could reveal personal information concerning individuals associated with the projects, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Consequently, this meeting is concerned with matters exempt from mandatory disclosure.

Ms. Lois DeNinno, Committee Management Officer, NEI, EPS/350, Bethesda, Maryland 20892, (301) 496–5301, will provide a summary of the meeting, roster of committee members, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. DeNinno in advance of the meeting.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

(Catalog of Federal Domestic Assistance Program No. 93.867, Vision Research; National Institutes of Health)

Dated: November 22, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–29311 Filed 11–25–94; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

Privacy Act of 1974; Computer Matching Programs (SSA/States SDX/BENDEX Files)

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Computer Matching Programs.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces computer matching programs that SSA plans to conduct.

DATES: SSA will file a report of the subject matching programs with the Committee on Governmental Affairs of the Senate, the Committee on Government Operations of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget. The matching programs will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 966–5138, or writing to the Associate Commissioner for Program and Integrity Reviews, 860 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program and Integrity Reviews as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503) amended the Privacy Act of 1979 (5 U.S.C. 552a) by establishing the conditions under which computer matching involving the Federal Government could be performed and adding certain protections for individuals applying for and receiving Federal benefits. The Computer Matching and Privacy Protection Amendments of 1990, set out in section 7201 of Pub. L. 101–508, further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. Among other things, it requires Federal agencies involved in computer matching programs to:

(1) Make written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain their Data Integrity Boards' approval of the match agreements;

(3) Furnish detailed reports about matching programs to Congress and the Office of Management and Budget;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that these computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: November 17, 1994.

Shirley S. Chater,

Commissioner of Social Security.

Notice of Computer Matching Programs, States' Income Eligibility Verification System Records with the Social Security Administration (SSA)

A. Participating Agencies

SSA and the States.

B. Purpose of the Matching Programs

Section 1137 of the Social Security Act (the Act) requires States to have in effect an income and eligibility verification system to administer certain State benefit programs including the exchange of information to verify eligibility or benefit amounts of State beneficiaries.

The purpose of these matching programs is to enable SSA to implement this provision. The agreements with the States will describe the conditions under which SSA and the States agree to disclose information to each other relating to the eligibility for, and payment of, Social Security and Supplemental Security Income (SSI) benefits and State-administered income, food assistance, and medical assistance programs, described in section 1137 (b).

C. Authority for Conducting the Matching Programs

Section 1137 of the Act (42 U.S.C. 1320b-7).

D. Categories of Records and Individuals Covered by the Matching Programs

States will submit names and other identifying information of beneficiaries/

recipients from their benefit rolls. This information from the States will be matched with the SSA master file of Social Security number holders which contains the SSNs and identifying information for all SSN holders and the SSA Master Beneficiary Record and Supplemental Security Income Record which contain beneficiary and payment information.

E. Inclusive Dates of the Match

The matching programs shall become effective 40 days after a copy of the agreement, as approved by the Data Integrity Board, is sent to Congress and the Office of Management and Budget (OMB) (or later if OMB objects to some or all of the agreement), or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching programs will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 94–29192 Filed 11–25–94; 8:45 am]
BILLING CODE 4190–29–P

Substance Abuse and Mental Health Services Administration

Office for Women's Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Advisory Committee for Women's Services of the Substance Abuse and Mental Health Services Administration.

The meeting of the Advisory Committee for Women's Services will include a discussion of the mission of SAMHSA and its programs for women, administrative announcements, and program developments.

A summary of the meeting and a roster of committee members may be obtained from: Jennifer B. Fiedelholtz, Executive Secretary, Advisory Committee for Women's Services, Office for Women's Services, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 13–99, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–5184.

Substantive information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Advisory Committee for Women's Services.

Meeting Dates: December 12 and 13, 1994.

Place: Conference Room I (12/12/94) and the Potomac Room (12/13/94), Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open: December 12, 1994, 9:00 a.m.–5:00 p.m., December 13, 1994, 9:00 a.m. until adjournment.

Contact: Jennifer B. Fiedelholtz, Room 13–99, Parklawn Building, Telephone (301) 443–5184.

Dated: November 21, 1994.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 94–29113 Filed 11–25–94; 8:45 am]
BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–054–1220–00; 5–021]

Notice of Public Lands Closure; Wheeler County, Oregon

AGENCY: U.S. Department of the Interior, Bureau of Land Management, Prineville District, Prineville, OR.

ACTION: Emergency closure of public lands; Oregon.

SUMMARY: Notice is hereby given that effective immediately, posted roads on public lands as legally described below are closed to all motorized vehicle access and travel year-long.

In Wheeler County, Oregon: T. 9 S., R. 20 E., Sec 32, southeast quarter.

The purpose of this closure is to protect against adverse impacts upon soils, fisheries habitat, wildlife habitat, scenic resources, and recreational opportunities. Exception to this closure is for emergency personnel while engaged in emergency activities. The authority for this closure is 43 CFR 8341.2.

This closure will remain in effect until the area is evaluated through the environmental assessment process and the adverse impacts are eliminated and measure are implemented to prevent recurrence.

SUPPLEMENTARY INFORMATION: Violation of this closure order is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months as provided in 43 CFR 8340.0–7.

James L. Hancock,

District Manager.

[FR Doc. 94–29122 Filed 11–25–94; 8:45 am]
BILLING CODE 4310–33–M

[CA–050–05–1220–00]

Intent To Prepare an Environmental Assessment Amending the Arcata Resource Management Plan for the Samoa Peninsula Management Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Land Management intends to prepare an environmental assessment in order to amend the existing Arcata Resource Area Management Plan specifically addressing the Samoa Dunes parcel, (T.5N.,R.1W, Sec. 31, S½ & T.4N., R.1W., Sec.6) and the Manila Dunes parcel, (T.6N., R.1W., parts of Sec. 26, 27, 34, and 35). This notice is being furnished to inform the public of the Bureau's action and to provide information regarding potential issues anticipated.

FOR FURTHER INFORMATION CONTACT: Lynda J. Roush, Area Manager, at Bureau of Land Management, Arcata Resource Area, 1125 16th Street, Room 219, Arcata, CA 95521. Telephone: (707) 822–7648.

SUPPLEMENTARY INFORMATION: This environmental assessment is being prepared in accordance with the requirements set forth in the Code of Federal Regulations (43 CFR 1610.5–5) to amend the Arcata Resource Area Management Plan.

The issues and concerns addressed in the environmental assessment focus on key land use management changes. The changes are to:

Close the Manila Dunes parcel to Off-Highway-Vehicle use; Close the Samoa Dunes Parcel nightly, to reduce crime and vandalism; Prohibit crossbow/bow shooting from both parcels; Conduct native dune plant habitat restoration and research.

The environmental assessment will be made available to the public for review Availability of the environmental assessment for public review will be published in newspapers. There will be a 30-day protest period on the decision record which the public may respond to before the plan amendment becomes final.

Lynda J. Roush,

Area Manager.

[FR Doc. 94–29126 Filed 11–25–94; 8:45 am]
BILLING CODE 4310–40–M

[CA–020–1040–00]

Notice of Intent To Prepare Land Use Plan Amendments and Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior; Susanville District Office, California.

ACTION: Notice of Intent to Prepare Land Use Plan Amendments and Environmental Impact Statement.

SUMMARY: Pursuant to 43 CFR 1601, 43 CFR 1610, and 40 CFR 1500–1508

notice is hereby given that the Susanville District Office, Bureau of Land Management (BLM), California, will prepare amendments to three land use plans (LUPs) and prepare an associated environmental impact statement (EIS). The LUPs to be amended are the (1) Cal-Neva Management Framework Plan of 1982, (2) Tuledad-Home Camp Management Framework Plan of 1977, and (3) Alturas Resource Management Plan of 1984. The LUP amendments and EIS will be published in a single document entitled East Lassen Ecosystem Management Plan and Environmental Impact Statement (ELEMP/EIS).

PUBLIC PARTICIPATION: The public will be provided opportunities to participate and comment throughout scoping, preparation, and review of the ELEMP/EIS. Opportunities for public participation at a series of public scoping meetings will also be provided. Times, dates, and locations of public meetings will be announced through the news media, by mail, and personal contact. Public meetings are anticipated to be held in Susanville, California; Alturas, California; Sacramento, California; and Reno, Nevada.

FOR FURTHER INFORMATION OR RELATED DOCUMENTS CONTACT: Herrick E. Hanks, District Manager, Attention: East Lassen Project, Bureau of Land Management, Susanville District Office, 705 Hall Street, Susanville, California 96130. Telephone: (916) 257–5381.

SUPPLEMENTARY INFORMATION: The East Lassen area is located in the northwestern Great Basin, encompassing about 1.25 million acres in portions of Washoe county in Nevada, and Lassen and Modoc counties in California. The area contains many jurisdictions, including lands and resources administered by BLM Susanville and Winnemucca Districts, Modoc National Forest, Sierra Army Depot, State of California, Nevada Division of Wildlife, California Department of Fish and Game, and private lands. A BLM interdisciplinary (ID) team of specialists has been assigned to prepare the ELEMP/EIS. The ID team anticipates the LUP amendments to result in decisions to incorporate ecosystem management principles, make resource allocations, set goals and objectives, establish priorities, establish standards and guidelines, be consistent with Rangeland Reform '94 and other initiatives, and define future public participation processes. The LUP amendments will be applicable to the land and resources administered by BLM Susanville District in the East Lassen area. Preliminary issues to be addressed are (1) vegetation, including riparian-wetland, (2) wild horses and burros, (3) fish and wildlife, (4) livestock grazing, (5) recreation opportunities, and (6) local socio-economics. Preliminary future management strategies (alternatives) to be addressed are (1) Baseline/Current Management (No Action), (2) Custodial Level Management, (3) Native Species and Habitat Restoration, and (4) Featured Animals Management. At this time the ID team does not anticipate LUP amendments to address BLM oil and gas, coal, geothermal, other mineral resources, cadastral survey, user fees, or realty related decisions or actions.

Herrick E. Hanks,

District Manager.

[FR Doc. 94–29124 Filed 11–25–94; 8:45 am]

BILLING CODE 4310–40–P

[AZ–024–05–4210–05; AZA–28416]

Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands, located near the City of Mesa, Maricopa County, Arizona, have been examined and found suitable for lease or conveyance to the Maricopa County Board of Supervisors under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, *et seq.*) for use as a model airplane park.

Gila and Salt River Meridian, Arizona

T. 1 N., R. 7 E.,
Sec. 12, NE¼SW¼, NW¼SE¼.
Containing approximately 80 acres.

The lands are presently withdrawn under SO 7/30/1931 withdrawing the lands for use by Salt River Project. It has been determined that the two uses (R&PP lease or conveyance and the withdrawal) are compatible uses. The lands are not needed for Federal purposes. Lease or conveyance is consistent with current Bureau of Land Management land use planning and would be in the public interest.

The lease or conveyance would be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and all regulations of the Secretary of the Interior.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

3. A right-of-way for ditches and canals constructed by the authority of the United States.

4. Those rights for power line purposes granted to the Bureau of Reclamation by Right-of-Way PHX–086777.

5. Those rights for flood control purposes granted to the Maricopa County Flood Control District by Right-of-Way AZA–3959.

6. All rights reserved by SO 7/30/1931 to Salt River Project.

For detailed information concerning this action, contact Jim Andersen at the Phoenix Resource Area Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Telephone (602) 780–8090.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act. For a period of 45 days from the date of publication of this Notice, interested parties may submit comments regarding this proposed lease, conveyance or classification of the lands to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a model airplane park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the Bureau of Land Management followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a model airplane park. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication in the **Federal Register**.

Dated: November 15, 1994.

David J. Miller,

Associate District Manager.

[FR Doc. 94–29127 Filed 11–25–94; 8:45 am]

BILLING CODE 4310–32–M

[NM–010–1430–01; NMNM 92922]

Recreation and Public Purposes (R&PP) Act Classification; New Mexico

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following public lands in Santa Fe County, New Mexico have been examined and found suitable for classification for lease or conveyance to the State of New Mexico, New Mexico State Game Commission, under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.) The Game Commission proposes to sublease the property to the Wildlife Center, a non-profit organization, for wildlife rehabilitation and public environmental education.

New Mexico Principal Meridian, New Mexico

T. 20 N., R. 9 E.,
Sec. 7, lots 1, 2, E½E½SE¼, and NW¼NE¼SE¼;
Sec. 8, lots 2, 7, and W½SW¼SW¼

The area described contains 193.82 acres in Santa Fe County.

The lands are not needed for Federal purposes and have been identified for disposal from Federal ownership by the current planning document (Taos Resource Management Plan).

FOR FURTHER INFORMATION CONTACT: Chet Grandjean, Bureau of Land Management, Taos Resource Area, 224 Cruz Alta Road, Taos, New Mexico 87571 or at (505) 758–8851.

ADDRESSES: Comments should be sent to District Manager, Bureau of Land Management, Albuquerque District Office, 435 Montano NE, Albuquerque, NM 87107.

SUPPLEMENTARY INFORMATION: Lease and/or conveyance of the lands will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Those rights for a road granted to Santa Fe County by right-of-way NMNM 59177 and powerline right-of-way NMNM 8271 granted to Jemez Mountains Electric Coop.

5. Provisions of the Resource Conservation and Recovery Act of 1976 (RCRA) as amended, 42 U.S.C. 6901–6987 and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) as amended, 42 U.S.C. 9601 and all applicable regulations.

6. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Upon publication of this Notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public lands, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

Interested parties may submit comments regarding the proposed lease/conveyance or classification of the lands on or within 45 days of the date of publication of this notice.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for wildlife rehabilitation and public environmental education.

Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for wildlife rehabilitation and public environmental education.

Adverse comments will be reviewed by the State Director. In the absence of any adverse comments, this classification will become effective 60 days from the date of this notice in the **Federal Register.**

Dated: November 10, 1994.

Sue E. Richardson,

Acting District Manager.

[FR Doc. 94–29131 Filed 11–25–94; 8:45 am]

BILLING CODE 4310–FB–P

[NM–037–1430–01]

Sale of Public Land in Otero County, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) announces that the following described parcels of public land have been examined and identified as suitable for disposal by sale under Section 203 and Section 209(b) of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2740; 43 U.S.C. 1713) at no less than the appraised fair market value shown. The parcels are isolated, difficult and uneconomical to manage as part of the public land, and are not suitable for management by another Federal department or agency. Mineral estate will be conveyed simultaneously with each parcel. The sale is consistent with the BLM's planning efforts, and the public interest will be served by offering this land for sale.

Sale Method

Parcels 2 and 5 will be offered for sale using competitive bidding procedures (43 CFR 2711.3–1). Parcels 1, 3, 4, 6, 7, 8, and 9 will be offered to the listed parties through direct sale procedures not less than 60 days from publication of this notice (43 CFR 2711.3–3).

PARCEL INFORMATION

Parcel No.	Serial NM NM	Legal Description, NMPM			Lot	Acreage	Appraised value	Method of sale
		Twnshp.	Range	Section				
1	92996	15 S.,	10 E.,	34	1	00.58	$1,120	Direct sale to William Danley.
2	93533	15 S.,	10 E.,	34	2	39.50	77,220	Competitive sale.
3	91682	15 S.,	10 E.,	34	3	00.31	620	Direct sale to C. J. Dugan.
4	91682	15 S.,	10 E.,	34	4	00.83	1,660	Direct sale to C. J. Dugan.
5	93534	15 S.,	10 E.,	34	5	37.85	88,600	Competitive sale.
6	92991	15 S.,	10 E.,	34	6	00.44	250	Direct sale to Fred L. Tidwell.
7	91635	15 S.,	10 E.,	34	7	01.06	1,650	Direct sale to Synergy Gas Corp.

PARCEL INFORMATION—Continued

Parcel No.	Serial NM NM	Legal Description, NMPM			Lot	Acreage	Appraised value	Method of sale
		Twnshp.	Range	Section				
8	92992	15 S.,	10 E.,	34	8	00.09	150	Direct sale to S. W. Atkins.
9	92993	15 S.,	10 E.,	34	9	00.06	120	Direct sale to Alexander Moulding Mill Co., NM.

Sales Procedures

The sale of parcels 2 and 5 will be by competitive sealed bids followed by oral bidding. Sealed bids will be considered only if received in the Caballo Resource Area, 1800 Marquess, Las Cruces, New Mexico, 88005 before 10:00 a.m. on January 30, 1995, the day of the sale. Oral bids will be accepted commencing at 10:30 a.m., following the opening of all sealed bids, at the same place on the same sale date. Sealed bids of less than the appraised fair market value will be rejected. The apparent highest qualified sealed bid will be publicly declared by the Authorized Officer. The apparent highest qualified sealed bid will then become the starting point for the oral bidding. If no apparent qualified sealed bids are received, the oral bidding will start at the appraised fair market value. In the absence of oral bids, the apparent highest qualified sealed bid will establish the sale price for the parcel. In the event that two or more sealed bids are received containing valid bids of the same amount for the same parcel, and no higher oral bid is received for that parcel, the determination of which is to be considered the highest designated bid will be by supplemental bidding. In such a case, the high bidders will be allowed to submit oral or sealed bids as designated by the Authorized Officer. After oral bids are received, the highest qualifying bid, whether sealed or oral, shall be declared by the Authorized Officer.

All bidders must be 18 years of age or older and United States citizens, and corporations must be subject to the laws of any state or of the United States. Apparent high bidders must submit proof of these requirements within 15 days after the sale date. Bids must be made by the principal or his duly qualified agent. Each sealed bid must be written or typed and accompanied by postal money order, bank draft, or cashier's check made payable to the Department of the Interior, Bureau of Land Management, for not less than 10 percent or more than 30 percent of the amount of the bid. The sealed bid envelope containing the bid and the required amount must be marked in the lower left-hand corner as follows:

Public Sale Bid Parcel No. _____
Serial No. _____
Sale Held (Date) _____

Each successful oral bidder will be required to pay not less than 20 percent of the amount of the bid immediately following the sale. Payment must be by cash, personal check, bank draft, money order, or any combination of these.

Successful bidders, whether such bid is oral or sealed, will be required to pay the remainder of the sale price prior to expiration of 180 days from the date of the sale. In addition, the successful bidders for the lots offered by competitive sale will be required to submit a $50.00 filing fee and application to purchase the mineral interests. Failure to submit the full sale price within the above specified time limit will result in cancellation of the sale of the specific parcel, and the deposit will be forfeited and disposed as other receipts of sale.

All sealed bids will be either returned, accepted, or rejected within 30 days of the sale date. Competitive sale parcels not sold on the day of the sale will be reoffered for sale every first Tuesday of each month, same time and place, by the same sale procedures described above until sold or until April 28, 1995, at close of business.

On parcels 1, 3, 4, 6, 7, 8, and 9: should any of the listed parties decline to purchase an offered parcel within the time allotted, the unsold parcel will then be reoffered by open competitive bidding procedures described above, every first Tuesday of each month, same time and place, until sold or until April 28, 1995, at the close of business.

In the event that the Authorized Officer rejects the highest qualified bid for any of the above parcels, or releases the bidder from it, the Authorized Officer shall determine whether the public land shall be withdrawn from the market or reoffered.

Terms and Conditions

Terms and conditions applicable to the sale are:

1. The patents, when and if issued, will contain a reservation to the United States for ditches and canals.

2. On parcels 1 and 2 the land will be subject to a 30-foot easement on the north end of the parcel.

3. On parcels 5, 6, 7, and 8, land will be subject to the highway right-of-way.

4. Parcel 5 is subject to ROW NMLC066065 for Plains Electric.

5. On Parcel 5, the land will be subject to a 15-foot easement on the south end of the parcel.

DATES: For a period of 45 days, interested parties may submit comments regarding the proposed action to the Caballo Resource Area Manager by January 12, 1995.

ADDRESSES: Comments should be sent to the Bureau of Land Management, Caballo Resource Area, 1800 Marquess, Las Cruces, New Mexico, 88005.

FOR FURTHER INFORMATION: Additional information concerning the land, terms and conditions of sale, and bidding instructions may be obtained from the Caballo Resource Area Office at the above address. Telephone calls may be directed to Bernie Creager (505) 525–4325 or Lorraine Salas (505) 525–4388.

SUPPLEMENTARY INFORMATION: Comments must reference specific parcel numbers. Adverse comments received on specific parcels will not affect the sale of any other parcel. Objections will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Upon publication in the Federal Register, the lands described above will be segregated from appropriation under the public land laws, including the mining laws. The segregative effect of this Notice of Realty Action shall terminate upon issuance of patent or other document of conveyance to such land, upon publication in the Federal Register of a termination of the segregation or 270 days from the date of publication, whichever occurs first.

The BLM may accept or reject any offer to purchase or withdraw any tract from sale if the Authorized Officer determines that consummation of the sale would not be fully consistent with the FLPMA or another applicable law.

Dated: November 14, 1994.

Richard T. Watts,

Acting District Manager.

[FR Doc. 94–29125 Filed 11–25–94; 8:45 am]

BILLING CODE 4310–FB–M

[OR–094–6334–04: GP5–037]

Proposed Establishment of Supplementary Rules; Lane County, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed establishment of supplementary rules.

SUMMARY: The Eugene District, Bureau of Land Management, proposes to establish supplementary rules for use of those public lands included in the West Eugene Wetlands Project in the Coast Range Resource Area, Eugene District, Lane County, Oregon. These supplementary rules are being proposed to provide for public safety and to protect the natural resources of the project area. These rules would be consistent with the City of Eugene regulations covering those project lands within the City of Eugene.

ADDRESSES: Comments should be sent to Wayne Elliott, Coast Range Area Manager, Eugene District Office, P.O. Box 10226, Eugene, Oregon 97440–2226.

FOR FURTHER INFORMATION CONTACT: Jock Beall, 503–683–6993.

SUPPLEMENTARY INFORMATION: Authority for the establishment of these supplemental rules is contained in 43 CFR 8365.1–6. A map showing the location of the lands subject to the proposed supplementary rules is available in the Eugene District Office. The proposed supplementary rules would apply to those lands already acquired and to lands that will be acquired as part of the West Eugene Wetlands Project. These supplementary rules will be subject to review and will be revised, if appropriate, to further the goals of providing for public safety and protecting natural resources.

DATES: Comments must be received by December 28, 1994.

For the reasons set forth in the preamble, the Eugene District, Bureau of Land Management, proposes to establish the following supplementary rules for the West Eugene Wetlands Project:

1. Use or operation of motor vehicles is prohibited except on those roads and parking areas specifically designated for motor vehicle use. Non-street legal motor vehicles are prohibited at all times. Motor vehicles being used by duly authorized emergency response personnel, including police, ambulance and fire suppression, as well as BLM vehicles engaged in official duties and other vehicles authorized by BLM, are excepted.

2. Possession, use and/or discharge of any weapons is prohibited, except that hunting on the Project lands outside the city limits of Eugene is permissible in accordance with federal and state laws.

3. Use and/or occupancy (including leaving personal property unattended) is prohibited between one half hour after sunset to one-half hour before sunrise without the written permission of the authorized officer.

4. The collection, disturbance or possession of any natural resource is prohibited without the written permission of the authorized officer.

5. The possession or discharge of fireworks is prohibited.

6. Campfires or other open flame fires are prohibited without the written permission of the authorized officer.

7. No person shall, unless otherwise authorized, bring any animal onto the public lands unless such animal is on a leash not longer than six feet and secured to a fixed object or under control of a person, or is otherwise physically restricted at all times. This restriction does not apply to legal hunting activities with dogs outside the City of Eugene.

8. Bicycle travel and equestrian travel is limited to designated routes and areas, except as otherwise permitted in writing by the authorized officer.

9. The possession or consumption of alcoholic beverages is prohibited.

10. Hiking and foot traffic may be limited or closed by the authorized officer in designated areas to protect natural resources.

11. Littering and the disposal of any commercial, industrial or household waste is prohibited.

12. Audio devices creating unreasonable noise and disturbance are prohibited without the written permission of the authorized officer.

13. Smoking may be prohibited by the authorized officer when necessary to protect natural resources and adjacent landowners.

Date of Issue: November 18, 1994.

Judy Ellen Nelson,

District Manager.

[FR Doc. 94–29229 Filed 11–25–94; 8:45 am]

BILLING CODE 4310–33–P

[ID–942–05–1420–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., November 17, 1994.

The plat representing the dependent resurvey of a portion of the fixed and limiting boundary in section 34 (north of the Snake River), Township 5 North, Range 39 East, Boise Meridian, Idaho, Group No. 907, was accepted November 14, 1994.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: November 17, 1994.

Gary T. Oviatt,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 94–29128 Filed 11–25–94; 8:45 am]

BILLING CODE 4310–GG–M

[CO–930–1430–01; COC–57605]

Proposed Withdrawal; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw approximately 6,125 acres of National Forest System lands for 10 years to protect management alternatives in the San Juan National Forest. This notice closes these lands to location and entry under the mining laws for up to two years. The lands remain open to mineral leasing.

DATES: Comments on this proposed withdrawal must be received on or before February 27, 1995.

ADDRESSES: Comments should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: On November 3, 1994, the Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws (30 U.S.C. Ch 2):

San Juan National Forest

New Mexico Principal Meridian

T. 39 N., R. 10 W.,
Sec. 6;
T. 39 N., R. 11 W.,
Secs, 1, 2, and 11;
T. 40 N., R. 10 W.,

Secs, 19, 30, and 31;
T. 40 N., R. 22 W.,
Secs, 13, 14, 23, 24, 25, 26, 35, and 36.

The areas described, excluding all patented lands within the listed sections, aggregate approximately 6,125 acres of National Forest System lands in Dolores County.

The purpose of this withdrawal is to allow the Forest Service to maintain administrative alternatives to management of the land while completing various reports relative to the resources on the land.

For a period of 90 days from the date of publication of this notice, interested parties may submit comments, suggestions, or objections in connection with the proposed action. Prior to final action on this withdrawal, a public meeting will be scheduled. Notice of the meeting will be published in the **Federal Register**.

This application will be processed in accordance with the regulations set forth in 43 CFR part 2310.

For a period of two years from the date of publication in the **Federal Register**, this land will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Forest Service will continue to manage these lands.

Jenny Saunders,

Acting Chief, Branch of Realty Programs.

[FR Doc. 94–29129 Filed 11–25–94; 8:45 am]

BILLING CODE 4310–JB–P

[NM–932–1430–01; NMNM 0437684]

Notice of Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, proposes that a 3,710.00-acre withdrawal for the McGaffey Recreation Area in the Cibola National Forest continue for an additional 20 years. The lands will remain closed to mining, but have been and will remain open to mineral leasing.

DATES: Comments should be received by February 27, 1995.

ADDRESSES: Comments should be sent to State Director, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502, 505–438–7502.

FOR FURTHER INFORMATION CONTACT: Jeanette Espinosa, BLM New Mexico State Office, 505–438–7597.

SUPPLEMENTARY INFORMATION: The United States Department of Agriculture, Forest Service, proposes that the existing land withdrawal made by Public Land Order No. 3350, be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, U.S.C. 1714 (1988). The lands are described as follows:

New Mexico Principal Meridian

Cibola National Forest

T. 13 N., R. 16 W.,
Sec. 2, SW¼;
Sec. 3, W½, N½SE¼, SW¼SE¼, and W½SE¼SE¼;
Sec. 4, N½ and SE¼;
Sec. 9, E½NE¼ and E½SW¼NE¼;
Sec. 10, SW¼NW¼, W½SW¼, and E½SE¼;
Sec. 11, W½;
Sec. 14, N½NE¼NW¼;
Sec. 15, N½N½NE¼.
T. 14 N., R. 16 W.,
Sec. 20, SE¼;
Sec. 28, E½, NW¼, N½N½SW¼, SW¼NW¼SW¼, and W½SW¼SW¼;
Sec. 29, E½;
Sec. 32, NE¼;
Sec. 33, NE¼NE¼, E½NW¼NE¼, NW¼NW¼, S½N½, and S½;
Sec. 34, SW¼.

The areas described aggregate 3,710.00 acres in McKinley County.

The purpose of the withdrawal is to protect the McGaffey Recreation Area in the Cibola National Forest. The withdrawal segregates the lands from the mining laws, but not the mineral leasing laws. No change is proposed in the purpose of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the State Director in the New Mexico State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and the Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long.

The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: November 17, 1994.

Gilbert J. Lucero,

Acting State Director.

[FR Doc. 94–29130 Filed 11–25–94; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Notice of Availability of the Draft Environmental Assessment for the Issuance of a Special Use Permit to the Government of Guam for the Proposed Ritidian Point Territorial Park, Guam National Wildlife Refuge, Dededo, Guam

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the draft Environmental Assessment (EA) for the issuance of a Special Use Permit to the Government of Guam for the proposed Ritidian Point Territorial Park on the Guam National Wildlife Refuge, Dededo, Guam is available for public review.

WRITTEN COMMENTS INFORMATION: Interested agencies, organizations, and individuals are encouraged to provide written comments to the Fish and Wildlife Service within 30 days after publication of this Notice. Address comments to the Refuge Manager as shown below:

FOR FURTHER INFORMATION CONTACT: Kelly Wolcott, Refuge Manager, Guam National Wildlife Refuge, P.O. Box 8134 MOU–3, Dededo, Guam 96912, (671) 355–5096.

Individuals wishing copies of this draft EA for review should immediately contact the above named individual.

SUPPLEMENTAL INFORMATION: Field Supervisor, Jerry Leinecke, Hawaiian and Pacific Islands NWR Complex, is the primary author of this document. The Fish and Wildlife Service, Department of the Interior, has prepared a draft EA on its proposal to issue a Special Use Permit to the Government of Guam for the proposed Ritidian Point Territorial Park within the Guam National Wildlife Refuge.

The Government of Guam proposes to establish and operate the Ritidian Point Territorial Park (RPTP) within an approximate 20.24 ha (50 acres) site of the Ritidian Point Unit of the Guam National Wildlife Refuge (NWR). The RPTP would be operated by the Guam Department of Parks and Recreation with the biological support of the Guam Department of Agriculture, Division of Aquatic and Wildlife Resources, in coordination with the U.S. Fish and Wildlife Service (Service). The proposed RPTP would provide the public with natural history educational and recreational opportunities within the setting of the Ritidian Point Unit of the Guam NWR. The proposed RPTP would be managed to be compatible with the purposes for which the Guam NWR was

established and in accordance with a Special Use Permit issued by the Service to the Government of Guam for the use of the approximate 20.24 ha site within the Ritidian Point Unit.

The proposed action is anticipated to have only minimal direct, indirect, and cumulative effects on the human environment. The establishment, operation and maintenance of the park will occur on a site that has been previously disturbed by construction of fields, pavilions, shelters and Navy buildings and by the past use of the area for recreational purposes by the Navy.

The major alternatives under consideration that were analyzed and evaluated during planning are: (A) Preferred Alternative, establishment of the proposed RPTP on an approximate 20.24 ha (50 acre) site within the Ritidian Point Unit by the Guam Department of Parks and Recreation; (Alternative 2) establishment of a Territorial Park at Tarague Basin, South Finegayan, Falcona Beach, or the Anao Conservation Area at the present time; (Alternative 3) establishment of a public use area at the Ritidian Point Unit by the Service; (Alternative 4) which is the No Action alternative.

Staffs of the Government of Guam, Department of Parks and Recreation and the U.S. Fish and Wildlife Service jointly cooperated to plan, prepare and evaluate the proposals and prepare this draft EA. Detailed information concerning consultation and coordination is contained in Section VII of the draft EA.

All agencies and individuals are urged to provide comments and suggestions for improving this EA as soon as possible. All comments received during the designated comment period will be considered in preparation of the final EA for this proposed action.

Dated: October 31, 1994.

Thomas Dwyer,

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

[FR Doc. 94–29228 Filed 11–25–94; 8:45 am]

BILLING CODE 4310–55–M

INTERSTATE COMMERCE COMMISSION

Notice of Establishment of National Grain Car Council and Request for Suggestion of Candidates for Membership

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Establishment of Federal Advisory Committee.

SUMMARY: As required by Section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App., the ICC hereby gives notice that it has obtained approval from the Office of Management and Budget (OMB) to establish a National Grain Car Council (NGCC) to assist the Commission in fulfilling its obligations to oversee the railroad industry's furnishing of safe and adequate car service for the transportation of grain under reasonable rules and practices, 49 U.S.C. 10321 and 11121(a). The ICC is also requesting suggestions for candidates for membership on the NGCC.

DATES: Suggestions of candidates for membership on the NGCC are due on December 19, 1994.

ADDRESSES: Send suggestions and supporting information (referring to the National Grain Car Council) to: Richard S. Fitzsimmons, Designated Federal Official—National Grain Car Council, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Room 3130, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Richard S. Fitzsimmons, Telephone: (202) 927–5340. TDD for the hearing impaired: (202) 927–5721.

SUPPLEMENTARY INFORMATION: The Commission has traditionally played an integral role in attempting to balance the needs of rail carriers and grain shippers. The regulatory reforms of the Staggers Rail Act of 1980 encourage market-based private solutions to such disputes, with resort to the Commission only when the free market has not successfully resolved a problem. It has become apparent to the Commission that those involved in the shipment of grain by railroad face recurring equipment shortages, and the current mechanisms available for addressing these problems are inadequate piecemeal measures, subject to time-consuming and expensive litigation.

The Commission attempted to encourage discussion between large and small railroads, grain shippers, car manufacturers, and others by hosting a conference in April 1994. See the *Report on the National Grain Car Supply Conference,* Ex Parte No. 519 (Commissioner Simmons August 1994) (*Report*). Despite an airing of competing positions, the parties failed to reach any consensus solutions concerning the problems facing shippers of grain. The *Report* suggested the formation of an NGCC, consisting of representatives of railroads, shippers, and manufacturers, to give these diverse groups an ongoing mechanism for discussion in a forum that is not currently available. Particular areas of discussion for the NGCC include identification of areas where car shortages might occur, new technological developments, grain export policies, new rail car purchases, and continuing advice to the Commission.

The NGCC will meet at least once a year, with such meetings of subcommittees or study groups as the NGCC deems necessary. We anticipate that the NGCC will meet in early 1995. No honoraria, salaries, or travel and per diem is available to members of the NGCC; however, reimbursement for travel expenses may be sought from the Commission in cases of hardship.

Suggestions for candidates for membership on the NGCC should be submitted to the Commission within 20 days. The NGCC will be balanced and representative of all interested and affected parties, and consist of 10 representatives of Class I railroads, 5 representatives of Class II and Class III railroads, 5 representatives of grain shippers and receivers, and 5 representatives of private car owners and car manufacturers. The Vice-Chairman of the ICC will serve as an ex-officio member of the NGCC.

Chairman McDonald has appointed Richard S. Fitzsimmons, Director of the Commission's Office of Congressional and Public Affairs, to serve as the Designated Federal Official—the agency's liaison to the NGCC.

Suggestions for members of the NGCC should be submitted in letter form, identifying the name of the candidate; evidence of the interests the candidate will represent; and a representation that the candidate is willing to serve a two-year term as a member of the NGCC.

Copies of the Charter of the NGCC may be obtained from the Office of the Secretary, Room 2215, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 927–7428 [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: November 21, 1994.

By the Commission, Chairman Gail C. McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 94–29201 Filed 11–25–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32610]

Norfolk and Western Railway Company—Trackage Rights Exemption—Consolidated Rail Corporation

Consolidated Rail Corporation (Conrail) has agreed to grant overhead trackage rights to Norfolk and Western Railway Company (N&W) between milepost 363.0 at Warsaw and milepost 319.2 at Fort Wayne, a distance of approximately 43.8 miles in Allen, Kosciusko, and Whitley Counties, IN. The transaction was to have been consummated on November 23, 1994.

The transaction is intended to alleviate the congestion on N&W's own route between Fort Wayne and Chicago, IL, by giving it an immediate, alternative routing. The trackage rights are temporary and are to be used in connection with a line between Tolleston, IL, and Warsaw that N&W previously purchased from Conrail. N&W will purchase the Warsaw-Fort Wayne line from Conrail on or before January 10, 1996.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to reopen will not stay the exemption's effectiveness. An original and 10 copies of all pleadings, referring to Finance Docket No. 32610, must be filed with the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. In addition, a copy of each pleading must be served on Robert J. Cooney, 3 Commercial Place, Norfolk, VA 23510–2191.

Decided: November 18, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary

[FR Doc. 94–29202 Filed 11–25–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Lodging of Modification of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed modification to the consent decree in *United States* v. *Accurate Partitions Corp., et al.*, Civil Action No. S91–00646M, was lodged on October 19, 1994 with the United States District Court for the Northern District of Indiana. The *Accurate Partitions* decree, which was entered by the Court on February 27, 1992, resolves the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") against the Settling Defendants and the Settling *De Minimis* Defendants for environmental contamination at the Fisher-Calo Superfund Site in LaPorte County, Indiana ("Fisher-Calo Site").

The proposed modification to the *Accurate Partitions* decree adds Lincoln Foodservice Products, Inc. ("Lincoln") and Amphenol Corporation ("Amphenol") as Settling *De Minimis* Defendants to the decree. The United States filed its First Amended Complaint in this case on October 19, 1994, adding Lincoln and Amphenol as defendants in this action. When this action was commenced, Lincoln and Amphenol were not named as defendants in the United States' complaint, nor were they included as Settling *De Minimis* Defendants in Appendix 5 of the consent decree. Nevertheless, these two companies paid their allocable shares of response costs to the Settling Defendants pursuant to Section XXVII of the consent decree, as if they had signed the decree. This proposed modification to the decree would add Lincoln and Amphenol to Appendix 5 of the decree as Settling *De Minimis* Defendants, if the following condition is satisfied: that the Settling Defendants pay to the United States the sum of $25,000 of the $115,262 total amount that Lincoln and Amphenol previously paid to the Settling Defendants pursuant to Section XXVII of the consent decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed modification to the *Accurate Partitions* consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Accurate Partitions Corp., et al.*, (N.D. Ind.) and DOJ Ref. No. 90–11–2–549.

The proposed modification to the decree may be examined at the office of the United States Attorney, Northern District of Indiana, 301 Federal Building, 204 South Main Street, South Bend, Indiana 46601; the Region V office of U.S. EPA, 77 West Jackson Blvd., Chicago, Illinois 60604–3590; and at the Consent Decree Library, 1120 G St., NW., 4th Floor, Washington, DC 20004, (202) 624–0892. Copies of the proposed modification to the *Accurate Partitions* consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy please enclose a check in the amount of $.75 (25 cents per page reproduction costs) payable to "Consent Decree Library."

Joel M. Gross,

Acting Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–29230 Filed 11–25–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Consistent with Departmental policy, 28 CFR 50.7, 38 Fed. Reg. 19029, notice is hereby given that on November 14, 1994, a proposed consent decree in *United States* v. *Federal Pacific Electric Company, Inc. et al.*, Civil Action No. 92–11924T, was lodged with the United States District Court for the District of Massachusetts. The proposed consent decree requires defendants Harold Friedland, Leonard Friedland, and Jack Friedland, and the Friedland Brothers Enterprises Inc. (collectively "the Friedlands"), under certain conditions, to reimburse the United States and the Commonwealth of Massachusetts for $38,500,000 in past and future response costs incurred and to be incurred for response actions in connection with the Norwood PCB Superfund Site in Norwood, Massachusetts, and to pay $1,500,000 in civil penalties and punitive damages for failure to comply with a Unilateral Administrative Order issued in August 1990 to perform the remedy set forth in the Record of Decision for the Site. The $40,000,000 total judgment amount is partially payable from the proceeds of claims the Friedlands have against Cooper Industries, Inc., Cornell-Dubilier Electronics, Inc., and Federal Pacific Electric Company, Inc. for

indemnification under the terms of a lease agreement. The proposed consent decree also guarantees recovery of $7 million from the Friedlands.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Federal Pacific Electric Company, Inc. et al.*, Civil Action No. 92–11924T, D.J. Ref. 90–11–2–372A.

The proposed consent decree may be examined at the Office of the United States Attorney, District of Massachusetts, J.W. McCormack Post Office and Courthouse, Boston, Massachusetts, 02109, and at Region I, Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts, 02203 and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $15.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–29231 Filed 11–25–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Partial Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed partial consent decree in *United States* v. *Ohio Power Company*, Civil Action No. 5:94–CV–100, was lodged on November 15, 1994 with the United States District Court for the Northern District of West Virginia. The proposed partial consent resolves the injunctive relief portion of this case brought under the Clean Air Act against Ohio Power Company, the owner and operator of an electrical generation facility, known as the Kammer Power Plant, located near Moundsville, West Virginia, and reserves the United States' claims for civil penalties. The proposed partial consent was lodged simultaneously with the filing of a complaint, which alleges sulfur dioxide emissions in excess of the limitation imposed under the federally-enforceable West Virginia State Implementation Plan, and seeks civil penalties and injunctive relief. The proposed partial consent decree requires Ohio Power Company to achieve compliance with the West Virginia State Implementation Plan by September 1, 1995. It also contains interim emission limits.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Ohio Power Company*, DOJ Ref. 90–5–2–1–1958.

The proposed consent decree may be examined at the Office of the United States Attorney, Northern District of West Virginia, 1125–1141 Chapline Street, Room 238, Wheeling, W. VA 26003; the Region III Office of the Environmental Protection Agency, 941 Chestnut Street, Philadelphia, PA 19107; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $8.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–29232 Filed 11–25–94; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–29,935]

American Microsystems, Inc., Testing Division, Pocatello, Idaho; Notice of Revised Determination on Reopening

On November 9, 1994, the Department, at the request of the company reopened its investigation for the workers and former workers of the subject firm in Pocatello, Idaho. The initial investigation resulted in a negative determination July 7, 1994 because the workers who produce semiconductors did not meet the decreased sales or production criterion of the Trade Act. The negative determination was published in the **Federal Register** on July 26, 1994 (59 FR 37996).

Findings on reopening show that an appropriate subdivision of the subject firm was adversely affected by increased imports. The Testing Division has decreased production and employment in 1994. Other findings show that the testing operation is gradually being transferred offshore and the tested products (chips and wafers) are imported back to the company. The shutdown process is expected to be completed by March 1995.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with the chips and wafers tested by the Testing Division of American Microsystems, Inc., contributed importantly to the decline in sales or production and to the total or partial separation of workers at the Testing Division of the subject facility. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers and former workers of the Testing Division of American Microsystems, Inc., Pocatello, Idaho who became totally or partially separated from employment on or after May 25, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 14th day of November 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–29223 Filed 11–25–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,105 and TA–W–30,106]

Champion Parts Northeast Division, Beech Creek, PA and Lock Haven, PA; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated October 3, 1994, with support from the Pennsylvania State Legislature, the workers- requested administrative reconsideration of the subject petition for trade adjustment assistance, TAA. The denial notice was issued on September 13, 1994 and published in the **Federal Register** on October 4, 1994 (59 FR 50628).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the workers produce rebuilt auto parts. The Beech Creek plant produces waterpumps, starters, clutches and alternators while the Lock Haven plant produces carburetors.

Its claimed that the company has lost market share because competitors are either importing components or importing the final product.

Investigation findings show that the decreased sales or production criterion and the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act have not been met. The findings show that sales at the subject firm increased in 1993 compared to 1992 and in the first six months of 1994 compared to the same period of 1993. Other findings show that the layoffs are the result of a corporate decision to consolidate their operations by shifting production to other domestic facilities. A domestic transfer of production would not form a basis for a worker group certification.

The findings also show that Champion takes broken and worn out parts and rebuilds them into working parts. Other findings show Champion imports only when a worn out or broken part is not available to rebuild. These company imports account for a very small portion of Champion's sales.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 14th day of November 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–29224 Filed 11–25–94; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than December 8, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 8, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC, 20210.

Signed at Washington, DC, this 7th day of November 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Bridge Mfg Inc. (ILGWU)	Wilkes-Barre, PA	11/7/94	11/1/94	30,462	Ladies' Dresses.
AT&T Network Systems (IBEW)	Columbus, OH	11/7/94	11/1/94	30,463	Communication Units & Components.
SMR Property Management Co (Co)	Oklahoma City, OK	11/7/94	10/27/94	30,464	Oil and Gas.
Range Oil Co (Wkrs)	Winfield, KS	11/7/94	9/19/94	30,465	Oil and Gas.
Weslock National, Inc. (Wkrs)	Sikeston, MO	11/7/94	10/21/94	30,466	Residential Door Locks.
SGS Thomson Microelectronics (Co)	Montgomeryville, PA	11/7/94	10/25/94	30,467	RF & Microwave Power Transistors.
Pontiac Weaving Corp (Wkrs)	Cumberland, RI	11/7/94	9/21/94	30,468	Broard Weave Fabrics.
LaRue Tank Service (Wkrs)	Tennings, KS	11/7/94	10/22/94	30,469	Hauling for Oil & Gas Industry.
Gist-Brocades Food Additives (Co)	East Brunswick, NJ	11/7/94	10/27/94	30,470	Bakers' Yeast.
Elton Leather (Wkrs)	Gloversville, NY	11/7/94	10/18/94	30,471	Finished Leather.
Exxon Co., USA—Santa Ynez Unit (Wkrs).	Thousand Oaks, CA	11/7/94	10/25/94	30,472	Crude Oil & Natural Gas.
Bluestone Farming, Inc (UFW)	Coachells, CA	11/7/94	10/25/94	30,473	Table Grapes.
Wicker Park L.P. (ILGWU)	Herrin, IL	11/7/94	10/26/94	30,474	Ladies Dresses.
Wicker Park L.P. (ILGWU)	Chicago, IL	11/7/94	10/26/94	30,475	Ladies Dresses.
Wicker Park L.P. (ILGWU)	New York, NY	11/7/94	10/26/94	30,476	Ladies Dresses.
Coombs Vermont Natural Products (Wkrs).	Wilmington, VT	11/7/94	11/4/94	30,477	Maple Syrup.

[FR Doc. 94–29226 Filed 11–25–94; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–30,196]

First Image Management Company, Houston, Texas; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated October 2, 1994, one of the petitioners requested administrative reconsideration of the subject petition for trade adjustment assistance, TAA. The denial notice will soon be published in the **Federal Register**.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the workers produce microfilm.

Although the Department's denial was erroneously based on the fact that the workers did not produce an article, the workers still do not meet the "contributed importantly" test of the worker group eligibility requirements of the Trade Act of 1974.

The "contributed importantly" test is generally demonstrated through a survey of the firm's major customers. The Department's survey of the subject firm major declining customers shows that none of the respondents imported microfilming services.

Technological unemployment as in the rapid development of PCs and new disk technology for storing data would not provide a basis for a worker group certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 9th day of November 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–29227 Filed 11–25–94; 8:45 am]
BILLING CODE 4510–30–M

Oshkosh B'Gosh, Inc.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of TA–W–29,543 McKenzie, Tennessee, TA–W–29,544 2660 Oregon St., Oshkosh, Wisconsin, TA–W–29,544A 2748 Oregon St., Oshkosh, Wisconsin, TA–W–29,544B 2728 Oregon St., Oshkosh, Wisconsin, TA–W–29,544C 164 W. 28th St., Oshkosh, Wisconsin.

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 29, 1994, applicable to all workers of Oshkosh B' Gosh's facilities at McKenzie, Tennessee; 2660 Oregon Street and 2748 Oregon Street in Oshkosh, Wisconsin. The Notice was published in the Federal Register on April 13, 1994 (59 FR 17570).

The Department reviewed the certification for the workers of the subject firm. New findings show that two distribution centers in Oshkosh, Wisconsin (2728 Oregon St and 164 W. 28th Avenue) which handle mostly domestic corporate merchandise from McKenzie and Camden Tennessee and Oshkosh, Wisconsin closed in September, 1994. The Camden plant was certified under petition TA–W–28,622.

The intent of the Department's certification is to handle all workers of Oshkosh B'Gosh who were affected by increased imports of children's and men's workwear bibs, jackets and jeans.

The amended notice applicable to TA–W–29,543 and 29,544 is hereby issued as follows:

All workers of Oshkosh B'Gosh, McKenzie, Tennessee (TA–W–29,543), who became totally or partially separated from employment on or after January 31, 1993 and all workers of Oshkosh B'Gosh 2660 Oregon Street (TA–W–29,544); 2748 Oregon Street (TA–W–29,544A); 2728 Oregon Street (TA–W–29,544B) and 164 W. 28th Avenue (TA–W–29,544C) in Oshkosh, Wisconsin who become totally or partially separated from employment on or after February 15, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 14th day of November 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–29225 Filed 11–25–94; 8:45 am]
BILLING CODE 4510–30–M

[NAFTA–00211, NAFTA–00211A, NAFTA 00211B]

Alfred Angelo, Inc., Horsham, PA, Hatboro, PA and Willow Grove, PA; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on September 20, 1994, applicable to all workers of the subject firm in Horsham, Pennsylvania. The notice was published in the **Federal Register** on October 5, 1994 (59 FR 50776).

At the request of the State Agency the Department reviewed the certification for workers of the subject firm. New findings show that worker production declines and worker separations occurred at Alfred Angelo, Inc., in Hatboro, Pennsylvania and willow Grove, Pennsylvania during the relevant period. Company imports increased in 1993 compared to 1992 and in the first six months of 1994 compared to the same period in 1993.

The intent of the Department's certification is to include all workers who were adversely affected by increased imports. Accordingly, the Department is amending the certification to include the Hatboro, Pennsylvania and Willow Grove, Pennsylvania locations of Alfred Angelo, Inc.

The amended notice applicable to NAFTA–00211 is hereby issued as follows:

All workers of Alfred Angelo, Inc., located in Horsham, Pennsylvania, Hatboro, Pennsylvania and Willow Grove, Pennsylvania who became totally or partially separated from employment on or after December 8, 1993 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 9th day of November 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–29222 Filed 11–25–94; 8:45 am]
BILLING CODE 4510–30–M

Job Training Partnership Act, Title III Program; Career Management Accounts

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and solicitation for grant application (SGA).

SUMMARY: The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), announces a demonstration program to provide dislocated workers with re-employment and retraining services through individual career management accounts. The demonstration program will be funded with Secretary's National Reserve funds appropriated through Title III of the Job Training Partnership Act (JTPA). This notice describes the process that eligible entities must use to apply for demonstration funds, the subject area for which applications will be accepted for funding, how grantees are to be selected, and the responsibilities of grantees. It is anticipated that up to $3 million will be available for funding the demonstration projects covered by this solicitation. *Everything needed to apply is contained in this announcement.*

DATES: Applications for grant awards will be accepted commencing November 28, 1994. The closing date for receipt of applications will be January 20, 1995, at 2:00 p.m. (Eastern Time) at the address below.

ADDRESSES: Applications shall be mailed to: U.S. Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, Attention: Mr. Willie E. Harris, Reference: SGA/DAA 94–22, 200 Constitution Avenue, NW., Room S–4203, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. Willie E. Harris, Division of Acquisition and Assistance, Telephone: (202) 219–8706 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This announcement consists of four parts. Part I describes the authorities and purpose of the demonstration program and identifies demonstration policy and topics. Part II describes the application process and provides detailed guidelines for use in applying for demonstration grants. *There is no separate application package.* Part III includes the statement of work for the demonstration projects. Part IV identifies and defines the selection criteria which will be used in reviewing and evaluating applications. Part V describes the reporting requirements.

Part I. Background

A. Authorities

Section 324 of the Job Training Partnership Act authorizes the use of funds reserved under Part B of Title III for demonstration programs of up to three years in length. Under section 324, the Secretary is required to conduct or provide for an evaluation of the success of each demonstration program.

B. Purpose of the Demonstration

Projects funded through this solicitation are to provide reemployment and retraining services—as described in sections 314(c), 314(d) and 314(e) of JTPA—to dislocated workers through the use of individual career management accounts. The goals of career management accounts are to:

—Increase customer choice;
—Allow maximum flexibility in customizing services, and service delivery, to the needs of the individual dislocated worker;
—Expand the resources and sources of assistance which are available to the individual dislocated worker.

The purpose of this demonstration is to determine if career management accounts are an administratively feasible approach for achieving these goals.

C. Demonstration Policy

1. Awards

DOL will select three to five applicants to conduct demonstrations of the use of career management accounts. It is anticipated that individual grant awards will be up to a maximum of $1,000,000 each.

2. Evaluation

Each grantee must establish a process whereby eligible dislocated workers are referred, after an assessment of individual needs, to a treatment group which will be served through the use of career management accounts. As described in Sections III.F and III.G of this solicitation, project designs will be expected to address both quantitative and qualitative measures of participant outcomes, including customer satisfaction.

Under a separate announcement, DOL will select and fund separate evaluation contractors to: (1) provide technical assistance to selected grantees in establishing appropriate data collection methods and processes; and (2) conduct an independent evaluation of the outcomes, impacts and benefits of the demonstration projects. Grantees will be expected to make available participant records and access to personnel, as specified by the evaluation contractor.

In addition, DOL will establish, for each demonstration project site, an oversight group made up of federal, State and substate staff.

3. Eligible Participants

Workers eligible for assistance under these demonstration grants are those individuals who are "eligible dislocated workers" in accordance with Section 301(a) or Section 314(h) of the Job Training Partnership Act (JTPA).

4. Allowable Activities

Grant funds awarded under this demonstration may be used to provide the services described in JTPA Section 314(c), Section 314(d) and Section 314(e). These services are more fully described in the statute. In addition, funds may be used to cover the costs of developing and implementing processes or mechanisms by which an individual worker can manage his/her "career account" and access payments for the costs of reemployment and retraining services at qualified providers. Funds may also be used to cover administrative costs, including the costs associated with establishing coordination with the unemployment compensation system, as described at Section 314(f).

5. Cost Limitations

Demonstration grants are not subject to the cost limitations for formula-funded Title III grants at Section 315 of the JTPA. However, any offeror proposing administrative costs that exceed 15 percent of the budget or needs-related payments and supportive services that exceed 25 percent of the funds requested in the application shall provide a narrative justification.

D. Demonstration Topic

DOL is soliciting applications for demonstrations of the feasibility of establishing career management accounts for individual workers. Career management accounts are funding commitments, which can be accessed by eligible individuals, to pay for the cost of training and other career or employment transition services allowable under the grant. The career management account is intended to provide maximum flexibility to the individual worker in selecting the types, timing and sources of career and employment transition assistance. The account is tied to the individual worker. However, to optimize the use of resources available from other funding sources, the account should provide the means to accept credits or deposits from multiple sources.

Part II. Application Process

A. Eligible Applicants

Eligible applicants for demonstration projects funded under this announcement are States and Title III substate grantees. States and substate grantees are defined at Section 301 of the Act. An application from a State agency shall be submitted by the Governor. An application from a substate grantee shall include written comments from the Governor. An application from a state should include comments, or a letter of support, from each substate area in which the Career Management Account System is to be implemented.

To adequately test the career management account concept, applicants must be able to serve at least 200 individuals during the grant period of performance. It is expected that funds under this grant will provide no more than 50% of the funding support for the career management accounts. Other public and private funds, including JTPA Title III formula funds, should be used to provide the additional funding support.

DOL expects that, in such cases where more than one eligible entity (e.g., State and SSG, two or more adjacent SSGs) wishes to apply for a grant to serve the same target population, applicants will establish appropriate linkages and submit a single application under a single proposed administrative entity.

B. Submission of Proposals

An original and three (3) copies of the proposal shall be submitted. The proposal shall consist of two (2) separate and distinct parts—Part I, the Financial Proposal, and Part II, the Technical Proposal.

1. *Financial Proposal.* The Financial Proposal, Part I, shall contain the SF–424, "Application for Federal Assistance" (Appendix No. 1), and SF 424–A, "Budget" (Appendix No. 2). The Federal Domestic Assistance Catalog number is 17.246. The budget shall include on separate pages: a cost analysis of the budget, identifying in detail the amount of each budget line item attributable to each of the Title III cost categories at Section 314 of JTPA for funds requested through this grant; and an identification of the amount of each budget line item which will be covered by other funds, and the sources of those funds (including employer funds, in-kind resources, secured and unsecured loans, grants, and other forms of assistance, public and private).

Federal funds cannot be used to support training which an employer is in a position to, and would otherwise, provide. Federal funds may not be used for acquisition of production equipment. The only type of equipment that may be acquired with Federal funds is equipment necessary for the operation of the grant. Grant funds may cover *only* those costs which are appropriate and reasonable. In the instance of a purchase, the cost of the equipment is to be prorated over the projected life of the equipment to determine the cost to the grant. Awardee must receive prior approval from the Department of Labor/Employment and Training Administration's Property Officer for the purchase and/or lease of any property and/or equipment with a per unit acquisition cost of $5,000 or more, and a useful life of more than one year as defined in OMB Circulars A–102 and A–110. This includes the purchase of ADP equipment. The request must be directed through your GOTR and must include a detailed description and cost of the items to be acquired.

Applicants may budget limited amounts of grant funds to work with technical expert(s) to provide advice and develop more complete project plans.

2. *Technical Proposal.* The technical proposal, Part II, shall demonstrate the offeror's capabilities in accordance with the Statement of Work in Section III. NO COST DATA OR REFERENCE TO PRICE SHALL BE INCLUDED IN THE TECHNICAL PROPOSAL.

3. *Page Count Limit.* Applications are to be limited to 30 single-side pages, single-spaced. The technical proposal should include a 2 to 3 page executive summary.

C. Hand-Delivered Proposals

Proposals should be mailed at least five (5) days prior to the closing date. However, if proposals are hand-delivered, they must be received at the designated place by 2 p.m., Eastern Time by January 20, 1995. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified time and closing date. Telegraphed and/or faxed proposals will not be honored. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness.

D. Late Proposals

Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by the U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of the application (e.g., an offer submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been mailed by the 15th); or

(2) Was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of mailing of a late proposal sent either by the U.S. Postal Service registered or certified mail is the U.S. postmark both on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late proposal sent by "Express Mail Next Day Service—Post Office to Addressee" is the date entered by the post office receiving clerk on the "Express Mail Next Day Service—Post Office to Addressee" label and the postmark on both the envelope and wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

E. Withdrawal of Proposals

Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Proposals may be withdrawn in person or by an applicant or an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal before an award.

F. Period of Performance

The period of performance will be from the date of grant execution through June 30, 1997.

G. Funding

DOL has set aside up to $3 million to be disbursed, contingent upon resources being available for this purpose. It is expected that grant awards will be up to a maximum of $1 million each.

H. Option to Extend

Based on the availability of funds, effective program operation and the needs of the Department, options for annual funding of up to two (2) additional years for project operation may be provided.

Part III. Government's Requirement/ Statement of Work Solicitation Specifications

Each application must include in the appropriate section(s): (1) Information that indicates adherence to the provisions described in Part I of this announcement; (2) information that responds to the requirements in this part; and (3) other information the offeror believes will address the selection criteria identified in Part III. Each application should follow the format outlined here:

A. Target Group

A description of the process to be used to identify participants to be served through this demonstration project from among the total number of eligible individuals. A description of the criteria and process for selecting individuals to be served through Career Management Accounts from the total number of eligible dislocated workers. For the purpose of this demonstration, participants should be selected from those eligible individuals who are in need of more intensive assistance, including education and training services.

B. Components of the Career Management Account System

An identification of the major elements of the career management account system and a description of how the system works in terms of the individual worker getting access to the reemployment and retraining services which that individual needs. Specifically:

- How will the reemployment and retraining service needs of the individual worker be determined?
- What information will be available to the worker to identify and evaluate alternative reemployment opportunities? How will this information be developed? How will the worker be able to access this information?
- What services will be covered by the career management account?
- How will qualified providers, which can be used by participants with career management account funds, be determined?
- What information will be available to the worker to identify and evaluate optional providers of services and training? How will this information be developed?
- How will the worker be able to access this information?
- How will the amount of funds in an individual's career management account be determined?
- How are funds in the career management account accessed?
- What is the time period in which the account is available to an individual (i.e. is there an established expiration date at the time of issuance)?
- How will a participant's continuing participation in the program be monitored? At what point(s) will termination occur?

C. Use of Existing Services and Resources

An identification of the specific sources and amounts of other funds which will be used, in addition to funds provided through this grant, to implement the project. The application must include information on the non-JTPA resources committed to this project, including employer funds, secured and unsecured loans, grants, and other forms of assistance, public and private. The application shall also describe the relationship of this project to the ongoing assistance to dislocated workers through the formula-funded JTPA Title III program(s) in the service area.

D. Coordination and Linkages

A description of the consultation with relevant parties in developing the project design and of the role of these parties in implementing the project. Required consultation shall include: State JTPA Dislocated Worker Unit, Substate Title III grantee(s) and administrative entity(ies), organized labor, and local organizations in the project service area providing education, training and supportive services.

E. Participant Services

A description of the services to be available and/or provided to participants. The services supported with funds under this grant must be allowable under Section 314 of the Act. This description should include a participant service flowchart indicating the sequence in the participant service process and the criteria/decision points which are used to determine the appropriateness of specific services for individual participants.

F. Outcomes

A description of the project outcomes and of the specific measures, and planned achievement levels, that will be used to determine the success of the project. These outcomes and measures should include, but are not limited to:

- The number of participants projected: to be enrolled in services, to successfully complete services through the project, and to be placed into jobs;
- Measurable effects of the services provided to project participants as indicated by gains in individuals' skills, competencies, or other outcomes;
- Average wages of participants prior to and at completion of project;
- Customer satisfaction with the new job compared to the job from which they were dislocated;
- Other measures of customer satisfaction that relate to both the outcomes attained and the service process; and
- Any additional measurable, performance-based outcomes that are relevant to the proposed intervention and which may be readily assessed during the period of performance of the project.

[**Note:** An explanation of how such additional measures are relevant to the purpose of the demonstration program shall be included in the application.]

The applicant shall include in its proposal Program Year 1993 performance data on these measures, to the extent feasible, for its regular JTPA Title III program.

The proposal shall also describe how outcomes achieved by individuals using career management accounts will be compared to outcomes achieved by individuals receiving assistance through the existing JTPA Title III program service process.

G. Customer feedback

Provide a description of the process and procedures to be used to obtain feedback from individuals—both those served through the project and those served through the regular JTPA Title III program—on the responsiveness and effectiveness of the services provided. The description should include an identification of the types of information to be obtained, the method(s) and frequency of data collection, and how the information will be used in implementing and managing the project. It is expected that grantees may employ focus groups and surveys, in addition to other methods, to collect feedback information.

H. Replicability

Provide a description of the applicant's plans for continuing or replicating the project.

I. Definitions

Unless otherwise indicated in this announcement, definitions of terms used herein shall be those definitions found in the Job Training Partnership Act, as amended, particularly at Section 4 and Section 301.

Part IV. Evaluation Criteria

Prospective offerors are advised that the selection of grantee(s) for award is to be made after careful evaluation of proposals by a panel of specialists selected by DOL. Panelists will evaluate the proposals for acceptability with emphasis on the various factors enumerated below. The panel results are advisory in nature and not binding on the Grant Officer. Evaluations will be made on the basis of both what the proposed offeror intends to do during the grant period, and on the usefulness of the demonstration after the end of the grant period.

A. Technical Evaluation (75 points)

Services and Target Group. The responsiveness of the services to be provided, including the degree to which the services appear to meet the needs of the target population. The degree to which the services to be provided and the process for selecting eligible individuals to be served through individual career management accounts are appropriate to the objectives of this demonstration. (20 points)

Career Management Account System Design. The completeness of the description of career management system. The extent to which the system creates more flexibility and individual choice for the individual worker. The extensiveness/scope of the service provider network. (30 points)

Coordination and Linkages; Utilization of Resources. The extent to which the project will be integrated with other existing public and private resources, and is supported by appropriate State and local organizations. Extent to which project design clearly leverages funds from non-JTPA sources. (15 points)

Evaluation and replicability. The completeness of the description of the methods which will be used to determine the performance of the project, including assessments of customer satisfaction. The likelihood that the approach may be applicable to the full range of dislocated worker programs across the country. (10 points)

B. Cost Evaluation (25 points)

The cost effectiveness of the project as indicated by the relationship of proposed costs to number of participants to be served, the range of services to be provided and the planned outcomes.

Applicants are advised that discussions may be necessary in order to clarify any inconsistencies in their applications. Applications may be rejected where the information required is not provided in sufficient detail to permit adequate assessment of the proposal. The final decision on the award will be based on what is most advantageous to the Federal Government as determined by the ETA Grant Officer.

Part V. Reporting Requirements

A. Dislocated Worker Special Project Reports as required by the grant award documents.

B. Quarterly Financial Reports.

C. Quarterly Progress Reports.

D. Final Project Report including an assessment of project performance.

Appendices

No. 1—Application for Federal Assistance (Standard Form 424)

No. 2—Non-Construction Budget Form (Standard Form 424A)

No. 3—Financial Status Report Form (Standard Form 269)

Signed at Washington, D.C., this 18th day of November, 1994.

Janice E. Perry

Grant/Contracting Officer.

Application for Federal Assistance

1. Type of Submission:
Application
☐ Construction
☐ Non-Construction
Preapplication
☐ Construction
☐ Non-Construction
2. Date Submitted _____
3. Date Received by State _____
4. Date Received by Federal Agency _____
Applicant Identifier _____
State Application Identifier _____
Federal Identifier _____
5. Applicant Information:
Legal Name: _____
Organizational Unit: _____
Address _____
(*give city, county, state, and zip code*):
Name and telephone number of the person to be contacted on matters involving this application: _____
(*give area code*)
6. Employer Identification Number (EIN):
7. Type of Applicant:
(*enter appropriate letter in box*) ☐
A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____
8. Type of Application:
☐ New
☐ Continuation
☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐
A. Increase Award
B. Decrease Award
C. Increase Duration
D. Decrease Duration
Other (*specify*):
9. Name of Federal Agency:
_____
10. Catalog of Federal Domestic Assistance Number:
11. Descriptive Title of Applicants Project:
Title: _____
12. Areas Affected by Project _____
(*cities, counties, states, etc.*):
13. Proposed Project:
14. Congressional Districts of:
Start Date _____
Ending Date _____
a. Applicant _____
b. Project _____
15. Estimated Funding:
a. Federal.....$.00
b. Applicant.....$.00
c. State.....$.00
d. Local.....$.00
e. Other.....$.00
f. Program Income.....$.00
g. Total.....$.00
16. Is Application Subject to Review by State Executive Order 12372 Process?
a. Yes. This preapplication/application was made available to the State Executive Order 12372 Process for Review on:
Date _____
b. No.
☐ Program is Not Covered by E.O. 12372
☐ Or Program has not Been Selected by State for Review
17. Is the Applicant Delinquent on any Federal Debt?
☐ Yes If "Yes." attach an explanation
☐ No
18. To the best of my knowledge and belief. All data in this application/preapplication are true and correct, the document has been duly authorized by the governing body of the Applicant and the Applicant will comply with the attached assurances if the assistance is awarded
a. Typed Name of Authorized Representative _____
b. Title _____
c. Telephone number _____
d. Signature of Authorized Representative _____
a. Date Signed _____
Previous Editions Not Usable.
Standard Form 424 (REV 4–88)
Prescribed by OMB Circular A–102

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item No. and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Part II—Budget Information

SECTION A—BUDGET SUMMARY BY CATEGORIES

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. Total Funds Requested (Lines 8 through 10)			

SECTION B—COST SHARING/MATCH SUMMARY (IF APPROPRIATE)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. Total Cost Sharing/Match (Rate %)			

Note: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

(Instructions on Back of Form)

[FR Doc. 94–29143 Filed 11–25–94; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 94–71]

Correction of Grant of Class Exemption To Permit Certain Transactions Authorized Pursuant to Settlement Agreements Between the U.S. Department of Labor and Plans

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Correction.

In FR Doc. 94–24874 appearing in the issue of Friday, October 7, 1994, on page 51217, second column, twenty-seventh line from the bottom, insert "406(a)(2)," before "406(b)(1)".

Signed at Washington, D.C., this 22nd day of November 1994.

Ivan L. Strasfeld

Director, Office of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 94–29170 Filed 11–25–94; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 94–80; Exemption Application No. D–9178 and D–9179, et al.]

Grant of Individual Exemptions; Banque Paribas (the Bank) and Paribas Asset Management, Inc., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of

the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Banque Paribas (the Bank) and Paribas Asset Management, Inc. (the Manager; collectively, the Applicants) Located, respectively, in Paris, France and New York, New York

[Prohibited Transaction Exemption 94–80; Application Nos. D–9178 and D–9179]

Exemption

The restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the guarantee by the Bank to an employee benefit plan (the Plan) that retains the Manager as investment manager for such plan of the value of the Plan's principal investment with the Manager, provided that each of the following conditions is satisfied: (1) The fiduciaries of the Plan who are responsible for the selection and retention of the Manager as investment manager for the Plan, and for the selection of the guarantee from the Bank, are independent of the Manager, the Bank, and their affiliates; (2) no separate fee or remuneration is payable by the Plan or any other person to the Manager, the Bank, or any of their affiliates for the guarantee; (3) the Plan is entitled to cancel the investment management agreement with the Manager, and/or the guarantee provided by the Bank, at any time upon reasonable notice; (4) the agreement between each Plan and the Manager and the Bank will be amended to provide that, for purposes of enforcing the Bank's guarantee, the determination of the value of a Plan's assets under the Manager's investment management at any relevant time shall be made pursuant to objective standards determined jointly by the Manager and the Plan's custodian, which is the bank or other entity holding the assets of the Plan or other Plan fiduciary responsible for causing the Plan to enter into the agreement; (5) however, if the Manager and the Plan's custodian are unable to agree as to the value of the Plan's account, they will jointly select a qualified appraiser to make this determination; if they are unable to agree on an appraiser, the Manager and the Plan's custodian will each select a qualified appraiser and the value will be determined by mutual agreement of such appraisers or, if they cannot agree, by a third qualified appraiser designated by the two appraisers, and all such appraisers will be independent of the Manager; and (6) the investment management agreement between each Plan and the Manager and the Bank will provide: (a) that income from any lending from a Plan's account will be credited to the Plan's account and not to the Manager's account, and (b) that no lending of this type will occur under circumstances where the borrower is a party in interest or disqualified person with respect to the Plan, unless the conditions of Prohibited Transaction Exemptions 81–6 (52 FR 18754, May 19, 1987) and 82–63 (47 FR 14084, April 6, 1982, as corrected by 47 FR 16437, April 16, 1982)] are satisfied.

For purposes of this exemption, the term "affiliate" of another person means any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such person, provided that the Manager shall not be deemed an affiliate of another person solely because the Manager has investment management authority or discretion over the assets of the other person. For purposes of the foregoing, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual. Further, for purposes of this exemption, a Plan fiduciary shall be deemed "independent" of a person only if: (1) the fiduciary is not an affiliate, as defined above, of such person; and (2) the fiduciary has no other relationship to or interest in such persons that might affect the exercise of such fiduciary's best judgment as a fiduciary.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 19, 1994, at 59 FR 47947.

FOR FURTHER INFORMATION CONTACT: Louis Campagna of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Del Monte Savings Plan, and Del Monte Certain Hourly Savings Plan (the Plans) Located in San Francisco, CA

[Prohibited Transaction Exemption 94–81; Exemption Application Nos. D–9767, D–9768]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the extension of credit to the Plans (the Loan) by Del Monte Corporation, the sponsor of the Plans, with respect to the Plans' interests in guaranteed investment contract No. CG01300B3A (the GIC) issued by Executive Life Insurance Company of California (Executive Life); and (2) the Plans' potential repayment of the Loan (the Repayments); provided that the following conditions are satisfied:

(A) All terms and conditions of such transactions are no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with unrelated parties;

(B) No interest or expenses are paid by the Plans;

(C) The Loan is made in lieu of amounts to be paid to the Plan under the plan of rehabilitation resulting from the bankruptcy of Executive Life (the Rehab Plan);

(D) The Repayments shall not exceed the principal amount of the Loan;

(E) The Repayments shall not exceed the amounts actually received by the Plans under the Rehab Plan; and

(F) Repayment of the Loan shall be waived to the extent that the amount of the Loan exceeds the amount of cash recovered by the Plans under the Rehab Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 30, 1994 at 59 FR 50008.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 22nd day of November, 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 94–29169 Filed 11–25–94; 8:45 am]

BILLING CODE 4510–29–P

[Application No. D–9743, et al.]

Proposed Exemptions; Sammons Enterprises, Inc. Employees Stock Ownership Trust et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor.Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Sammons Enterprises, Inc. Employee Stock Ownership Trust (the Trust) Located in Dallas, Texas

[Exemption Application No. D–9743]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) by certain accounts (the Prior Plan Accounts) in the Trust of certain limited partnership interests (the Limited Partnership Interests) and an undivided interest in certain real property (the Property Interest; collectively, the Interests) to Otter, Inc. (Otter), a party in interest with respect to the Trust.

This proposed exemption is conditioned upon the following requirements: (1) All terms and conditions of the Sale are at least as favorable to the Prior Plan Accounts as those obtainable in an arm's length transaction; (2) the Sale is a one-time cash transaction; (3) the Prior Plan Accounts are not required to pay any commissions, costs or other expenses in connection with the Sale; (4) the Prior Plan Accounts receive a sales price equal to the greater of: (a) the fair market value of the Interests as determined by qualified, independent appraisers; or (b) the Prior Plan Accounts' aggregate costs of acquiring and holding the Interests; (5) the trustee of the Trust determines that the Sale is appropriate for the Prior Plan Accounts and is in the best interests of the Prior Plan Accounts and their participants and beneficiaries; (6) the Prior Plan Accounts, prior to the Sale, obtain the written consent of the general partner of each of the limited partnerships involved with respect to the sale of the Limited Partnership Interests; and (7) the other partners of such limited partnerships, as per the limited partnership agreements, are given the right of first refusal with

respect to the Limited Partnership Interests.

Summary of Facts and Representations

1. Sammons Corporate Services, Inc. (SCSI), an affiliate of Sammons Enterprises, Inc. (SEI), sponsors a defined contribution plan designated as the Sammons Employee Stock Ownership Plan (the Plan), the assets of which are the corpus of the Trust. SEI is the common parent of Consolidated Investment Services, Inc. (CIS), of which Otter, SCSI and many other corporations are subsidiaries. SEI, through various wholly owned subsidiaries, is involved in a variety of industries, including the insurance, cable television, industrial supply and bottled water industries. Otter is engaged primarily in the business of collecting and monetizing debts incurred in oil and gas related transactions.

2. As of December 31, 1993, the Trust had total assets of $101,618,265 and 2,242 participants. The trustee of the Trust (the Trustee) is Texas Commerce Bank, N.A., formerly Ameritrust, N.A. The Trustee has the sole investment discretion with regard to the Trust's assets. The purpose of the Plan is to invest primarily in the outstanding stock of SEI (the Stock), which is not publicly traded.[1] As of December 31, 1993, the Trust held approximately ninety-eight percent of its assets in the Stock. The Trust owns 7.65 percent of the Stock; the balance of the outstanding stock is privately held.

3. In 1960, Texas Marine & Industrial Supply Company (TMIS), a Texas corporation engaged in the business of selling marine supplies, adopted the Texas Marine & Industrial Supply Company Profit Sharing Plan (the TMIS Plan). In 1971, TMIS was acquired by TMI Supply Company and, as a result of that transaction, became a member of the consolidated group of which SEI is the common parent. Effective 1991, the TMIS Plan merged into the Plan. As a result of this merger, the existing TMIS Plan accounts were frozen and all future contributions under the TMIS Plan were discontinued. The Prior Plan Accounts consist of these frozen accounts which have been maintained as separate accounts for TMIS employees under the Trust and have continued to be invested in assets other than the Stock, such as the Interests described herein below and certain liquid investments in securities.

The Prior Plan Accounts involve forty-three participants. The fair market value of the assets in the Prior Plan Accounts totalled $1,994,394 as of December 31, 1993. The Interests account for approximately twenty-five percent of the Prior Plan Accounts' assets. Several TMIS employees who have substantial amounts in the Prior Plan Accounts are expected to retire in the near future. Therefore, the Trust must convert the assets in the Prior Plan Accounts into more liquid investments to insure that sufficient cash will be available to make such distributions. Because Otter has offered to purchase the Interests at a price higher than any actual or anticipated offers resulting from the Trustee's efforts to sell the Interests to an unrelated party, the Trustee proposes to sell the Interests to Otter for the greater of: (a) The fair market values of the Interests as determined by qualified, independent appraisers; or (b) the Prior Plan Accounts' aggregate costs of acquiring and holding the Interests. The Sale will be a one-time cash transaction, and the Prior Plan Accounts will not be required to pay any fees, commissions or expenses in connection with the Sale. The Trustee has determined that the Sale is appropriate for the Prior Plan Accounts and is in the best interests of the Prior Plan Accounts and their participants and beneficiaries. However, the Sale will be subject to the Prior Plan Accounts obtaining, prior to the Sale, the written consent of the general partner of each of the limited partnerships involved with respect to the sale of the Limited Partnership Interests. In addition, the other partners of such limited partnerships, as per the limited partnership agreements, must be given the right of first refusal with respect to the Limited Partnership Interests. The inability of the Prior Plan Accounts to sell one of the Limited Partnership Interests to Otter either due to the failure of the Prior Plan Accounts to obtain the written consent of the general partner or the exercise of the right of first refusal by any partner does not preclude the sale of the other Limited Partnership Interest to Otter if the requisite conditions are met. Accordingly, Otter and the Trustee request an administrative exemption from the Department to permit the Sale of the Interests under the terms and conditions described herein.

The Limited Partnership Interests

4. The Limited Partnership Interests consist of a 22.50 percent interest in Sunbelt Commercial Associates (Sunbelt Commercial) and two interests—a 14.15 percent Class A interest and a 14.5 percent Class B interest—in Sunbelt City, Ltd. (Sunbelt Oklahoma). (Sunbelt Commercial and Sunbelt Oklahoma are collectively referred to as the Limited Partnerships). The Prior Plan Accounts acquired the Limited Partnership Interests as a result of a series of purchases occurring between 1981 and 1993, in the case of Sunbelt Commercial, and 1982 and 1984, in the case of Sunbelt Oklahoma. The Prior Plan Accounts made such purchases either directly from the Limited Partnerships or from withdrawing limited partners. The general partners of both Limited Partnerships, as well as the other investors, are unrelated to the Prior Plan Accounts, SEI and its affiliates. The Limited Partnerships were formed for the purpose of investing in real estate through a sale-leaseback arrangement with Cyclops Inc. (Cyclops). In 1982, the Limited Partnerships purchased certain properties in Tulsa and Oklahoma City from Cyclops and leased such properties back to Cyclops for use by its Silo Division for the retail sale of major electrical appliances. The leases are triple net leases for a term of fifteen years with two five-year lessee renewal options. In 1993, Cyclops closed its Silo stores in the Tulsa and Oklahoma City locations but has advised the Limited Partnerships that it intends to honor its lease agreements.

The Prior Plan Accounts invested $250,600 in Sunbelt Commercial and $230,089 in Sunbelt Oklahoma with the total Prior Plan Account investment in the two Limited Partnerships amounting to $480,689. As of December 31, 1993, the Prior Plan Accounts had received distributions representing returns of capital totaling $480,689 and income distributions totaling $146,064 for the two Limited Partnerships combined. Sunbelt Commercial and Sunbelt Oklahoma have experienced average compounded rates of return of 10.1 percent and 10.8 percent, respectively.

Annual valuations of interests in both partnerships are furnished, on behalf of the general partners, to investors by Churchill Management Corporation (Churchill), the investment adviser to the Limited Partnerships. The applicants represent that Churchill is independent of, and unrelated to, the Prior Plan Accounts, SEI and its affiliates. Based upon the valuation reports from Churchill dated February

[1] The applicants represent that the Stock is qualifying employer securities (QES) within the meaning of section 407(d)(5) of the Act and that the exemption provided by section 408(e) of the Act applies to the acquisition of the Stock by the Trust. In this proposed exemption, the Department expresses no opinion on whether the Stock constitutes QES within the meaning of section 407(d)(5) of the Act or whether the requirements of the statutory exemption, as set forth by section 408(e) of the Act, have been met by the Trust under the circumstances described.

14, 1994, the aggregate fair market value of the Limited Partnership Interests for the three Limited Partnership investments was $400,508 as of December 31, 1993.

Substantially all of the assets of each Limited Partnership consist of its real estate and its lease contract with Silo. The Limited Partnerships' only other material asset is cash. Therefore, Churchill bases its valuation of the Limited Partnerships on the fair market values of the underlying assets of the Limited Partnership, which are the Tulsa and Oklahoma City properties, plus the Limited Partnerships' available cash. Independent, qualified appraisers annually value these underlying properties.

The most recent appraisals, dated January 14, 1994, by Duane J. Blevins, MAI of Tulsa, Oklahoma, taking into account the existing long-term leases on the properties, place primary emphasis on the income approach. Mr. Blevins placed the fair market values on the Tulsa and Oklahoma City properties at $950,000 and $1,250,000, respectively. Mr. Blevins notes that the values of these properties have declined since the closing of the Silo stores because the Limited Partnerships will not be able to renew the lease with Cyclops. As a result, Mr. Blevins further notes, the Limited Partnerships, as owners, will be faced with added expenses such as marketing, leasing commissions, vacancy and possibly up-front renovation costs for a prospective tenant. The applicants represent that the Limited Partnership Interests are highly illiquid investments for which there is a very limited secondary market.[2] On March 14, 1994, an attorney for the Trust contacted Churchill and inquired whether either the general partner or any of the other limited partners would be interested in purchasing the Limited Partnership Interests. On April 6, 1994, Churchill advised the attorney that none of the Limited Partners were interested in purchasing those interests and that the general partner would consider purchasing them at a purchase price equal to one third to one half of their original purchase price.

The Real Property Interest

5. The Property Interest consists of a 3.125 percent undivided interest in a 117,956 square foot retail center with a 1,500 square foot addition and the underlying land (collectively, the Property). The Property is located at 5029–5139 Austell Road in Cobb County, Georgia.

On November 30, 1988, the TMIS Plan participated with unrelated investors in a loan in the original amount of $1,600,000 to Atlanta Austell Plaza, Ltd. (Atlanta Ltd.), a California limited partnership which was unrelated to the Prior Plan Accounts.[3] The TMIS Plan's contribution was $50,000 or 3.125 percent of the total principal amount. A second deed of trust on the Property secured the loan. The first deed of trust, originally held by the Fulton National Bank of Atlanta, secured a loan in the original principal amount of $1,800,000. The first deed of trust note was subsequently assigned to Western Savings Bank and is now held by Meritor Savings Bank (formerly known as Philadelphia Savings Fund Society, successor by merger to Western Savings Bank). At the time that the parties entered into the second deed of trust loan, the unpaid principal balance on the first deed of trust loan was $1,113,000.

Eventually, Atlanta Ltd. experienced difficulties and became unable to service the debt on the first and second deed of trust loans. In February of 1991, the Prior Plan Accounts and the other lenders foreclosed on the second deed of trust, thereby acquiring direct ownership of the Property.[4] In accordance with their original investment, the Prior Plan Accounts received a 3.125 percent interest in the Property. The other investors in the Property are unrelated to SEI and its affiliates. The Prior Plan Accounts and the other lenders contributed the necessary funds to make current the principal and interest payments on the first deed of trust loan. The Trust contributed a total of $11,406 to cover the costs of foreclosure, the payments of the first deed of trust loan and other costs which included operating, maintenance and advertising expenses.[5] As a result of such foreclosure, the Prior Plan Accounts and the other lenders assumed Atlanta Ltd.'s position as debtor on the first deed of trust loan.

In 1993, the Property owners, pursuant to the terms of a lease, were required to make tenant improvements in the amount of $225,000. Several of the Property owners objected to further mortgaging the Property in an effort to raise this additional $225,000. Finally, the tenant and the Property owners agreed that the tenant would pay for its own improvements but would be reimbursed in the amount of $225,000 by the Property owners out of any proceeds which resulted from the sale of the Property. As of December 31, 1993, the outstanding balance on the original first deed of trust loan was $617,000. Accordingly, the outstanding liabilities on the Property (the Liabilities), as of December 31, 1993, increased by $350,000 to $842,000.

The applicants represent that the Property has been and continues to be leased to unrelated parties. As of December 31, 1993, the Property had a fifty percent occupancy rate with the average lease being a five-year, triple net lease with the tenant responsible for all of the actual tenant finish work on the space. The Prior Plan Accounts' portion of the lease income collected since 1991 will amount to $36,349 as of December 31, 1994.

Roger R. Upton, MAI and Martha H. Mathis, MAI (the Appraisers) of Upton Associates located in Atlanta, Georgia appraised the Property as of January 14, 1994 on an "as is" basis, i.e., a fifty percent lease rate. Otter represents that both the Appraisers and Upton Associates are independent of and unrelated to SEI and its affiliates. In placing the fair market value of the Property at $2,650,000, the Appraisers utilized the income approach and the market approach, but gave primary emphasis to the income approach for the value estimate of the Property. Accordingly, the Trust's 3.125 percent interest in the Property minus its pro rata share of the Liabilities would be worth $56,500.

6. Because the fair market value of the Property Interest is less than the Prior Plan Accounts' aggregate costs of acquiring and holding the Property Interest, the Property Interest will be sold by the Trust to Otter for the aggregate costs of acquiring and holding the Property which totaled $61,406. The rental income received by the Prior Plan Accounts covered any interest which might have reasonably accrued on the holding costs as well as any interest which was due but not received under the second deed of trust loan. However, the rental income is insufficient to fully

[2] The Department expresses no opinion, in this proposed exemption, on whether plan fiduciaries violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act in acquiring and holding the Limited Partnership Interests.

[3] The Department expresses no opinion, in this proposed exemption, on whether plan fiduciaries violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act in acquiring and holding the Property Interest.

[4] The applicants represent that Atlanta Ltd. ceased making payments approximately three months prior to the foreclosure in February 1991. Accordingly, the Prior Plan Accounts' share of the interest which was due but never received under the second deed of trust loan will total $23,554 as of December 31, 1994.

[5] The applicants represent that interest in the amount of $4,160 would have reasonably accrued on the $11,406 of holding costs, assuming an interest rate of nine percent per annum, for the period beginning on February of 1991 and ending December 31, 1994.

cover the actual holding costs.[6] Because the Prior Plan Accounts have received a complete return of capital with regard to their investment in the Limited Partnerships, the Trust will sell the Limited Partnership Interests to Otter at their combined fair market values of $400,508. Accordingly, the Trust will sell the Interests for an aggregate sales price of $461,914.

7. In summary, it is represented that the transaction will satisfy the statutory criteria of section 408(a) of the Act because: (a) All terms and conditions of the Sale will be at least as favorable to the Prior Plan Accounts as those obtainable in an arm's length transaction; (b) the Sale will be a one-time cash transaction; (c) the Prior Plan Accounts will not be required to pay any commissions, costs or other expenses in connection with the Sale; (d) the Prior Plan Accounts will receive a sales price equal to the greater of the: (1) the fair market values of the Interests as determined by qualified, independent appraisers; or (2) the Prior Plan Accounts' aggregate costs of acquiring and holding the Interests; (e) the trustee of the Plan will determine that the Sale is appropriate for the Prior Plan Accounts and is in the best interests of the Prior Plan Accounts and their participants and beneficiaries; (f) the Prior Plan Accounts, prior to the Sale, will obtain the written consent of the general partner of each of the limited partnerships involved; and (g) the other partners of such limited partnerships, as per the limited partnership agreements, will be given the right of first refusal with respect to the Limited Partnership Interests.

FOR FURTHER INFORMATION CONTACT: Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Lucky Electric Supply Inc. Employees Pension Plan (the Plan) Located in Memphis, Tennessee

[Application No. D–9792]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan to Lucky Electric Supply, Inc. (the Employer), the sponsor of the Plan, of a group annuity contract (the GAC) issued by Mutual Benefit Life Insurance Company of New Jersey (Mutual Benefit); provided that the following conditions are satisfied:

(A) The sale is a one-time transaction for cash;

(B) The Plan does not suffer any loss or incur any expenses in the transaction;

(3) The Plan receives a purchase price of no less than the fair market value of the GAC at the time of the transaction; and

(4) The proceeds of the sale are used solely to discharge the Plan's obligations to participants and beneficiaries in connection with the termination of the Plan.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan, with 30 participants as of December 31, 1993. The Plan was established in 1974 by Lucky Electric Supply, Inc. (the Employer), which is a closely-held Tennessee corporation engaged in wholesale and retail electrical supply operations, with its place of business in Memphis, Tennessee. The trustee of the Plan is Marylew Lewis who is a director of the Employer.

2. In 1991, the Employer took the actions necessary to terminate the Plan, and established May 31, 1991 as the termination date. The Employer represents that notice of intent to terminate the Plan was made to Plan participants, and was filed with the Pension Benefit Guaranty Corporation (PBGC), in accordance with the requirements of the PBGC.

3. The sole asset in the Plan upon its termination was group annuity contract No. 03057 (the GAC) issued by Mutual Benefit Life Insurance Company of New Jersey (Mutual Benefit). The Employer represents that Mutual Benefit was notified of the termination of the Plan, and that Mutual Benefit acknowledged receipt of such notification in a letter to the Employer dated July 22, 1991. Mutual Benefit also advised the Employer that effective July 16, 1991, Mutual Benefit had been placed in a rehabilitory conservatorship (the Conservatorship) by the insurance commissioner of the State of New Jersey (the Commissioner).[7] The Employer represents that the Conservatorship effected a freeze on regular payments and withdrawals from Mutual Benefits group annuity contracts, including the GAC held by the Plan. Since the Conservatorship commenced, the only withdrawals with respect to the GAC have been to enable hardship distributions under the Plan (the Hardship Withdrawals). The Employer represents that upon commencement of the Conservatorship on July 16, 1991, the GAC had a face value, referred to in the terms of the GAC as "contract value", of $147,477.68 (the Conservatorship Face Value), consisting of total principal deposits, plus interest at the rates guaranteed by the GAC (the Contract Rates), less previous withdrawals. The Employer represents that a total of $37,743.55 in Hardship Withdrawals from the GAC have been made by the Plan since the commencement of the Conservatorship.

4. In January of 1993, the Employer received a letter from the PBGC requesting a certification that final distribution of Plan benefits, in connection with termination of the Plan, had been accomplished. Due to the Conservatorship's freeze on withdrawals and payments with respect to the GAC, other than the Hardship Withdrawals, the Employer has not been able to accomplish final distribution of benefits to the Plan's participants, in accordance with requirements of the PBGC. In order to enable the Plan to accomplish complete discharge of Plan benefit obligations and distribution of assets in accordance with requirements of the PBGC, the Employer proposes to purchase the GAC from the Plan, and is requesting an exemption to permit such transaction under the terms and conditions described herein.

5. The Employer proposes a purchase price for the GAC which represents its new value as determined with reference to the Conservatorship, as described herein. As a result of the Conservatorship, a plan of rehabilitation of Mutual Benefit (the Rehab Plan) has been approved by the Commissioner, under which the terms of the GAC have been redefined and restated. Under the Rehab Plan, as the holder of a Mutual Benefit group annuity contract, the Plan had the options of "opting out" of the

[6] The rental income minus the Prior Plan Accounts' pro rata share of the interest which was due but never received under the second deed of trust loan minus the interest which reasonably would have accrued on the holding costs equals $8,689 ($36,349 − $23,554 − $4,106). Because the holding costs amount to $11,406, the remaining rental income of $8,689 is insufficient to cover these costs. See Representation #5 for an explanation of the rental income received by the Prior Plan Accounts. See Footnotes #4 and #5 for an explanation as to how the applicants calculated the interest attributable to the second deed of trust loan and the holding costs, respectively.

[7] The Department notes that the decisions to acquire and hold the GAC are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this proposed exemption, the Department is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GAC.

Rehab Plan, in which case the GAC would have been terminated, or "opting in", in which case the GAC would be restated, redefined, and would be supported and reinsured by a consortium of life insurance companies. By not submitting the forms necessary to "opt out" of the Rehab Plan, the Trustee allowed the Plan to be "opted in" automatically. Consequently, the GAC has been assigned a new value (the New Value) equal to 100 percent of the Conservatorship Face Value, less subsequent Hardship Withdrawals, plus interest on this amount as follows: (a) For the period of July 16, 1991 through December 31, 1991, interest at the Contract Rates; (b) for calendar year 1992, interest an annual rate of four percent; and (c) for calendar years 1993 and 1994, an annual rate of 3.5 percent. The Rehab Plan provides that subsequent to 1994, the New Value will earn an annual rate of interest determined each year by the performance of a separate account maintained by Mutual Benefit. On the basis of the foregoing, the GAC's New Value plus interest, as of December 31, 1993, was $123,422.43. The Employer represents that the Plan is unable to withdraw its investment in the GAC without the payment of a substantial fee, which would be assessed by Mutual Benefit under the terms of the Rehab Plan.

6. In accordance with the Rehab Plan's new valuation of the GAC, the Employer proposes to pay the Plan cash for the GAC in the amount of the New Value plus all interest accrued in accordance with the Rehab Plan as of the date of the purchase. The Employer states that such a purchase transaction will allow the Plan to substitute the GAC, which is illiquid due to the inability to withdraw its value, for the cash assets necessary for the Plan's participants to receive the full amount of the benefits due them under the terms of the Plan. The Employer represents that no participant will receive less than the full value of his or her accrued benefits under the terms of the Plan. The Employer estimates that the termination value of all Plan participants' accrued benefits as of March 31, 1995 will be $239,953.57. Commensurate with the Employer's proposed purchase of the GAC, the Employer will make cash contributions to the Plan to supply funding for the excess of the Plan's accrued benefit obligations over the purchase price of the GAC.

7. In summary, the applicant represents that the transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The transaction enables the Plan to liquidate it sole asset, the GAC, to enable distribution of benefits in connection with termination of the Plan; (2) The transaction is a one-time cash transaction in which the Plan will incur no losses or expenses; (3) The Plan will receive a purchase price for the GAC equal to its New Value plus interest through the date of sale in accordance with the Rehab Plan; and (4) All Plan participants will receive all benefits due them under the terms of the Plan.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

CNA Employees' Retirement Trust (the Trust) Located in Chicago, Illinois

[Application Nos. D–9539 through D–9544]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective January 17, 1992, to fifteen past sales and purchases by the Trust of twelve issues of short-term commercial paper (the CNA Transactions), as identified below, involving the Continental Casualty Company, the Continental Assurance Company, the Continental Assurance Company Guaranteed Investment Fund, the Valley Forge Life Insurance Company, Valley Forge Insurance Company, and the American Casualty Company of Reading, Pennsylvania (collectively, the CNA Companies), each of which is a party in interest with respect to the CNA Employees' Retirement Plan (the Plan), whose assets are held by the Trust; provided that the following conditions are satisfied:

(A) In each of the CNA Transactions, the Trust paid no more, or received no less, than the fair market value of the commercial paper involved in the transaction;

(B) The CNA Transactions constituted, in the aggregate, less than four percent of all commercial paper transactions of the Trust during 1992; and

(C) The CNA Companies have undertaken efforts to prevent any recurrence of direct or indirect transactions involving the Trust and the CNA Companies, including the appointment of an independent investment manager of all the Trust's commercial paper investments.

Summary of Facts and Representations

1. The Plan is a defined contribution pension plan sponsored by CNA Financial Corporation (CNAF), an Illinois public corporation, 83 percent of the stock of which is owned by Loews Corporation. CNAF's largest wholly-owned subsidiary is the Continental Casualty Company (Casualty), one of the largest property-casualty insurance underwriters in the United States. Among Casualty's eleven insurance subsidiaries (collectively, the CNA Companies) are the Continental Assurance Company (Assurance) and the American Casualty Company of Reading, Pennsylvania (ACCP). Valley Forge Life Insurance Company (VF Life) is a wholly-owned subsidiary of Assurance, and Valley Forge Insurance Company (VF Insurance) is a wholly-owned subsidiary of ACCP. Assurance is a registered investment advisor under the Investment Advisors Act of 1940, as amended. The Plan had 19,858 participants as of December 31, 1992, and total assets of approximately $443 million as of June 30, 1993.

2. Prior to January 2, 1992, the Plan's assets had been invested by Assurance, as Plan fiduciary, through a variety of separate accounts, and in a participating investment contract issued by Assurance. Effective January 1, 1992, all of the Plan's investment contracts and separate accounts were canceled and terminated, and the liquidated assets were transferred to the CNA Employees' Retirement Trust (the Trust). Simultaneously, CNAF entered into a contract with Assurance (the Advisory Agreement), effective January 1, 1992, under which Assurance agreed to provide investment advice to the Trust.[8] Among other things, Assurance agreed to supervise the composition of the Trust's portfolio continuously, and to determine the nature and timing of changes in the portfolio and the manner of effectuating such changes, subject to the oversight of the Trust's trustees. Assurance's responsibilities under the Advisory Agreement include the provision of advice, information and recommendations with respect to acquisition, holding and disposition of securities by the Trust. During 1992, two individuals who were employed by Assurance and Casualty (the Traders) had investment discretion over

[8] The Applicants represent that the Trust does not pay any fees to Assurance with respect to services rendered pursuant to the Advisory Agreement.

commercial paper transactions of the Trust, Casualty, and the other CNA Companies.

3. The Applicants represent that as part of an internal compliance program, Casualty's employee benefits planning staff developed a systems program designed to detect related-party transactions involving the Trust. A trial run of that program on May 6, 1993 detected that certain Trust transactions involved commercial paper which was purchased by CNA Companies. Upon this discovery, further investigations were conducted by Casualty's legal staff in June 1993 to determine whether any more of the Trust's commercial paper transactions involved CNA Companies. As a result of these voluntary investigative efforts, Casualty has determined that fifteen of the commercial paper transactions engaged in by the Trust between January 17 and December 10, 1992 involved five of the CNA Companies (the CNA Transactions). In response to the discovery of these transactions, the five CNA Companies involved (the Applicants) are requesting an exemption for the CNA Transactions under the terms and conditions described herein.

4. The CNA Transactions fall into four categories: (a) Direct Trust sales, which are direct sales by the Trust of commercial paper to a CNA Company; (b) Indirect Trust sales through the issuer, which are sales by the Trust of commercial paper to the issuer of the commercial paper, and the purchase by CNA Companies, on the same date and from the same issuer, of commercial paper issued by that same issuer with the same maturity date; (c) Indirect Trust sales through dealers, which are sales by the Trust of commercial paper to independent broker-dealers, and the purchase by CNA Companies on the same date from the same broker-dealers of commercial paper of the same issuer and with the same maturity date; and (d) Indirect Trust purchases through dealers, which are sales by CNA Companies of commercial paper to independent broker-dealers, and the purchase by the Trust on the same date from the same broker-dealers of commercial paper of the same issuer and with the same maturity date. The Applicants describe the details of the CNA Transactions as follows:

(a) Direct Trust sales:

(1) On November 2, 1992, the Trust sold Ameritech Capital Funding commercial paper with a maturity date of November 13, 1992, principal amount $17,575,000, to Casualty for $17,558,245.17.

(2) On November 2, 1992, the Trust sold Woolworth Corporation commercial paper with a maturity date of November 13, 1992, principal amount $17,950,000, to Casualty for $17,928,011.25.[9]

(b) Indirect Trust sales through the issuer: On November 2, 1992, the Trust sold Chevron commercial paper which it had acquired on October 28, 1992, with a maturity date of December 3, 1992 and the principal amount $65,900,000, to Chevron for $65,928,614.85,[10] and on the same date Assurance and Casualty bought Chevron commercial paper with the same maturity date and in the same principal amount from Chevron.

(c) Indirect Trust sales through dealers:

(1) On January 17, 1992, the Trust sold Federal Farm Credit commercial paper, in the principal amount of $15 million with a maturity date of January 24, 1992, to an independent broker-dealer for $14,988,625, and on the same date Assurance bought Federal Farm Credit commercial paper with the same maturity date and in the same principal amount from the same independent broker-dealer for $14,988,654.17.

(2) On January 31, 1992, the Trust sold Student Loan Mortgage commercial paper, in the principal amount of $24,800,000 with a maturity date of February 14, 1992, to an independent broker-dealer for $24,762,097.33, and on the same date Student Loan Mortgage commercial paper with the same maturity date in a lesser principal amount was purchased from the same independent broker-dealer for $20,693,567.08 by the Continental Assurance Company Guaranteed Investment Fund (the G.I. Fund), which is a sub-account of a separate account maintained by Assurance.

(3) On February 18, 1992, the Trust sold Bell Atlantic commercial paper, in the principal amount of $24,700,000 with a maturity date of February 21, 1992, to an independent broker-dealer for $24,691,252.08, and on the same date the G.I. Fund bought Bell Atlantic commercial paper with the same maturity date and in the same principal amount from the same independent broker-dealer for $24,691,355.

(4) On November 2, 1992, the Trust sold Detroit Edison commercial paper, in the principal amount of $10 million with a maturity date of November 23, 1992, to an independent broker-dealer for $9,979,466.67, and on the same date Casualty bought Detroit Edison commercial paper with the same maturity date and in the same principal amount from the same independent broker-dealer for $9,980,722.22.

(5) On November 18, 1992, the Trust sold Abbot Labs commercial paper, in the principal amount of $13,970,000 with a maturity date of December 14, 1992, to an independent broker-dealer for $13,938,218.25, and on the same date Casualty bought Abbott Labs commercial paper with the same maturity date and in the same principal amount from the same independent broker-dealer for $13,938,420.04.

(6) On December 1, 1992, the Trust sold Wal-Mart commercial paper, in the principal amount of $20,645,000 with a maturity date of December 10, 1992, to an independent broker-dealer for $20,628,225.94, and on the same date Casualty, VF Life, and ACCP bought Wal-Mart commercial paper with the same maturity date and in the same principal amount from the same independent broker-dealer for $20,628,484.

(d) Indirect Trust purchases through dealers:

(1) On March 4, 1992, Casualty sold Unilever Capital Corporation commercial paper, in the principal amount of $17,530,000 with a maturity date of April 2, 1992, to an independent broker-dealer for $17,471,396.24, and on the same date the Trust bought Unilever Capital Corporation commercial paper with the same maturity date in the principal amount of $13,390,000 from

[9] The Applicants represent that the sale prices in both of the direct Trust sales were determined by contemporaneous independent price quotes for the commercial paper from dealers in such paper. The Applicants further represent that due to an irregularity in the U.S. commercial paper market on the day of the transactions, the Trust's representative, Mr. Wayne Gulgren, succeeded in obtaining prices for the Ameritech Capital Funding and Woolworth Corporation commercial paper on November 2, 1992, which were actually more favorable to the Trust than the Trust could have obtained through dealers in the open market.

[10] The Applicants represent that the Chevron paper, unlike all the other commercial paper involved in the CNA Transactions, is referred to as "coupon paper" which sells at its principal face amount, rather than at a discount, and has a stated interest rate. Interest accrues at the stated interest rate, and the principal amount plus the accrued interest is returned at maturity or on prepayment. Thus, when the Trust acquired $65,900,000 principal amount Chevron paper with a maturity of December 3, 1992 and a 3.125 percent stated interest rate, the Trust had paid $65,900,000. When the Trust sold this position back to Chevron on November 2, 1992, the Trust received $65,928,614.85, including five days' interest at the paper's stated rate of 3.125 percent. The Applicant represents that the remainder of the commercial paper involved in the CNA Transactions is referred to as "discount paper", for which the purchaser pays a price below the principal face amount and is paid the face amount upon the paper's maturity. The Applicants state that approximately one-half of Chevron's commercial paper is issued as discount paper, and the remainder is issued as coupon paper. The Applicants represent that investors typically preferring to invest in U.S. Treasury bills, which are issued only in discount form, are likely to invest in discount paper, while coupon paper is a more likely investment for investors which typically invest in interest-bearing securities.

the same independent broker-dealer for $13,883,992.31.

(2) On September 29, 1992, ACCP sold Nestles Capital Corporation commercial paper, in the principal amount of $2,200,000 with a maturity date of October 13, 1992, to an independent broker-dealer for $2,197,347.78, and on the same date the Trust bought Nestles Capital Corporation commercial paper with the same maturity date and in the same principal amount from the same independent broker-dealer for $2,197,364.89.

(3) On December 10, 1992, VF Insurance sold GTE Corporation commercial paper, in the principal amount of $11 million with a maturity date of January 13, 1993, to an independent broker-dealer for $10,959,275.56, and on the same date the Trust bought GTE Corporation commercial paper with the same maturity date and in the same principal amount from the same independent broker-dealer for $10,959,483.33.

5. The Applicants represent that any violations of the Act attributable to the participation of CNA Companies in the CNA Transactions resulted inadvertently and unintentionally from actions customarily taken by the Traders in effecting commercial paper transactions. The Applicants represent that, except for three indirect Trust purchases of commercial paper through dealers, the CNA Transactions were effected to accomplish the necessary liquidation of Trust assets in order to satisfy the Trust's obligations arising from commitments to purchase U.S. Treasury securities or short-term commercial paper issued by U.S. corporations. The Applicants state that in all of the CNA Transactions, the commitments on behalf of the Trust to purchase the commercial paper or U.S. Treasury securities were made because the yields on the obligations to be purchased were higher than those on the commercial paper which was sold. The Applicants maintain that if the commercial paper in issue had not been sold by the Trust on the dates of the CNA Transactions, the Trust would have foregone the incremental return on the government obligations and commercial paper to which it was committed, and the Trust would have been required to reimburse its broker for any costs of carrying the obligations until settlement.

The Applicants represent that the three indirect Trust purchase transactions were mistakenly initiated by the Traders, who proceeded on erroneous assumptions about the Trust's ability to engage in the transactions with the CNA Companies. The Applicants state that the sellers in these transactions were under no obligation to sell the commercial paper to the Trust, nor was the Trust obligated to purchase the commercial paper from the sellers. The Applicants represent that the commercial paper involved in the Trust purchase transactions was readily tradable on the open market, and that sellers other than the CNA Companies could readily have been located.

The Applicants represent that as a percentage of commercial paper transactions entered into during 1992 by the Trust, the CNA Transactions were minor. Specifically, the Applicants state that the total amount involved in the CNA Transactions constituted only 3.15 percent of all commercial paper transactions entered into by the Trust during 1992 and only 2.52 percent of all transactions entered into by the Trust during 1992.

6. The Applicants represent that in each of the CNA Transactions, the Trust bought or sold commercial paper on terms which were as favorable or more favorable to the Trust as those which the Trust could have obtained in arm's-length transactions with unrelated parties on the open market. Specifically, the Applicants represent that in the purchase transactions, the Trust did not pay, and the CNA Companies did not receive, prices which were in excess of the fair market value of the commercial paper purchased. Similarly, with respect to the sale transactions, the Applicants represent that the Trust received purchase prices which were equal to or in excess of the fair market values of the commercial paper at the time of the transactions.[11] With respect to the Trust purchases, the Applicants also represent that the commercial paper issues involved in the CNA Transactions were highly liquid and involved highly liquid issuers, and that none of the parties to the transactions were under any compulsion or duress because the commercial paper involved could have been sold by and purchased by sellers and purchasers other than the Trust and the CNA Companies. The Applicants have obtained written determinations by independent commercial paper broker-dealers (the Independent Dealers), confirming the fair market value prices and liquidity of the commercial paper involved in the CNA Transactions. The representations of the Independent Dealers are summarized as follows:

(a) In a letter dated December 20, 1993, William H. Honnaker III (Honnaker), vice-president of Goldman Sachs Money Markets, L.P. (GSMM) states that after a review of the CNA Transactions, it is the opinion of GSMM that the Trust sold and purchased the commercial paper at rates which are representative of those at which such paper would have traded on the open market for the time periods in question between unrelated buyers and sellers, and that the Trust purchased the commercial paper at rates which are representative of those at which such paper would have traded on the open market for the time periods in question between unrelated buyers. With respect to the Trust purchases, in a letter dated January 14, 1994, Honnaker states that GSMM could have found a willing buyer other than the Trust to purchase the Nestles and Unilever commercial paper if it had held or acquired such paper at the time of those transactions, and that the commercial paper traded by Nestles and Unilever was readily tradable in the market at the time of those transactions.

(b) In a letter dated December 2, 1993, Andrea L. Dullberg (Dullberg), a senior vice-president of Merrill Lynch Money Markets, L.P. (MLMM) states that the prices at which the CNA Transactions were consummated were within the bid-offer ranges for such securities on the dates involved. With respect to the Trust purchases of GTE and Unilever commercial paper, involving MLMM as broker-dealer, Dullberg states the purchase prices were the fair market prices of the commercial paper at the time of the transactions.[12] In a letter dated January 5, 1994, another vice president of MLMM, John B. Sprung, states that it could have found a willing buyer other than the Trust to purchase the GTE and Unilever commercial paper involved in the Trust purchases in which MLMM participated as broker-dealer, and that the commercial paper issued by GTE and Unilever was readily tradable on the open market at the times

[11] The Applicants represent that a retrospective determination of whether a single trade of commercial paper was made for fair market value (defined as the price at which the commercial paper would trade between a willing buyer and willing seller, neither party being under a compulsion to buy or sell), is difficult, and includes comparisons of identical or similar transactions, taking into account differences between the transactions being compared. The Department expresses no opinion as to the Applicants' representations regarding the determination of fair market value of commercial paper, or whether the paper involved in the CNA Transactions was exchanged at its fair market value.

[12] Dullberg's letter does not refer to the fair market value of any other commercial paper involved in the CNA Transactions, and Dullberg states that as a matter of policy, MLMM does not opine on fair market value with respect to trades in which MLMM did not participate.

of the Trust purchases of that commercial paper.

(c) Michael B. Connolly, vice president of Citicorp Securities, Inc., states in a letter dated January 7, 1994, that the purchase prices in the CNA Transactions were within the bid-offer range for similar commercial paper on the dates involved.

(d) William D. Folland, vice president of CS First Boston Corporation, in a letter dated January 6, 1994, represents that the prices at which the Trust purchased and sold commercial paper in the CNA Transactions were equal to or better than the rates which such paper would have been quoted on the open market by a dealer willing to make a market in such paper.

7. In addition to the foregoing representations of the Independent Dealers, the applicants have also obtained the opinions of an independent professional analyst of commercial paper markets, Dr. Marcia L. Stigum (Dr. Stigum). Dr. Stigum (Ph. D. in economics, 1961, Massachusetts Institute of Technology), who is president of her money market consulting firm in Quechee, Vermont, represents that she is independent of and unrelated to the CNA Companies, and that she has substantial experience as an expert on commercial paper market issues. Dr. Stigum has submitted a report containing analyses of each of the CNA Transactions and the market environments in which each one occurred. Dr. Stigum represents that her report was prepared with the objective of addressing two questions: (1) Was the paper sold to and bought by the Trust in each CNA Transaction readily marketable at the time of the transaction? (2) Were the CNA Transactions consummated at fair market value? Dr. Stigum's findings detailed in her report in response to these two questions are summarized as follows:

(A) All twelve issues of commercial paper sold to and bought by the Trust in the CNA Transactions were unequivocally readily marketable. Dr. Stigum states that in this context, the term "readily marketable" means "highly liquid." She states that at any time, the original owner or subsequent owner of each issue of the commercial paper could have sold that paper at a fair market value to the issuing dealer or, in the case of direct paper, could have obtained a prepayment from the issuer.

(1) Dr. Stigum notes that all issues of paper sold by the Trust to CNA Companies, except for the Chevron paper, was "dealer paper" which the Trust had purchased from dealers rather than directly from the issuers. Dr. Stigum states that every dealer in commercial paper stands ready to bid for paper issued by one of the names which that dealer sells (i.e., "dealer paper"), in order to make the paper sold by that dealer as liquid as possible. Dr. Stigum has determined that the Trust could have sold to an unrelated third party, including any dealer through whom the paper of a particular name is issued, each piece of dealer paper it sold to the CNA Companies, on the same date it sold that paper to the CNA Companies. Accordingly, Dr. Stigum concludes that all dealer paper in the CNA Transactions was 100 percent liquid. With respect to the Chevron paper, Dr. Stigum states that it was "direct paper" which the Trust purchased directly from the issuer, featuring the ability to have the issuer prepay at any time before maturity, and that this issue of Chevron paper was and is 100 percent liquid.

(2) Dr. Stigum states that two of the three issues of commercial paper bought by the Trust from the CNA Companies were dealer paper which carried the top credit ratings given by Moody's and Standard & Poors, and that the third issue of such paper carried a split rating which even conservative investors consider to be quite acceptable. Dr. Stigum states that at no time during the period over which the commercial paper involved in the CNA Transactions matured, or subsequently, have any one of the issuers of such paper experienced financial difficulties that either caused the issuer's paper to be downgraded or caused the issuer to exit the commercial paper market. Dr. Stigum concludes that the commercial paper sold by the Trust was 100 percent liquid.

(B) All of the CNA Transactions, both buys and sells, were consummated at fair market values, i.e., terms at least as favorable to the Trust as could have been obtained in open-market transactions with unrelated parties. Dr. Stigum's report includes an analysis of, and conclusions regarding, each of the CNA Transactions, and she represents that her findings on each transaction demonstrate that each of the CNA Transactions was consummated at fair market value, which she defines as "a price (rate) at which a willing seller would have sold to a willing buyer, neither being under any compulsion to sell or buy."

In her report, Dr. Stigum explains that her determinations of the fair market values of the commercial paper involved in the CNA Transactions were based on comparisons with LIBOR rates [13], because time-series data on short-term commercial paper rates are not available, and short-term commercial paper was traded during the relevant period at a relatively constant spread to LIBOR rates, on which accurate time-series data are readily available. She states that over the time period of the CNA Transactions, commercial paper for different maturities consistently traded at a spread below LIBOR rates for Eurodollar deposits having those same maturities. Accordingly, for each CNA Transaction, Dr. Stigum presented and compared actual CNA Transactions data with two LIBOR yield curves: (1) For the week of the initial purchase of the commercial paper; and (2) for the week of the subsequent sale or purchase of such paper. She states that her determinations were also influenced by her awareness that the rates at which secondary trades of commercial paper may be effected through a dealer depend on the name and rating of the issuer, the rates that the issuer is posting, and the precise time of day at which the secondary trade is made. On the basis of these factors, Dr. Stigum represents that she has judged the prices (rates) involved in the CNA Transactions to be fair market prices if they fell within a range of five basis points above or below the rate that the data indicated to be a fair market rate.

8. The Applicants represent that since discovery of the CNA Transactions in May and June 1993, they have undertaken efforts to prevent any recurrence of direct or indirect transactions between the Trust and the CNA Companies. The Applicants state that three full-time attorneys were appointed to review all proposed CNA intercompany trades of commercial paper, to detect any proposed transactions involving the Trust. Additionally, a memorandum describing the prohibitions of the Act was distributed to all personnel involved in commercial paper transactions on behalf of the Trust, the receipt of which was acknowledged in writing. The Applicants state that this memorandum will be recirculated annually to all such investment personnel. The Applicants represent that personnel involved in the Trust's commercial paper transactions have been directed to develop a "real-time" trading audit computer program which would interdict proposed party-in-

[13] LIBOR is the London Interbank Offered Rate for Eurodollar deposits. Dr. Stigum represents that banks post, each day, a number of different LIBOR rates, one for each maturity in which they are bidding for funds.

interest transactions before the trade can be accomplished. Furthermore, Assurance has entered into an investment management agreement with Harris Investment Management, Inc. (Harris), under which Harris manages all the Trust's commercial paper investments and approves all the Trust's commercial paper transactions, in order to prevent any transactions involving parties related to the Trust.

9. In summary, the Applicants represent that the CNA Transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (a) The prices at which the Trust sold commercial paper were not less than the paper's fair market value, and the prices at which the Trust purchased commercial paper were not in excess of the paper's fair market value; (b) The transactions resulted from actions customarily taken by the Traders in effecting commercial paper transactions; (c) The transactions involved a very small percentage of the Trust's total commercial paper transactions for 1992; and (d) The Applicants have undertaken efforts to prevent any recurrence of direct or indirect transactions involving the Trust and the CNA Companies, including the appointment of Harris as an independent investment manager of all the Trust's commercial paper investments.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department (202) 219–8881. (This is not a toll-free number.)

John R. Lyman Company 401(k) Profit Sharing Plan (the Plan) Located in Chicopee, Massachusetts

[Application No. D–9759]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) by the Plan of Guaranteed Investment Contract CGO1303A3A (GIC1303) and Guaranteed Investment Contract CGO1344A3A (GIC1344, collectively, the GICs) issued by Executive Life Insurance Company (Executive Life), a California corporation, located in Los Angeles, California, to John R. Lyman Company, a Massachusetts corporation (the Employer), the sponsoring employer and a party in interest with respect to the Plan; provided that (1) the Sale is a one-time transaction for cash; (2) the Plan experiences no loss nor incurs any expense from the Sale; (3) the Plan receives as consideration from the Sale the greater of either the fair market value of the GICs as determined on the date of the Sale or an amount that is equal to the total amount expended by the Plan for the GICs at the time of acquisition, less withdrawals, plus the amount the GICs would have earned by the date of the Sale if Executive Life had not been placed under conservatorship; and (4) any funds from the GICs in excess of the Sale price that are received by the Employer, or its successors, from Executive Life, or its successors, after the date of the Sale are paid to the Plan.

Summary of Facts and Representations

1. The Employer, a Massachusetts corporation, is a closely held corporation that was established in 1906 and currently employs approximately 186 individuals. It is located in Chicopee, Massachusetts where it is engaged primarily in the manufacture and distribution of wiping products that include woven (textiles) and non-woven (paper and synthetic) materials.

2. The Plan is a defined contribution plan with individual accounts for participants that is intended to meet the qualification requirements of sections 401(a) and 401(k) of the Code. The Plan intends also to comply with section 404(c) of the Act whereby participants self-direct the investments of assets in their respective individual accounts. As of January 31, 1994, the Plan had 79 participants and total assets of $499,249.87. Approximately 2.25 percent of the total assets of the Plan, valued at $12,906.58, remain invested in the GICs for individual accounts of 19 participants of which 4 are retired.

At the adoption of the Plan by the Employer on September 29, 1989, Edward S. Wright (president, director, and shareholder of the Employer) and his wife, Jean C. Wright (treasurer, clerk, director, and shareholder of the Employer) were appointed Trustees of the Plan. In their undertakings, the Trustees are authorized by the Plan to employ agents and to pay their reasonable expenses and compensation.

The Plan also provides that the Employer may make appointments of persons to direct and manage the Plan. In the absence of such an appointment the Employer is the Plan Administrator and Named Fiduciary. Currently the Plan is administered by a committee (the Committee) which consists of 11 members of which 4 members act as a quorum (the Executive Committee) in administering daily activities of the Plan. This includes the Executive Committee selecting the optional investment vehicles used by Plan participants in directing investments for their respective accounts. The Executive Committee also appoints legal counsel, accountants, investment advisors, and administrators for the Plan. The Executive Committee has currently retained Lamoriello & Company, Inc. of Warwick, Rhode Island to perform various functions for the Plan, which include the preparation and filing of annual earnings reports and disbursing periodic reports to participants. The Executive Committee also has retained Inside Management, Inc. of Wellesley, Massachusetts as the current registered Investment Advisor for the Plan.

When the Employer adopted the Plan in 1989, Feingold & Feingold Insurance Agency, Inc. of Worcester, Massachusetts (Feingold) was appointed Plan Administrator. Included in Feingold's duties, among other things, was the responsibility to maintain books and records for the Plan, manage Plan assets, and recommend investment vehicles for Plan participants to invest the assets of their respective accounts. Feingold submitted the GICs as one of its five recommended investment vehicles for the Plan. The GICs were purchased from Executive Life by Feingold at the direction of the respective participants and were held in trust by its subsidiary, Feingold Investment Planning Trust, for the benefit of the participants in the Plan.[14] GIC 1303, with an issue date of January 1, 1989, and a maturity date of December 31, 1995, was to pay an annual interest yield of 8.95 percent until maturity. GIC 1344, with an issue date of January 1, 1990, and a maturity date of December 31, 1996, was to pay an annual interest yield of 8.65 percent until maturity.

As of March 31, 1991, GIC 1303 had a balance of $9,147.56, which was determined by adding its earnings of $1,165.42 to the original price of $9,227.31 and subtracting $1,245.17 in withdrawals. The GIC 1344 was determined, as of March 31, 1991, to have a balance of $3,759.12 which was determined by the same calculation of adding its earnings of $338.20 to the original price of $3,881.30 and subtracting the withdrawals of $460.38.

3. On April 11, 1991, the California Department of Insurance obtained a

[14] Feingold is no longer Plan Administrator for the Plan, but its subsidiary continues to hold the GICs in trust for the Plan.

court order placing Executive Life under conservatorship and freezing, as of March 31, 1991, the value of the GICs and their interest payments.[15] The following month, First Executive Corporation, a Delaware corporation, which wholly owns Executive Life, filed for reorganization under Chapter 11 of the Bankruptcy Code.

On August 13, 1993, the Superior Court of California approved a Rehabilitation Plan of the Department of Insurance of California and authorized the Insurance Commissioner for California and the successor of Executive Life, Aurora National Life Insurance Company (Aurora), a California corporation, to implement all the provisions of the Rehabilitation Plan. Included in the implementation was an offer of an option to every contract holder of Executive Life to continued coverage through Aurora, or opt out of the Rehabilitation Plan and receive a reduced return over a longer extended period of time.

On or about February 11, 1994, Feingold, with its subsidiary holding the GICs in trust for the participants of the Plan, elected to continue the GICs with Aurora under the Rehabilitation Plan.

Under the Rehabilitation Plan the maturity dates of the GICs were extended to September 3, 1998, from their respective maturity dates of December 31, 1995, and December 31, 1996. Also, under the Rehabilitation Plan the interest rates for the GICs were reduced at various periods of time from a low of 2.68 percent to the high of 5.34 percent.

In addition, the GICs are subject to an ongoing litigation concerning a determination of the priority of payment to creditors of Executive Life. The application represents that no payments to the holders of the GICs are anticipated until all possible appeals to the litigation are exhausted. The applicant represents that if the court determines that holders of the GICs are creditors of Executive Life and not insurance policy holders, the holders of the GICs will have little or no recovery. The applicant further represents that the GICs do not have the protection of the State Participating Guaranty Association.

4. In order to avoid the continued risk to the participants and beneficiaries of the Plan with investments in the GICs, the Employer proposes to purchase the GICs from the Plan for cash in a one-time transaction with no expense to the Plan. The Employer intends to pay the Plan the greater of either the fair market value of the GICs on the date of the Sale, or an amount that is equal to the total funds expended by the Plan in acquiring the GICs, less withdrawals, plus the earnings the GICs would have received to the date of the Sale if Executive Life had not been placed under conservatorship. In addition the Employer will pay to the Plan any funds emanating from the GICs in excess of the Sale price and received by the Employer after the date of the Sale.

In a written statement dated September 15, 1994, Kidder, Peabody & Co., Incorporated (Kidder, Peabody) represented that it was retained by the Employer to make an independent determination on the date of the Sale that the exact amount of payment will be made to the Plan in accordance with the formula set forth by the Employer in its application for exemption. Also, Kidder, Peabody represented that the payment will not be less than the fair market value of the GICs on the date of the Sale. Both Kidder, Peabody and Merrill Lynch stated that there is no market for the GICs in written statements dated September 15, 1994, and July 28, 1994, respectively.

In a statement dated October 20, 1994, Feingold represents that the Sale will enable the Plan and its participants and beneficiaries to avoid continued risk associated with holding the GICs; and the proposed Sale to the Employer is in the best interests of the Plan and its participants and beneficiaries and protective of the rights of the participants and beneficiaries.

5. In summary, the applicant represents that the proposed transaction will satisfy the criteria for an exemption under section 408(a) of the Act because (a) the Plan will receive from the Employer in a one-time transaction cash in an amount that is the greater of either the fair market value of the GICs or an amount that is equal to the total amount paid by the Plan for the GICs, less any withdrawals during ownership of the GICs, plus earnings the GICs would have received to the date of the Sale if Executive Life had not been placed under conservatorship by the Superior Court of California, as well as, any funds from the GICs in excess of the Sale price received by the Employer subsequent to date of the Sale; (b) the transaction will enable the Plan and its participants and beneficiaries to avoid any risk associated with the continued holding of the GICs; (c) the Plan will not incur any losses or expenses from the proposed transaction; and (d) the fiduciaries of the Plan have determined that the proposed transaction is in the best interests of the Plan and its participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

[15] The Department notes that the decisions to acquire and hold the GICs are governed by the fiduciary responsibility provisions of Part 4 of Title I of the Act. In this regard, the Department is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GICs.

Signed at Washington, DC, this 22nd day of November 1994.

Ivan Strasfeld

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 94–29168 Filed 11–25–94; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL COMMUNICATIONS SYSTEM

Federal Telecommunication Standards

AGENCY: National Communications System (NCS), Office of Technology and Standards.

ACTION: Notice for comment on proposed standard.

SUMMARY: The purpose of this notice is to solicit the views of Federal agencies, industry, the public, and State and local governments on proposed Federal Telecommunications Standard 1052; "Telecommunications: High Frequency Radio Modems." All comments, including those previously received, will be given full consideration.

DATES: Comments are due on or before March 3, 1995.

ADDRESSES: Send comments to the National Communications System, Office of Technology and Standards, Attn: NT, 701 South Court House Road, Arlington, VA 22204–2198.

FOR FURTHER INFORMATION CONTACT: Institute for Telecommunications Sciences, National Telecommunications and Information Administration, Mr. David F. Peach, telephone (303) 497–5309, or Mr. Nathaniel B. McMillian, telephone (303) 497–5750.

SUPPLEMENTARY INFORMATION:

1. The General Services Administration (GSA) is responsible under the provisions of the Federal Property and Administrative Services act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of General Services designated the National Communications System (NCS) as the responsible agent for the development of Federal telecommunication standards for NCS interoperability and the computer communication interface.

2. Prior to the adoption of proposed Federal standards, it is important that proper consideration be given to the needs and views of Federal agencies, industry, the public, and State and local governments.

3. Requests for copies of the September 28, 1994 draft proposed FED–STD–1052 should be directed to the National Communications System, Office of Technology and Standards, Attn: NT, 701 South Court House Road, Arlington, VA 22204–2198.

Dennis Bodson,

Assistant Manager, NCS Office of Technology and Standards.

[FR Doc. 94–29235 Filed 11–25–94; 8:45 am]

BILLING CODE 5000–03–M

Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee

AGENCY: National Communications Systems (NCS), Joint Secretariat.

ACTION: Notice of meeting.

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

A. Call to Order/Welcoming Remarks.
B. NSTAC Bylaws Tiger Team.
C. Wireless Services Task Force.
D. Funding & Regulatory Working Group.
E. National Information Infrastructure Task Force.
G. Network Security Steering Committee.

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.

FOR FURTHER INFORMATION CONTACT: Telephone (703) 692–9274 or write the Manager, National Communications System, 701 S. Court House Rd., Arlington, VA 22204–2198.

Dennis Bodson,

Assistant Manager, Technology and Standards.

[FR Doc. 94–29234 Filed 11–25–94; 8:45 am]

BILLING CODE 5000–03–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–160-Ren; ASLBP No. 95–704–01–Ren]

Georgia Institute of Technology Atlanta, GA; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 F.R. 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding.

Georgia Institute of Technology, (Georgia Tech) Research Reactor, Atlanta, Georgia

[Facility License No. R–97]

This Board is being established pursuant to a request for a hearing by Georgians Against Nuclear Energy (GANE) regarding renewal of a facility license issued to the Georgia Institute of Technology ("Georgia Tech") for operation of its research reactor located on the Georgia Tech campus in Atlanta, Georgia. This order was issued on September 19, 1994, by the Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation. 59 Fed. Reg. 49089, September 26, 1994.

An order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board consists of the following Administrative Judges:

Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dr. Jerry R. Kline, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dr. Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Rockville, Maryland, this 18th day of November 1994.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 94–29173 Filed 11–25–94; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Thermal Hydraulic Phenomena; Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on December 15 and 16, 1994, in the Century C Room, at the Los Angeles Airport Hilton & Towers, 5711 West Century Blvd., Los Angeles, CA.

Most of the meeting will be closed to the public, with the possible exception of a small portion (about one hour) on the afternoon of December 16, 1994 to discuss General Electric Nuclear Energy

(GENE) proprietary information pursuant to [5 U.S.C. 552b(c)(4)].

The agenda for the subject meeting shall be as follows:

Thursday, December 15, 1994—8:30 a.m. until the conclusion of business.

Friday, December 16, 1994—8:30 a.m. until the conclusion of business.

The Subcommittee will meet with representatives of GENE and the NRC staff to continue its review of the GENE analytical program (TRACG code development) associated with the Simplified Boiling Water Reactor (SBWR) passive plant design certification. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then near presentations by and hold discussions with representatives of GENE, the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, which portions of the meeting will be open to the public, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual on the working day prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: November 21, 1994.

Sam Duraiswamy,

Chief, Nuclear Reactor Branch.

[FR Doc. 94–29172 Filed 11–25–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–20719; 811–4498]

The Baker Fund; Notice of Application

November 18, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Baker Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company under the Act.

FILING DATE: The application was filed on February 14, 1993, and amended on March 1, 1994, June 22, 1994, and November 1, 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 December 13, 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, 1601 N.W. Expressway, Suite 2000, Oklahoma City, Oklahoma 73118–1426.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Senior Attorney, (202) 942–0571, or Robert A. Robertson, Branch Chief, (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Massachusetts trust, is an open-end management company that may issue more than one series of shares with each series representing a separate investment portfolio. On November 25, 1985, applicant registered under the Act as an investment company and filed a registration statement under the Securities Act of 1933 to register shares for two series: the Equity Series and the U.S. Government Series (currently, the U.S. Government Capital Accumulation Series and referred to herein as the "Accumulation Series").[1] The registration statement was declared effective on September 4, 1986, and applicant's initial public offering commenced immediately thereafter. On April 30, 1990 and February 24, 1992, applicant filed post-effective amendments to register shares for two new series: the U.S. Government Adjustable Rate Series (the "Adjustable Rate Series") and the Oklahoma Municipal Bond, Tax Free Series (the "Oklahoma Series"), respectively. The amendments were effective on the date of filing and the public offering for the respective series commenced immediately thereafter.

2. During the period from 1987 to 1990, the Equity Series performed poorly and, as a result, a substantial number of shareholders redeemed their shares. As of June 30, 1990, the Equity Series had only 12 shareholders. In addition, applicant's investment adviser at the time, James Baker & Company ("James Baker"), determined that it would no longer subsidize the Equity Series through reimbursements of expenses as it had done in prior years. Shareholders were notified of this determination by letter dated October 3, 1990. As a result, all shareholders of Equity Series other than James Baker redeemed their shares. At a shareholder meeting held on October 26, 1990, James Baker, as sole shareholder, approved the liquidation of the Equity Series and redeemed its shares at net asset value shortly thereafter.

3. In December 1992, James Baker & Associates (the successor to James Baker and referred to herein as "James Baker II") notified the Oklahoma Series board of trustees that it also would no longer subsidize the Oklahoma Series through reimbursements of expenses. Shareholders were notified of this determination by letter dated December 12, 1992. As a result, the public shareholders redeemed their shares at

[1] On October 26, 1990, the U.S. Government Series changed its investment objectives and name to the U.S. Government Capital Accumulation Series pursuant to majority shareholder vote.

net asset value. As of February 28, 1993, James Baker II was the sole remaining shareholder. On March 19, 1993, James Baker II voted to liquidate the series and redeemed its shares at net asset value shortly thereafter.

4. The portfolio securities for both the Equity Series and the Oklahoma Series were liquidated at market value to fund the public shareholders' redemptions. Accordingly, at the time of liquidation, both series no longer maintained a portfolio of securities. No brokerage commissions were incurred with these transactions.

5. On June 29, 1993, applicant's board of trustees approved termination of the Adjustable Rate Series and the Accumulation Series and the liquidation of applicant. On September 1, 1993, applicant mailed proxy materials to the shareholders of each series At a joint meeting held on September 17 1993, the shareholders of the series approved the termination of their respective series and the liquidation of applicant.

6. Pursuant to the liquidation, the portfolio securities of the Adjustable Rate Series and the Accumulation Series, which consisted of U.S. government or agency issued securities, were sold at market value. No brokerage commissions were incurred in these transactions.

7 In connection with the liquidation, the Adjustable Rate Series paid approximately $2,289,463 to its redeeming shareholders and the Accumulation Series paid approximately $14,559,895 to its redeeming shareholders. Shares were redeemed at net asset value of the respective series.

8. James Baker II will bear all the costs for the liquidation of applicant.

9. As of the date of the application, applicant had no assets, debts or liabilities, and was not a party to any litigation or administrative proceeding.

10. On June 30, 1994, applicant filed a notice of termination with the Secretary of State of the Commonwealth of Massachusetts which terminated its existence.

11. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–29216 Filed 11–25–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26163]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

November 18, 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 December 12, 1994, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or 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 requests 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.

Holyoke Water Power Company (70–7495)

Holyoke Water Power Company ("HWP"), One Canal Street, Holyoke, Massachusetts 01040, an electric utility subsidiary company of Northeast Utilities, a registered holding company, has filed a post-effective amendment under Sections 6(a) and 7 of the Act and Rule 54 thereunder to its declaration previously filed under Sections 6(a) and 7 and Rule 50(a)(5) thereunder.

By Commission order dated November 9, 1988 (HCAR No. 24742), HWP was authorized to finance certain pollution control facilities at its Mt. Tom Station ("Facilities"). The cost of acquiring, constructing and installing the Facilities was financed by HWP through its use of the net proceeds from the sale by the Industrial Development Finance Authority of the City of Holyoke, Massachusetts ("IDA") of its pollution control revenue bonds ("Bonds") in the principal amount of $8 million. The Bonds were issued pursuant to an Indenture of Trust between the IDA and Baybank Middlesex, as trustee ("Trustee"), and the proceeds of the issuance of the Bonds were loaned to HWP pursuant to a Loan Agreement ("Loan Agreement") between HWP and the IDA.

In order to obtain the benefits of a high quality rating for the Bonds, HWP's obligations under the Loan Agreement are secured by an irrevocable letter of credit ("Letter of Credit") in the amount of $8,667,000 issued by Union Bank of Switzerland, New York Branch ("Bank") in favor of the Trustee. The Letter of Credit secures $8 million of principal amount plus interest in the amount of $667,000 at the maximum rate of 15% per annum for 218 days.

HWP now proposes to amend the Reimbursement and Security Agreement, dated as of November 1, 1988 between HWP and the Bank in order to: (1) change the expiration date of the Letter of Credit, from perpetual to a three-year term ending November 1, 1997, extendible for successive one-year terms thereafter during the term of the Loan Agreement, with the consent of HWP and the Bank; (2) reduce the annual Letter of Credit fee payable to the Bank; and (3) extend, modify or replace the Letter of Credit provided by the Bank, as permitted by the Loan Agreement, by delivery of a substitute credit facility, consisting of a new letter of credit, and related agreements, to be provided by a substitute bank to be chosen by HWP ("Substitute Bank").

The proposed Letter of Credit fee will be changed from 0.45% of the Letter of Credit amount to 0.40% of that amount. This represents an annual fee reduction of $4,334 per annum.

HWP proposes to extend, modify or replace the Bank's Letter of Credit with a new letter of credit ("Substitute "LOC") to be issued by the same or a Substitute Bank during the term of the Bonds. The Substitute LOC would be issued under a new letter of credit and reimbursement agreement ("New LOC Agreement") substantially identical to the Letter of Credit and Reimbursement Agreement, dated as of September 1, 1993 among HWP's associate company, The Connecticut Light & Power Company, Deutsche Bank AG, New York Branch and various co-agents and participating banks, as approved by Commission order, dated September 15, 1993 (HCAR No. 25881). The New LOC Agreement will be in accordance with the Loan Agreement and provide that: (1) the total amount available to be drawn under any such extended, modified, or replacement letter of credit does not exceed $8,667,000; (2) the

annual letter of credit costs applicable to any such extension, modification, or replacement do not exceed 1.00% per annum of the total amount available; (3) that tender advances bear interest until paid at a rate not to exceed the higher of (a) the prime rate plus 2.00% or (b) the federal funds rate plus 2.00%; (4) such extension, modification, or replacement is otherwise on terms that are substantially similar in all material respects to those applicable to the New LOC Agreement.

GPU Nuclear Corporation, et al. (70–8425)

GPU Nuclear Corporation ("GPUN"), One Upper Pond Road, Parsippany, New Jersey, 07054, a public-utility subsidiary company of General Public Utilities Corporation ("GPU"), a registered holding company; Energy Initiatives, Inc. ("EII"), One Upper Pond Road, Parsippany, New Jersey, 07054, a nonutility subsidiary company of GPU; Jersey Central Power & Light Company ("JCP&L"), 300 Madison Avenue, Morristown, New Jersey, 07960, a public-utility subsidiary company of GPU; Metropolitan Edison Company ("Met Ed"), P.O. Box 16001, Reading, Pennsylvania, 19640; a public-utility subsidiary company of GPU; Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania, 15907, a public-utility subsidiary company of GPU; and GPU Service Corporation ("GPUS"), 100 Interpace Parkway, Parsippany, New Jersey, 07054, a nonutility subsidiary company of GPU, have filed a declaration under Section 13(b) of the Act and Rules 87, 90 and 91 thereunder.

GPUN proposes to perform a range of nonnuclear technical, training, management and consulting services ("Services") for GPU Service, Initiatives, JCP&L, Met Ed, and Penn Elec ("GPU Companies"),[1] which include: (1) plant operations and maintenance; (2) plant inspections and risk analysis; (3) plant equipment corrosion control and failure analysis; (4) engineering and design services; (5) plant life extension analysis; (6) project and construction management; (7) plant modification, design, installation, evaluation and testing; (8) environmental protection services; (9) emergency preparedness training and services; (10) quality assurance services; (11) training programs; (12) plant management consulting and operation analysis; (13) industrial safety and hygiene services; and (14) medical services.

GPUN intends to enter into a Non-Nuclear Technical, Training, Management and Consulting Services Agreement ("Agreement") with the GPU Companies to provide the Services in connection with their business operations. The Agreement will be substantially in the form of the Laboratory Service Agreement previously filed (Exhibit A–4) in SEC File No. 70–7720.

Schedule I to the Agreement describes the types of Services that GPUN intends to furnish to the GPU Companies. Schedule II to the Agreement, Determination of Cost of Service and Allocation Thereof, provides that any Services to be rendered by GPUN will be charged at cost pursuant to the Act and the regulations thereunder.

Schedule II will also reflect the practice of (i) charging capital costs for providing Services to the serviced companies consistent with generally accepted accounting principles, and (ii) billing to the serviced company the costs of service before they are paid by GPUN, which is consistent with the practice that was approved by the Commission in its letter to GPUS dated June 3, 1982. Such costs will be accounted for and billed to the GPU Companies substantially as described in HCAR No. 25149 (Sept. 14, 1990).

The GPU Companies believe that the technical, analytical and related expertise of GPUN can be usefully applied in support of their business activities. Providing the Services will not interfere with GPUN's primary responsibility of operating and maintaining nuclear generating facilities of behalf of those companies. The total level of Services GPUN will provide will not exceed ten percent of the level of primary nuclear services which it is currently providing to the GPU Companies.

GPUN will, by May 1 each year, separately report to the Commission any revenues received from the performance of the Services on its annual report on Form U–13–60 filed under the Act.

American Electric Power Co., et al. (70–8429)

American Electric Power Company, Inc. ("AEP"), 1 Riverside Plaza, Columbus, Ohio 43215, a registered holding company, and AEP Resources, Inc. ("Resources"), 1 Riverside Plaza, Columbus, Ohio 43215, a non-utility subsidiary company of AEP, have filed an application-declaration under Sections 6(a), 7, 9(a), 10, 12(b), 32 and 33 of the Act and Rules 45 and 53 thereunder.

AEP and Resources propose to issue and sell up to $300 million in debt and/or equity securities through June 30, 1997 to invest in two types of power projects ("Power Projects")—exempt wholesale generators ("EWGs") and foreign utility companies ("FUCOs"). AEP and Resources also request approval to acquire the securities of one or more companies ("Project Parents") that will directly or indirectly own and hold the securities of one or more FUCOs and EWGs.

AEP proposes to guarantee the debt securities and other commitments of Resources, and AEP and Resources also propose to guarantee the securities of one or more Project Parents or Power Projects, and for Project Parents to guarantee the securities of their Power Projects, through June 30, 1997, in an aggregate amount which together with the securities will not exceed $300 million.

With respect to AEP equity financing, AEP proposes to issue and sell up to 10 million additional shares ("Shares") of its common stock, par value $6.50 per share, which are authorized but unissued or held by AEP, provided that the gross proceeds from such sale will not exceed $300 million. AEP proposes to effect the issuance and sale by competitive bidding, negotiations with underwriters or agents, or agents at market prices. The Commission is requested to reserve jurisdiction over the issuance and sale by AEP of the Shares pending completion of the record.

With respect to long-term debt financing, AEP and Resources also request authorization to issue and sell through June 30, 1997 promissory notes ("Long-term Notes") in the aggregate principal amount of up to $300 million to one or more commercial banks, financial institutions or other institutions or other investors pursuant to one or more loan agreements ("Proposed Agreement"). The Proposed Agreement and the Long-term Notes thereunder would be for a term of not less than nine months nor more than twenty years.

The Proposed Agreement would provide that the Long-term Notes bear interest at either a fixed rate, a fluctuating rate or some combination of fixed and fluctuating rates. Any fixed rate of interest of the Long-term Notes will not be greater than 250 basis points above the yield at the time of issuance of the Long-term Notes of United States Treasury obligations ("Applicable Treasury Rate"). Any fluctuating rate

[1] On April 5, 1994, GPU filed an application (File No. 70–8409) to form GPU Generation Corporation ("GPU Generation") to operate, maintain and rehabilitate the non-nuclear generation facilities of the GPU Companies. GPUN proposes that when GPU Generation is authorized, GPUN also would provide services for it under the authorization requested herein.

will not be greater than 200 basis points above the rate of interest announced publicly by a major bank as its base or prime rate ("Prime Rate"). If the indebtedness is denominated in the currency of a country other than the United States, the fixed or floating rate, when adjusted for inflation in such country, will not be greater than 700 basis points over the Applicable Treasury Rate or Prime Rate.

With respect to short-term debt financing, AEP and Resources request authorization to incur such indebtedness through June 30, 1997 through the issuance and sale of notes to banks and, in the case of AEP, commercial paper to dealers in commercial paper in an aggregate amount not to exceed $300 million. Borrowings under the lines of credit would generally bear interest at an annual rate not greater than the prime commercial rate in effect from time to time. The total annual cost of borrowings under all such bank lines is estimated to be not greater than the effective rate for borrowings bearing interest at the prime commercial rate with compensating balances of up to 10% of the line of credit. The effective annual interest cost under any of the above arrangements, assuming full use of the line of credit, will not exceed 125% of the prime commercial rate in effect from time to time, or not more than 10.625% on the basis of a prime commercial rate of 8.50%.

Commercial paper will be sold directly by AEP to dealers in commercial paper. The commercial paper will be in the form of promissory notes in denominations of not less than $50,000, and of varying maturities, with no maturity more than 270 days after the date of issue. Such notes will not be prepayable prior to maturity and will be sold at a discount rate not to excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and maturity.

The application-declaration states that it may be necessary from time to time for AEP to guarantee certain indebtedness or other financial commitments of Resources, for AEP or Resources to guarantee certain indebtedness or financial commitments of a Project Parent or Power Project in which they may invest, or for a Project Parent to guarantee certain indebtedness or financial commitments of a FUCO or EWG in which it may invest. The terms and conditions of such guarantees would be negotiated in individual cases, would vary in duration, and may be contingent and conditional or absolute and unconditional. AEP and Resources request authority to issue, or have Project Parents issue, from time to time through June 30, 1997, up to $300 million in guarantees provided that any guarantee outstanding on June 30, 1997 would expire or terminate in accordance with its terms.

AEP will not sell any Shares and neither AEP nor Resources will incur any indebtedness or issue, or have a Project Parent issue, any guarantee if the gross proceeds of all Shares and the principal amount of all indebtedness and all guarantees authorized hereunder would exceed $300 million. AEP intends to use the net proceeds from the sale of the Shares or the short-term or long-term indebtedness to make additional investments in Resources and direct or indirect investments in Power Projects. Resources intends to use such funds from AEP and the net proceeds from any short-term or long-term indebtedness to make direct or indirect investments in Power Projects.

Investments in Resources by AEP would be by acquisitions of common stock, capital contributions, open account advances and/or loans. Open account advances or loans would bear interest at a rate based on the cost of funds to AEP in effect on the date of issue. If AEP uses the proceeds of long-term indebtedness to fund such investment, then the interest rate will be the same as that of the term loan. If AEP uses the proceeds of short-term borrowings to fund such investment, then the cost of such funds will be the interest rate of short-term borrowings—that is, would generally bear interest at an annual rate not greater than the prime commercial rate in effect from time to time.

AEP and Resources request authority to make direct or indirect investments in Project Parents in an aggregate amount not to exceed $300 million. It is proposed that investments by AEP and Resources in any Project Parent may take the form of (i) purchases of capital shares, partnership interests, trust certificates, or the equivalent of any of the foregoing, (ii) open account advances or loans, and/or (iii) guarantees by AEP or Resources.

Open account advances or loans to a Project Parent would bear interest at a rate based on cost of funds to AEP or Resources on the date of issue. Any open account advance or loan may be converted to a capital contribution to such Project Parent. Funds for any open account advances or loans by AEP or Resources in any Project Parent will be derived from the sale of common stock and/or the issuance of short-term and long-term indebtedness or guarantees and from available cash.

Approval is requested for Project Parents to issue short-term and long-term indebtedness to persons other than AEP or Resources which would be guaranteed by AEP or Resources ("Recourse Debt"). Recourse Debt would be subject to the same terms and conditions as indebtedness of AEP and Resources. Approval is also requested for any Project Parent to issue equity securities and debt securities to persons other than AEP or Resources ("Non-Recourse Securities") exclusively for the purpose of financing investments in Exempt Subsidiaries. It is proposed that the aggregate principal amount of non-recourse debt securities issued by Project Parents to persons other than AEP and Resources will not exceed $800 million provided that no more than $200 million principal amount may be denominated in currencies other than U.S. dollars.

Equity securities issued by any Project Parent to a person other than AEP or Resources may include capital shares, partnership interests, trust certificates, or any of the foregoing. Non-recourse debt securities issued to persons other than AEP or Resources may include secured and unsecured promissory notes, subordinated notes, bonds, or other evidence of indebtedness. Securities issued by Project Parents may be denominated in either U.S. dollars or foreign currencies. The amount and type of such securities, and the terms thereof, including interest rate, maturity, prepayment or redemption privileges, and the terms of any collateral security granted with respect thereto, would be negotiated on a case by case basis.

However, AEP and Resources state that any note, bond or other evidence of indebtedness issued or sold by any Project Parent will mature not later than 30 years from the date of issuance thereof, and will bear interest, if such note, bond or other indebtedness is U.S. dollar denominated, at a fixed rate not to exceed 6.5% over the Applicable Treasury Rate, or at a floating rate not to exceed 6.5% over the Prime Rate, and, if such note, bond or other indebtedness is denominated in the currency of a different country, will bear interest at a fixed or floating rate which, when adjusted for inflation in such country, will not exceed 10% over the Applicable Treasury Rate or Prime Rate.

The application-declaration states that AEP will not sell any Shares, and neither AEP nor Resources will incur any indebtedness or issue, or have a Project Parent issue, any guarantee, if the gross proceeds of all outstanding Shares and the principal amount of all such outstanding indebtedness and all

such outstanding guarantees authorized hereunder would exceed $300 million.

New England Electric System, et al. (70–8475)

New England Electric System ("NEES"), a registered holding company, and New England Electric Resources, Inc. ("NEERI"), its wholly owned, nonutility subsidiary company, both of 25 Research Drive, Westborough, Massachusetts 01582, have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rule 45 thereunder.

NEERI proposes to enter into a joint arrangement with Separation Technologies, Inc. ("STI"), the developer of a process for separating unburned carbon from coal ash. In connection with this joint arrangement, NEERI will be called on to invest in STI projects and to provide certain consulting services to STI. Applicants-declarants state that STI has developed a system of economically separating unburned carbon from coal (or fly) ash produced by utility generating plants. The separated carbon can be reburned by the utility. The processed ash can be sold as a cement substitute in the manufacture of concrete.

As part of its joint arrangement with STI, NEERI proposes to enter into a project with STI involving the processing of coal ash at an electric generation facility in the New England/New York region ("NE/NY Project") owned by a nonaffiliated electric company ("Owner"). NEERI proposes to invest $700,000 in the NE/NY Project in return for a percentage of the NE/NY Project revenue stream. In addition, NEERI will provide to STI consulting services for a fee. STI will be responsible for processing the ash at the Owner's facility.

NEERI proposes to enter into similar joint arrangements with STI at other locations where STI equipment will be installed. NEERI's investment in these other utility locations is anticipated to range between $0.5 and $2.0 million per installation. NEERI and STI also propose to perform research to further refine the carbon-rich and low carbon processed waste stream and to find other applications for the STI separation process in recycling.

NEES proposes to provide additional financing to NEERI by making capital contributions up to an additional $11.7 million and/or by lending to NEERI from time to time additional amounts not to exceed $11.7 million at any one time, such loans to be in the form of non-interest bearing subordinated notes. The aggregate amount of all investments (including amounts previously authorized by the Commission) by NEES in NEERI shall not exceed $13.95 million.

Louisiana Power & Light Company (70–8487)

Louisiana Power & Light Company ("LP&L"), 639 Loyola Avenue, New Orleans, Louisiana 70113, an electric public-utility subsidiary company of Entergy Corporation, a registered holding company, has filed an application-declaration under Sections 6(a), 7, 9(a), and 10 of the Act and Rule 54 thereunder.

LP&L proposes to issue and sell up to an aggregate principal amount of $565 million its first mortgage bonds ("Bonds") to be issued and sold in one or more new series from January 1, 1995 through December 31, 1996. Each series of Bonds will be sold at such price, will bear interest at such rate and will mature on such date as will be determined at the time of sale. One or more series of Bonds may include provisions for redemption or retirement prior to maturity, including restrictions on optional redemption for a given number of years. LP&P may determine to provide an insurance policy for the payment of the principal of and/or interest and/or premium on one or more series of Bonds.

LP&L further proposes to issue and sell, from January 1, 1995 through December 31, 1996, one or more new series of its preferred stock, cumulative, of either $25 par value or $100 par value (collectively, the "Preferred"). The total aggregate par value of shares of those new series of the Preferred issued will be up to an aggregate principal amount of $110 million. The price, exclusive of accumulated dividends, and the dividend rate for each series of Preferred will be determined at the time of sale. LP&L may determine that the terms of the Preferred should provide for an adjustable dividend rate thereon to be determined on a periodic basis, subject to specified maximum and minimum rates, rather than a fixed dividend rate. The terms of one or more series of the Preferred may include provisions for redemption, including restrictions on optional redemption, and/or a sinking fund designed to redeem all outstanding shares of such series not later than thirty years after the date of original issuance.

LP&L proposes to use the net proceeds derived from the issuance and sale of Bonds and/or the Preferred for general corporate purposes, including, but not limited to, the possible acquisition of certain outstanding securities. LP&L states that it presently contemplates selling the Bonds and the Preferred either by competitive bidding, negotiated public offering or private placement.

LP&L also proposes to enter into arrangements to finance on a tax-exempt basis certain solid waste, sewage disposal and/or pollution control facilities ("Facilities") at Unit No. 3 of its Waterford Steam Electric Generating Station in the Parish of St. Charles, Louisiana ("Parish"). LP&L proposes, from time to time through December 31, 1996, to enter into one or more installment sale agreements and supplements ("Agreement"), pursuant to which the Parish may issue one or more series of tax-exempt revenue bonds ("Tax-Exempt Bonds") up to an aggregate principal amount of $65 million. The net proceeds from the sale of Tax-Exempt Bonds will be deposited by the Parish with the trustee ("Trustee") under one or more indentures ("Indenture") and will be applied by the Trustee to reimburse the Company for, or to permanently finance or refinance on a tax-exempt basis, the costs of the acquisition, construction, installation or equipping of the Facilities.

LP&L further proposes, under the Agreement, to sell the Facilities to the Parish for cash and simultaneously repurchase the Facilities from the Parish for a purchase price, payable on an installment basis over a period of years, sufficient to pay the principal of, purchase price of, the premium, if any, and the interest on Tax-Exempt Bonds as the same become due and payable. Under the Agreement, LP&L will also be obligated to pay certain fees incurred in the transactions.

The price to be paid to the Parish for each series of Tax-Exempt Bonds and the interest rate applicable thereto will be determined at the time of sale. The Agreement and the Indenture will provide for either a fixed interest rate or an adjustable interest rate for each series of the Tax-Exempt Bonds. Each series may be subject to optional and mandatory redemption and/or a mandatory cash sinking fund under which stated portions of such series would be retired at stated times.

In order to obtain a more favorable rating and thereby improve the marketability of the Tax-Exempt Bonds, LP&L may: (1) arrange for a letter of credit from a bank ("Bank") in favor of the Trustee (in connection therewith, LP&L may enter into a Reimbursement Agreement pursuant to which LP&L would agree to reimburse the Bank for amounts drawn under the letter of credit and to pay commitment and/or letter of credit fees); (2) provide an insurance policy for the payment of the principal of and/or interest and/or premium on

one or more series of Tax-Exempt Bonds; and/or (3) obtain authentication of one or more new series of First Mortgage Bonds ("Collateral Bonds") to be issued under LP&L's Mortgage on the basis of unfunded net property additions and/or previously retired First Mortgage Bonds and delivered to the Trustee and/or the Bank to evidence and secure LP&L's obligations under the Agreement and/or the Reimbursement Agreement, respectively.

Allegheny Power System, Inc., et al. (70–8491)

Allegheny Power System, Inc. ("Allegheny"), a registered holding company, and AYP Capital, Inc. ("AYP Capital"), its wholly owned nonutility subsidiary, both of 12 East 49th Street, New York, New York 10017, have filed an application-declaration under sections 6(a), 7, 9(a) and 10 of the Act and rule 45(a) thereunder.

Allegheny proposes to invest in AYP Capital up to $5 million in the form of cash contributions from time to time through December 31, 2002. This money will fund AYP Capital's proposed acquisition, as a limited partner of up to 10% of the interests of all limited partners in Envirotech Investment Fund I Limited Partnership, a Delaware limited partnership ("Envirotech Partnership"). In no event shall AYP Capital's investment be more than $5 million.

The sole general partner of the Envirotech Partnership ("General Partner") will be Advent International Limited Partnership, a Delaware limited partnership of which Advent International Corporation ("AIC") is the general partner. A key objective of the Envirotech Partnership is to make investments that will contribute to the reduction, avoidance or sequestering of greenhouse gas emissions; help utilities and their customers handle waste by-products more effectively or produce or manufacture goods or services more cost effectively; improve the efficiency of the production, storage, transmission, and delivery of energy; and provide investors with attractive opportunities relating to the evolving utility business climate which meet the above objectives.

In selecting suitable investments, the Envirotech Partnership will focus on the following technology sectors, among others: alternate and renewable energy technologies; environmental and waste treatment technologies and services; energy efficiency technologies, processes and services; electrotechnologies used in the reduction of medical waste; technologies and processes promoting alternative energy for transportation; and other technologies related to improving the generation, transmission and delivery of electricity.

The term of Envirotech Partnership shall be for 10 years from the date of the partnership agreement, subject to extension for up to two years upon agreement of the General Partner and limited partners holding 66⅔% of the combined capital contributions of all limited partners. Subject to certain limitations set forth in the partnership agreement, the management, operation, and implementation of policy of the Envirotech Partnership will be vested exclusively in the General Partner. Among other powers, the General Partner shall have discretion to invest the Partnership's fund in accordance with investment guidelines set forth in the charter. The investment guidelines may be amended or modified only upon the affirmative vote of limited partners representing at least 75% of the commitments of all limited partners.

Under the terms of the partnership agreement the General Partner will be paid an annual management fee equal to 2½% of the total amount of the capital commitments of the partners through the first six (6) years, thereafter declining by ¼ of 1% on each anniversary to 1.5% commencing on the ninth anniversary date. In addition, the General Partner shall be entitled to reimbursement for all reasonable expenses incurred in the organization of the Envirotech Partnership up to $195,000, and for other third party expenses incurred on behalf of the Envirotech Partnership.

All Envirotech Partnership income and losses (including income and losses deemed to have been realized when securities are distributed in kind) will generally be allocated 80% to and among the limited partners and 20% to the General Partner. One hundred percent (100%) of all cash distributions to the partners shall be made first to the limited partners until such time as the limited partners shall have received aggregate distributions equal to the aggregate of their respective capital contributions, and thereafter 20% to the General Partner and 80% to the limited partners. Distributions in kind of the securities of Portfolio Companies that are listed on or otherwise traded in a recognized over-the-counter or unlisted securities market may be made at the option of the General Partner.

Entergy Corporation (70–8509)

Entergy Corporation ("Entergy"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and its wholly owned nonutility subsidiary companies, Entergy Enterprises, Inc., ("Enterprises"), Three Financial Centre, 900 South Shackleford Road, Suite 210, Little Rock, Arkansas 72211, and Entergy Systems and Service, Inc. ("Entergy SASI"), 4740 Shelby Drive, Suite 105, Memphis, Tennessee 38118, (collectively, "Applicants"), have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 45 and 54 thereunder.

Pursuant to Commission order dated December 28, 1992 (HCAR No. 25718), Entergy SASI was organized as a wholly owned subsidiary of Enterprises that would provide energy management services to commercial, industrial and institutional customers. Such order authorized Entergy SASI to provide energy management services, without limitation, to customers within a region consisting of the states of Arkansas, Louisiana and Mississippi; and the service territories of utilities from which the Entergy system could expect to purchase economy, replacement and emergency energy ("Base Region"). The order also permitted Entergy SASI to solicit and serve customers outside the Base Region to a limited extent and subject to the condition that at least 50% of Entergy SASI's annual revenues be derived from its activities within the Base Region ("50% Revenue Restriction").

The Applicants now seek additional authorization for Entergy SASI to provide consulting services related to energy management and demand-side management ("DSM") activities. Such consulting services would generally be limited to the rendering of advice, know-how and management/technical services for a consulting fee in order to assist energy customers, utilities, federal, state and foreign government entities and other customers with energy management and/or DSM activities in cases where Entergy SASI is not directly involved in the performance of such energy management and/or DSM services. Entergy SASI proposes to provide such consulting servies on a worldwide basis and that associated revenues not be subject to the 50% Revenue Restriction.

Specifically, Entergy SASI's consulting services would include the following: (1) development and review of architectural, structural and engineering drawings for energy and other resource efficiency; (2) design and specification of energy consuming or conservation equipment, controls and systems; (3) design and marketing of intellectual property, i.e. any process, program, technique, or computer software used to analyze energy

conservation opportunities and results; (4) general technical advice concerning the use, benefits, planning and/or administration of energy management and/or DSM programs; and (5) general management advice and services relating to the implementation of functions, practices and procedures incidental to the conduct of the energy management services business and/or DSM programs.

In addition, Entergy SASI proposes to provide funding to other energy management and DSM contractors to enable them to carry out energy conservation measures. Although the precise terms of such funding arrangements will not be determined until the time of the applicable transactions, it is anticipated that Entergy SASI will be repaid through assignments of a portion of the monthly fees paid by customers under contracts relating to the installation of such energy conservation measures. The Applicants state that the proposed funding arrangements will not involve the acquisition by Entergy SASI of any promissory notes.

Finally, the Applicants request authorization for: (1) Entergy to make additional investments in Enterprises of up to an aggregate amount of $100 million from time to time through December 31, 1997, with such investments to be made through any combination of purchases of Enterprises' common stock and/or capital contributions to Enterprises; (2) Enterprises to use the proceeds of such transactions to make additional investments in Entergy SASI (in the form of equity investments and/or loans) of up to $100 million from time to time through December 31, 1997; and (3) Entergy SASI to issue and sell to nonaffiliated third parties during the same period up to $100 million of commercial paper, promissory notes and/or other debt securities, secured or unsecured (collectively, the "Debt Securities).

It is proposed that the proceeds derived from Enterprises' investments, as well as any third party financing, be used by Entergy SASI for the following purposes: (1) to repay its existing indebtedness under notes issued to Entergy; (2) to provide financing for customer contracts and funding for the implementation of energy conservation measures by other energy management and DSM contractors; and (3) to provide Entergy with necessary working capital in connection with its ongoing energy management, consulting and other authorized businesses, as well as to pay for general and administrative expenses and to provide for Entergy SASI's other capital needs.

Any loans made by Enterprises to Entergy SASI would be evidenced by promissory notes bearing an interest rate to be determined at the time of borrowing (but in no event greater than the then prevailing prime rate, as reported by the Wall Street Journal) and maturing no later than ten years from the date of borrowing. Where Debt Securities issued to nonaffiliates are involved, the yield to maturity of such Debt Securities would not exceed the then current yield to maturity on U.S. Treasury securities of comparable maturities (subject to straight line interpolation when there is no comparable U.S. Treasury security), plus 400 basis points, and no Debt Securities would be issued for a term of greater than thirty years. It is further proposed that any notes issued by Entergy SASI to Enterprises may, at the option of Enterprises, be converted to capital contributions to Entergy SASI by the forgiveness of the debt represented thereby.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–29215 Filed 11–25–94; 8:45 am]

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[Release No. 34–34986; File Nos. SR–Amex–94–49, SR–CBOE–94–41, SR–PSE–94–33, and SR–PHLX–94–53]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes by the American Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Pacific Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc. Relating to an Extension of the Hedge Exemption Pilot Programs

November 18, 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 November 2, 1994, the Pacific Stock Exchange, Inc. ("PSE"); on November 7, 1994, the Chicago Board Options Exchange, Inc. ("CBOE"); on November 9, 1994, the American Stock Exchange, Inc. ("Amex"); and on November 17, 1994, the Philadelphia Stock Exchange, Inc. ("PHLX") (each individually referred to as an "Exchange" and two or more collectively referred to as "Exchanges") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes as described in Items I and II 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 Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule changes filed by the Amex and PHLX extend for six months (*i.e.*, from November 17, 1994, to May 17, 1995) the Exchanges' pilot programs for exemptions from equity position limits for certain hedged positions.[1] The proposals filed by the CBOE and the PSE extend for six months (*i.e.*, from November 17, 1994, to May 17, 1995), the Exchanges' pilot programs for position limit exemptions for certain hedged equity option positions and certain stock index option positions.

The text of the proposals are available at the Office of the Secretary of the respective Exchanges and at the Commission.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organizations included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organizations have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The Commission has previously approved pilot programs by the Amex and the PHLX providing exemptions from position limits for certain fully hedged equity option positions.[2] In addition, the Commission has previously approved pilot programs proposed by the CBOE, the New York Stock Exchange, Inc., and the PSE providing exemptions from position limits for certain fully hedged equity

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[1] Position limits impose a ceiling on the aggregate number of options contracts on the same side of the market that can be held or written by an investor or group of investors acting on concert.

[2] *See* Securities Exchange Act Release No. 25738 (May 24, 1988), 53 20201 (June 2, 1988).

option positions and/or stock index option positions.[3] Each of the pilot programs allow the underlying hedged positions to include securities that are readily convertible into common stock.[4] Under all of the pilot programs, exercise limits continue to correspond to position limits, so that investors are allowed to exercise, during five consecutive business days, the number of option contracts set forth as the position limit, as well as those contracts purchased pursuant to the pilot program.[5]

The Exchanges believe that the proposed rule changes are consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that they are designed to protect investors and the public interest and to remove impediments and perfect the mechanism of a free and open market.

(B) Self-Regulatory Organizations' Statement on Burden on Competition

The Exchanges do not believe that the proposed rule changes will impose any burden on competition.

(C) Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Changes Received From Members, Participants or Others

Written comments on the proposed rule changes were neither solicited nor received.

[3] *See* Securities Exchange Act Release Nos. 25738 (May 24, 1988), 53 FR 20201 (June 2, 1988) (order approving CBOE's equity option hedge exemption pilot programs); 25739 (May 24, 1988(, 53 FR 20204 (June 2, 1988) (approving CBOE's stock index option hedge exemption pilot program); 27786 (March 8, 1990), 55 FR 9523 (March 14, 1990) (order approving NYSE's equity option and stock index option hedge exemption pilot programs); 25811 (June 20, 1988), 53 FR 23821 (June 24, 1988) (order approving PSE'e equity option hedge exemption pilot program); and 32900 (September 14, 1993), 58 FR 49077 (September 21, 1993) (order approving PSE's stock index option hedge exemption pilot program).

[4] The Commission expects the Exchanges to determine on a case-by-case basis whether an instrument that is being used as the basis for an underlying hedged position is readily and immediately convertible into a security that is convertible at a future date, but which is not presently convertible, is not a "convertible" security for purposes of the equity option position limit hedge exemption until the date it becomes convertible. In addition, if the convertible security used to hedge an options position is called for redemption by the issuer, the security would have to be converted into the underlying security immediately or the corresponding options position reduced accordingly. *See, e.g.*, Securities Exchange Act Release No. 32904 (September 14, 1993), 58 FR 49339.

[5] Exercise limits prohibit the exercise by an investor or group of investors acting in concert of more than the number of options contracts specified in the position limit rule within five consecutive business days.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The Exchanges have requested that the proposed rule changes be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

The Commission finds that the proposed rule changes to extend the pilot programs until May 17, 1995, are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) thereunder.[6] The Commission concludes, as it did when originally approving each of the pilot programs, that providing for increased position and exercise limits for equity options and stock index options in circumstances where those excess positions are fully hedged with offsetting stock positions will provide greater depth and liquidity to the market and allow investors to hedge their stock portfolios more effectively, without significantly increasing concerns regarding intermarket manipulations or disruptions of either the options market or the underlying stock market.

The Commission also notes that before the pilot program of an Exchange can be extended or approved on a permanent basis, that Exchange must provide the Commission with a report on the operation of its pilot program since its inception by January 31, 1995. Specifically, an Exchange must provide the Commission details on (1) the frequency with which the exemptions have been used; (2) the types of investors using the exemptions; (3) the size of the positions established pursuant to the pilot program; (4) what types of convertible securities are being used to hedge positions and how frequently the convertible securities have been used to hedge; (5) whether the Exchange has received any complaints on the operation of the pilot program; (6) whether the Exchange has taken any disciplinary action against, or commenced any violation of any term or condition of the pilot program; (7) the market impact, if any, of the pilot program; and (8) how the Exchange has implemented surveillance procedures to ensure compliance with the terms and conditions of the pilot program. In addition, the Commission expects each Exchange to inform the Commission of the results of any surveillance investigations undertaken for apparent violations of the provisions of its position limit hedge exemption rules.

[6] 15 U.S.C. § 78f(b)(5) (1982).

The Commission finds good cause for approving the extension of the pilot programs prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to permit the continuation of the pilot programs. The Commission notes that the Exchanges have not experienced any significant programs with the pilot programs since their inception and that the Exchanges will continue to monitor the pilot programs to ensure that no problems arise. Finally, no adverse comments have been received by the Exchanges or the Commission concerning the pilot programs. Based on the above, the Commission believes good cause exists to approve the extension of the pilot programs through May 17, 1995, on an accelerated basis. Therefore, the Commission believes that granting accelerated approval of the proposal is appropriate and consistent with sections 6 and 19(b)(2) of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organizations. All submissions should refer to the file number in the caption above and should be submitted by December 19, 1994.

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule changes (SR–Amex–94–49, SR–CBOE–94–41, SR–PSE–94–33, and SR–PHLX–94–53) relating to an extension of the hedge exemption pilot programs until May 17, 1995, is approved.

[7] 15 U.S.C. § 78s(b)(2) (1982).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–29213 Filed 11–25–94; 8:45 am]

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[Release No. 34–34987; File No. SR–CBOE–94–35]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Expedited Proceedings and Offers of Settlement

November 18, 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 October 12, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, 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 CBOE proposes to amend CBOE Rules 17.3, "Expedited Proceeding," and 17.8 "Offers of Settlement," to (1) specify that the subject of an Exchange investigation must notify the CBOE staff in writing within 15 days of the date of notification under paragraph (d), "Notice, Statement and Access," of CBOE Rule 17.2, "Complaint and Investigation" that he elects to proceed in an expedited manner pursuant to CBOE Rule 17.3; (2) reduce the time period during which settlement offers may be submitted by a subject in an Exchange disciplinary matter who seeks to resolve the matter through expedited proceedings pursuant to CBOE Rule 17.3; and (3) allow either the subject or the Exchange staff to end the negotiations for a letter of consent at any point during the negotiations.[1] If either the CBOE staff or the subject ends the negotiations, the subject will have 15 days to submit a written statement to the BCC pursuant to CBOE Rule 17.2(d) indicating why no disciplinary action should be taken; the CBOE staff may then bring the matter to the BCC for appropriate action. If the subject and the CBOE staff are able to agree upon a letter of consent, the CBOE staff will submit the letter to the BCC.

In addition, the CBOE proposes to amend CBOE Rule 17.8, Interpretation and Policy .01, to provide that if the respondent and the CBOE staff are unable to reach agreement on a letter of consent under CBOE Rule 17.3 then the number of days over 30 between the time when the CBOE staff receives notice of the respondent's election to proceed in an expedited manner under CBOE Rule 17.3 and the date when either party ends the consent negotiations shall be deducted from the 120-day period specific in CBOE Rule 17.8 (a), "Submission of Offer," which provides a 120-day period within which a respondent may submit a settlement offer to the BCC. Regardless of the amount of time spent in unsuccessful consent negotiations, the respondent will have no less than 14 days to submit a settlement offer to the BCC pursuant to CBOE Rule 17.8(a).

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 statement 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

Background

Pursuant to CBOE Rule 17.2(d), prior to the time that the CBOE staff submits an investigative report to the Exchange's BCC concerning possible disciplinary violations, the staff if required to provide a notice to the subject of the report which sets forth the general nature of the allegations made in the report and the specific rules that appear to have been violated (a "Notification Letter"). CBOE Rule 17.2(d) provides further than, except when the BCC determines that expeditious action is required, the subject of an investigative report shall have 15 days from the date of the Notification Letter in which to submit a written statement to the BCC concerning why no disciplinary action should be taken against a subject (a "Notification Response"). In accordance with CBOE Rule 17.4, "Charges," the CBOE staff then submits the investigative report and the Notification Response to the BCC, and if the BCC determines that probable cause exists for finding a disciplinary violations, a statement of charges is issued against the subject.

Upon the issuance of a statement of charges against a subject, the subject is referred to as a respondent under the Exchange's rules.[2] Pursuant to CBOE Rule 17.8(a), a respondent has 120 calendar days from the date of service of a statement of charges in which to submit settlement offers to the BCC. However, the 120-day settlement period does not include the number of days in excess of seven calendar days that it takes the Exchange's staff to comply with a respondent's request for access to documents which is made properly pursuant to CBOE Rule 17.4(c), "Access to Documents."[3] In addition, with one exception, a respondent is only entitled to submit a maximum of two settlement offers to the BCC during the 120-day settlement period.[4] Upon the expiration of the 120-day settlement period, or earlier if the BCC rejects a respondent's second settlement offer prior to the expiration of such period, a hearing is scheduled with respect to the charges.[5]

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[8] 17 CFR 200.30–3(a)(12) (1993).

[1] CBOE Rule 17.2(c), "Report," requires the CBOE staff to submit a written report of its investigation to the Exchange's Business Conduct Committee ("BCC") in every case where an investigation results in a finding that there are reasonable grounds to believe that a violation of the Act or the CBOE's rules has been committed. CBOE Rule 17.2(d), "Notice, Statement and Access," requires the CBOE staff to notify the subject of the report of the general nature of the allegations and of the specific provisions of the Act or of the CBOE's rules that appear to have been violated. Under CBOE Rule 17.3, the subject of a report written pursuant to CBOE Rule 17.2 may to seek to dispose of the matter through a letter of consent.

[2] *See* CBOE Rule 17.4(b), "Initiation of Charges."

[3] *See* CBOE Rule 17.8, Interpretation and Policy .01(c). CBOE Rule 17.4(c) provides that within 60 calendar days after a statement of charges has been served upon a respondent, the respondent may make a written request for access to all documents concerning the case that are in the Exchange's investigative file except for CBOE staff investigation and examination reports and materials prepared by the CBOE staff in connection with such reports or in anticipation of a disciplinary hearing. However, in providing such documents the CBOE staff may protect the identity of a complainant.

[4] *See* CBOE Rule 17.8, Interpretation and Policy .01(a) and (b). The BCC, at its discretion, may permit a respondent to submit a third settlement offer during the 120-day settlement period if the pertinent details of the offer are consistent with parameters and criteria deemed acceptable by the BCC.

[5] *See* CBOE Rule 17.8, Interpretation and Policy .02.

Notwithstanding the foregoing, CBOE Rule 17.3 sets forth an expedited proceeding process pursuant to which a subject may seek to resolve a disciplinary matter through a letter of consent with the Exchange prior to the issuance of a statement of charges against the subject. CBOE Rule 17.3 requires that a letter of consent contain a description of the facts, violation, and sanction and must be agreed upon by the Exchange staff and by the respondent. In addition, CBOE Rule 17.3 requires that all such letters of consent be accepted by the BCC. If the Exchange staff and the subject are unable to agree upon a letter of consent or if they agree upon a letter of consent and the letter is rejected by the BCC, CBOE Rule 17.3 provides that the matter shall proceed as if no letter of consent had been submitted to the BCC (*i.e*, the BCC may decide to authorize the issuance of a statement of charges against the subject; the subject is then entitled to submit settlement offers to the BCC pursuant to CBOE Rule 17.8 during the 120-day settlement period).

Therefore, under the Exchange's current rules, a subject who unsuccessfully attempts to resolve a disciplinary matter through expedited proceedings is permitted to take advantage of the entire 120-day settlement period, no matter how long the subject may have spent in the expedited proceeding process. As a result, as noted by the Exchange and by the Division of Market Regulation ("Division") of the Commission in connection with the Division's inspection of the Exchange's surveillance, investigative, and enforcement programs which took place last year, it is possible for a respondent to utilize the expedited proceeding process as a means of circumventing the 120-day settlement period limit and accordingly as a means of simply delaying the resolution of the case.[6]

Proposal

In response to this concern, the CBOE proposes to amend CBOE Rule 17.8 to reduce the time period during which settlement offers may be submitted by a subject who seeks to resolve a disciplinary matter through expedited proceedings, is unable to reach an agreement with Exchange staff, and consumes over 30 days in the expedited proceeding process. Specifically, under the proposal, the number of days in excess of 30 days that a subject spends in the expedited proceeding will be deducted from the 120-day settlement period applicable to the subject; provided, however, that in no event will a subject's settlement period under CBOE Rule 17.8 ever be less than 14 days.[7]

The mechanism for limiting settlement periods will apply only to a subject who attempts to resolve a disciplinary matter through expedited proceedings and is unable to reach an agreement with CBOE staff upon a letter of consent. It will not apply to a subject who attempts to resolve a disciplinary matter through expedited proceedings and who reaches an agreement with CBOE staff upon a letter of consent, but finds that the agreed-upon letter of consent is not accepted by the BCC. In addition, under this mechanism, in no event will the number of days between the time that the expedited proceedings process is deemed to end (as described below) and the time that a subject is served with a statement of charges be deducted from the 120-day settlement period applicable to the subject.

The proposed amendment will also refine the procedures that are applicable to expedited proceedings under CBOE Rule 17.3 in two ways. First, the proposed amendment will impose a new requirement that any subject desiring to attempt to resolve a disciplinary matter through expedited proceedings submit a written notice of this fact to the Exchange staff within 15 days from the date of service upon the subject of a Notification Letter. Second, the proposed amendment will permit either the Exchange staff or the subject to declare an end to the negotiations regarding a letter of consent and thus an end to the expedited proceeding process at any point in the consent negotiations by delivering a written declaration to this effect to the other party. After the declaration is delivered, the subject will have 15 days to submit a Notification Response and the Exchange staff will then be permitted to bring the matter to the BCC. Currently, there is no provision in the CBOE's rules setting forth when a subject is deemed to enter the expedited proceeding process or when the expedited proceeding process is deemed to end, and these new procedures will establish a start and end date for when a subject is deemed to be in the expedited proceeding process so that the number of days that the subject spends in the expedited proceeding process can be calculated for the purposes of CBOE Rule 17.8.

Finally, the proposal makes certain editorial changes to clarify CBOE Rules 17.8 and 17.3 without affecting their substance.

The CBOE believes that the proposal will enhance the efficiency and effectiveness of the Exchange's disciplinary process. Specifically, the Exchange believes that by limiting the settlement period applicable to those subjects who consume over 30 days in the expedited proceeding process but cannot reach an agreement with the Exchange staff upon a letter of consent, the proposed changes will minimize opportunities for delay and thereby help to preserve evidence and the memories of witnesses.

Basis

The CBOE believes that the proposal is consistent with section 6(b) of the Act, in general, and further the objectives of section 6(b)(1) and 6(b)(6), in particular, in that it promotes appropriate disciplinary processes and enables the Exchange to efficiently enforce compliance with its rules and federal securities laws.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days 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 reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and

[6] *See* Letter from Brandon Becker, Director, Division, Commission, to Charles Henry, President, CBOE, dated October 20, 1993, and Letter from Charles Henry, President, CBOE, to Brandon Becker, Director, Division, Commission, dated January 14, 1994.

[7] The proposed amendment will also amend all of the references to the 120-day settlement period which are contained currently in CBOE Rule 17.8 to acknowledge that this settlement period will be shorter in situations where the mechanism described for limiting the 120-day settlement period becomes applicable.

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 December 19, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–29214 Filed 11–25–94; 8:45 am]

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[Release No. 34–34985; File No. SR–NYSE–94–37]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Equity-Linked Debt Securities ("ELDS")

November 18, 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 October 21, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[8] 17 CFR 200.30–3(a)(12) (1993).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend its listing standards for equity-linked debt securities ("ELDS") contained in Paragraph 703.21 of the Exchange's Listed Company Manual ("Manual") to provide for greater flexibility in the listing of ELDS. The text of the proposed rule change is available at the Office of the Secretary, NYSE, 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 NYSE 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 NYSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

ELDS are intermediate-term, debt securities of an issuer where the value of the debt is based, at least in part, on the value of another issuer's common stock or non-convertible preferred stock.[1] The purpose of the proposed rule change is to provide alternative market capitalization and trading volume criteria for the linked security, that is, the security on which the value of the ELDS is based. Specifically, the proposed rule change will add the following alternative standard for securities that can be linked to an ELDS: (1) market capitalization of at least $500 million; and (2) annual U.S. trading volume for the one-year period prior to the listing of the ELDS of at least 80 million shares.[2] Paragraph 703.21 will also be amended to provide flexibility for the listing of issues of ELDS in cases where the linked security does not meet the specified capitalization and trading volume criteria provided in Paragraph 703.21 of the Manual, provided the staff of the Commission concurs with the listings.

Finally, the proposed rule change amends existing language in Paragraph 703.21 regarding the listing of ELDS that represent more than the specified maximum percentages of the outstanding shares of the linked security.[3] The amended language parallels the language discussed above regarding the ability of the Exchange to list ELDS that do not meet the specific capitalization and trading volume standards, *i.e.*, an ELDS linked to more than the maximum specified percentages of the outstanding shares of the linked security could be listed provided that the NYSE, with the concurrence of the staff of the Commission, determines that the listing is appropriate.[4]

The NYSE believes the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the

[1] The Commission originally approved the Exchange's ELDS listing standards on January 13, 1994. *See* Securities Exchange Act Release No. 33468 (January 13, 1994), 59 FR 3387 (January 21, 1994) ("Exchange Act Release No. 33468"). The ELDS listing standards have twice been amended since that time. *See* Securities Exchange Act Release Act Nos. 33841 (March 31, 1994), 59 FR 16671 (April 7, 1994) (order approving alternative minimum market capitalization and trading volume requirements for the security underlying an ELDS) ("Exchange Act Release No. 33841") and 34545 (August 18, 1994), 59 FR 43877 (August 25, 1994) (order approving the listing of ELDS linked to sponsored American Depositary Receipts ("ADRs") and other securities issued by non-U.S. companies subject to reporting requirements under the Act) ("Exchange Act Release No. 34545").

[2] Currently, the market capitalization and trading volume requirements for a security underlying an ELDS are as follows: (1) market capitalization of at least $3 billion and trading volume in the U.S. for the one-year period prior to the listing of the ELDS of at least 2.5 million shares; or (2) market capitalization of at least $1.5 billion and trading volume in the U.S. for the one-year period prior to the listing of the ELDS of at least 20 million shares. *See* Exchange Act Release Nos. 33468 and 33841, *supra* note 1.

[3] Paragraph 703.21 presently provides that an issue of ELDS linked to a security issued by a: (1) U.S. company may not exceed 5% of the total outstanding shares of that security; and (2) non-U.S. company that is subject to reporting requirements under the Act may not exceed (i) 2% of the total worldwide outstanding shares of such security if at least 30% of the worldwide trading volume for the security and all related securities during the six-month period preceding the date of listing occurs in the U.S. market, (ii) 3% of the total worldwide outstanding shares of such security if at least 50% of the worldwide trading volume for the security and all related securities during the six-month period preceding the date of listing occurs in the U.S. market, or (iii) 5% of the total worldwide outstanding shares of such security if at least 70% of the worldwide trading volume for the security and all related securities during the six-month period preceding the date of listing occurs in the U.S. market. *See* Securities Exchange Act Release Nos. 33468 and 34545, *supra* note 1.

[4] The Commission notes that Paragraph 703.21 presently provides that an ELDS may relate to more than the maximum percentages set forth above if the Exchange, in consultation with the staff of the Commission, determines that the listing is appropriate. As a result, the Commission believes that this portion of the proposed rule change is non-substantive in that it merely clarifies the intent of current standard set forth in the NYSE's rules, provides uniformity throughout Paragraph 703.21, and provides uniformity among the wording of the NYSE rule and similar rules of other self-regulatory organizations (*see infra* notes 10–12).

objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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 NYSE 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 either solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NYSE has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act[5] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. Specifically, the Commission believes that the proposed change does not raise any significant regulatory issues that were not addressed in the Commission's approval orders regarding ELDS.[6] The Commission finds that the proposal to add an additional market capitalization and trading volume requirement for eligible linked securities will expand the number of securities that can be linked to an ELDS while maintaining the requirement that the linked security be an actively traded common stock or sponsored ADR issued by a highly capitalized issuer. While the proposal introduces a third alternative for ELDS eligibility that reduces the minimum market capitalization requirement for the linked security, the stock of such an issuer (or sponsored ADR related thereto) could only be linked to an ELDS issue if its trading volume in the U.S. for the prior one-year period is at least 80 million shares, which is four times higher than the current minimum trading volume requirement.[7] The Commission believes that together, the new capitalization and trading volume requirements will continue to ensure that ELDS are only issued on highly liquid securities of broadly capitalized companies and that these requirements will reduce the likelihood of any adverse market impact on the securities underlying ELDS.

Additionally, allowing the NYSE, subject to the concurrence of the staff of the Commission, to approve an issue of ELDS that either does not satisfy one of the existing requirements regarding market capitalization and trading volume merely adds flexibility to the proposed rule change. The Commission believes that this portion of the proposal does not raise any regulatory concerns, particularly given the requirement of obtaining the concurrence of the staff of the Commission prior to listing.[8]

Moreover, as stated above, amending the language of Paragraph 703.21 to state that the concurrence of the staff of the Commission is required prior to listing an ELDS linked to greater than the maximum specified percentages of the outstanding shares of the linked security merely clarifies the intent of the language currently contained in Paragraph 703.21.[9] Accordingly, this portion of the proposal raises no new regulatory concerns.

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** in order to allow the Exchange to begin listing ELDS satisfying the revised listing standards described herein without delay. For the reasons discussed above, the Commission believes that the proposal does not raise any significant regulatory issues. Additionally, the changes proposed herein are substantively the same as amendments recently approved by the Commission for the listing of equity linked debt by the American Stock Exchange, Inc.,[10] the National Association of Securities Dealers, Inc.,[11] and the Chicago Board Options Exchange, Inc,[12] for which no comments have been received by the Commission.

For the above reasons, the Commission believes it is consistent with Section 19(b)(2)[13] of the Act to approve the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File Number SR–NYSE–94–37 and should be submitted by December 19, 1994.

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NYSE–94–37) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jonathan G. Katz,

Secretary.

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[5] 15 U.S.C. § 78f(b)(5) (1982).

[6] *See supra* note 1.

[7] *See supra* note 2.

[8] If the NYSE proposed an ELDS that raised unique or significant regulatory concerns, the staff of the Commission would require the NYSE to submit a rule filing to the Commission pursuant to Section 19(b) of the Act. Depending on the proposed facts, the Commission may require the NYSE to submit a rule filing to the Commission pursuant to Section 19(b) of the Act to address the regulatory issues raised by any proposed offering of ELDS that does not satisfy the market capitalization and/or trading volume set forth in Paragraph 703.21 of the Manual, as amended herein. In this connection, the Commission notes that any proposal to list an ELDS linked to a security with a market capitalization of less than $500 million would raise significant regulatory concerns for which a Section 19(b) rule filing would be required.

[9] *See supra* note 4.

[10] *See* Securities Exchange Act Release No. 34765 (September 30, 1994), 59 FR 51220 (October 7, 1994).

[11] *See* Securities Exchange Act Release No. 34758 (September 30, 1994), 59 FR 50943 (October 6, 1994).

[12] *See* Securities Exchange Act Release No. 34759 (September 30, 1994), 59 FR 50939 (October 6, 1994).

[13] 15 U.S.C. § 78s(b)(2) (1988).

[14] 15 U.S.C. § 78s(b)(2) (1982).

[15] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34984; File No. SR–CBOE–94–33]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Reporting by the Exchange to the Central Registration Depository ("CRD") of Information Concerning Pending Formal Exchange Disciplinary Proceedings

November 18, 1994.

On September 15, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change requiring the CBOE to report information concerning pending formal Exchange disciplinary proceedings to the Central Registration Depository ("CRD").[3] Notice of the proposal appeared in the **Federal Register** on October 13, 1994.[4] No comment letters were received on the proposed rule change. This order approves the CBOE proposal.

Currently, the Exchange discloses to the CRD information with respect to formal Exchange disciplinary proceedings only upon the conclusion of such proceedings.[5] Under the proposed rule change, the amount of information concerning formal Exchange disciplinary proceedings[6] reported by the Exchange to the CRD would be expanded to include the issuance of a statement of charges in such proceedings and all significant changes[7] in the status of such proceedings while such proceedings are pending. For purposes of Rule 17.14, a formal Exchange disciplinary proceeding would be considered to be pending from the time that a statement of charges is issued in the proceeding[8] until the outcome of the proceeding becomes final.

In addition to the foregoing, the proposed rule change would renumber the provisions which are currently contained in Rule 17.12 (Miscellaneous Provisions) without affecting the substance of these provisions. Specifically, under the proposed rule change, the current provisions of Rule 17.12 would be separated into two rules, Rule 17.12 and Rule 17.13.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[9] Specifically, the Commission believes the proposal is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

In the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Penny Stock Reform Act"), Congress mandated that the NASD establish its 800 number service for the purpose of receiving and responding to inquiries from the public regarding the background of NASD members and their associated persons.[10] As initially implemented, a caller using the 800 number service could request a written report from the NASD with the following information contained in the CRD:[11] past and present employment history of NASD members and their associated persons; all final disciplinary actions,[12] taken by federal and state regulatory agencies and SROs, that relate to securities or commodities transactions; and all criminal convictions reported on Form BD or Form U–4.

In 1993, the Commission approved a rule change by the NASD to expand the scope of information that is reportable through its 800 number service.[13] Thus, in addition to the information set forth above, the NASD may disclose to the public such events as pending formal disciplinary actions initiated by federal and state regulatory agencies and SROs; criminal indictments or informations; civil judgments; and certain arbitration awards in securities and commodities disputes involving public customers. Currently, the NASD relies on members and associated persons to report these events to the CRD on form BD or Form U–4, respectively.[14] Because this represents the only means by which the NASD can obtain data about pending disciplinary actions (other than its own), the quality of the CRD database, and thus of the 800 number service, depends on complete and timely reporting by members and associated persons.

As stated in the NYSE and CHX Approval Orders,[15] the proposed rule change should help fill a potential gap in the NASD's 800 number service by authorizing the Exchange to report directly to the CRD the initiation of a formal CBOE disciplinary proceeding and significant changes in the status

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] The CRD is an automated industry database containing employment and disciplinary history of members and associated persons registered with self-regulatory organizations ("SROs") and state securities agencies. The CRD is operated by the National Association of Securities Dealers, Inc. ("NASD") with input on policy and other matters from federal and state agencies and other SROs including the Exchange.

[4] *See* Securities Exchange Act Release No. 34792 (October 5, 1994), 59 FR 52014 (October 13, 1994).

[5] Information concerning final disciplinary actions taken by the Exchange, the NASD, and other SROs, as well as information concerning certain criminal convictions contained in the CRD, has been disclosed to the public pursuant to the NASD's 800 number service ("800 number service") since October 1991. The Commission subsequently approved the NASD's procedures for operating its 800 number service in Securities Exchange Act Release No. 30629 (April 23, 1992), 57 FR 18535 (April 30, 1992) ("800 Number Service Plan Approval Order"). On July 1, 1993, the Commission approved an NASD rule change to make more information available to the public regarding pending disciplinary proceedings or actions taken by federal or state agencies and SROs that relate to securities and commodities transactions, and regarding criminal indictments and information. *See* Securities Exchange Act Release No. 32568 (July 1, 1993), 58 FR 36723 (July 8, 1993) ("Pending Event Disclosure Approval Order"). In addition, the Commission recently approved rule changes by both the New York Stock Exchange, Inc. and the Chicago Stock Exchange, Inc. that are substantively the same as the CBOE's proposal. *See* Securities Exchange Act Release Nos. 33844 (March 31, 1994), 59 FR 16669 (April 7, 1994) and 34516 (August 10, 1994), 59 FR 42317 (August 17, 1994) ("NYSE and CHX Approval Orders").

[6] For purposes of CBOE Rule 17.14, and Exchange disciplinary proceeding would be considered to be a formal disciplinary proceeding if it is initiated by the Exchange pursuant to Exchange Rule 17.2 *et. seq.*

[7] Significant changes in the status of a formal Exchange disciplinary proceeding would be deemed to include, but not be limited to, the scheduling of a disciplinary hearing, the issuance of a decision by the CBOE's Business Conduct Committee, the filing of an appeal to the Exchange's Board of Directors, and the issuance of a decision by the Exchange's Board of Directors.

[8] *See* CBOE Rule 17.4(b).

[9] 15 U.S.C. 78f(b)(5) (1988).

[10] *See supra* note 5.

[11] Under NASD procedures, the 800 number service operator does not provide any information over the telephone. Instead, a written copy of the information requested is sent to the caller and to the NASD member and/or associated person who is the subject of the inquiry. The identity of the caller remains confidential. *See* 800 Number Service Plan Approval Order, *supra*, note 5.

[12] The NASD's 800 number service plan does not define the term "disciplinary action." According to the NASD, however, the term includes, but is not limited to, information provided in response to question 7 on Form BD and question 22 on Form U–4. *See* Pending Event Disclosure Approval Order, *supra*, note 5.

[13] *Id.* The Commission notes that, in 1992, Congress requested that the General Accounting Office ("GAO") conduct a review of various aspects of the Penny Stock Reform Act, including the NASD's 800 number service. Among other things, the GAO recommended that information about final arbitration awards be reported. Accordingly, the NASD submitted, and the Commission approved, a rule change authorizing the NASD to disclose certain arbitration awards, as well as pending formal disciplinary actions, through its 800 number service. In this context, the Commission notes that it has requested all SROs to coordinate with the NASD the transfer of information about awards rendered in each exchange's arbitration program.

[14] *See supra* note 13.

[15] *See supra* note 5.

thereof. As a result, that information will be available to the public whether or not it is voluntarily reported by the member or associated person. The Commission therefore finds that the proposed rule change should enhance the fairness and accuracy of the CRD database and, accordingly, of information released to the public through the 800 number service.

The Commission has long believed that investors need access to reliable information in order to protect themselves against potential fraud and abuse. In this respect, the CBOE proposal should help customers make an informed decision about whether they should conduct or continue to conduct business with particular securities professionals. In sum, the Commission has concluded that the proposed rule change should increase the flow of information to the public and thus should ultimately strengthen investor protection.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, [16] that the proposed rule change (File No. SR–CBOE–94–33) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–29211 Filed 11–25–94; 8:45 am]

BILLING CODE 8010–01–M

[16] 15 U.S.C. 78s(b)(2) (1988).

[17] 17 CFR 200.30–3(a)(12) (1993).

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended November 18, 1994

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49897
Date filed: November 14, 1994
Parties: Members of the International Air Transport Association
Subject:
Comp Telex Mail Vote 719
Amend Mileage Manual
Proposed Effective Date: December 1, 1994

Docket Number: 49898
Date filed: November 14, 1994
Parties: Members of the International Air Transport Association
Subject:
TC2 Reso/P 1651 dated September 23, 1994
Middle East-Africa Resos r-1 to r-17
Minutes—TC2 Meet/P 0339 dated September 30, 1994
Tables—TC2 Fares 1336 dated November 11, 1994
Proposed Effective Date: April 1, 1995

Docket Number: 49904
Date filed: November 16, 1994
Parties: Members of the International Air Transport Association
Subject:
TC2 Reso/P 1681 dated November 11, 1994 r-1 to r-11
TC2 Reso/P 1682 dated November 11, 1994 r-12 to r-13
TC2 Reso/P 1683 dated November 11, 1994 r-14
TC2 Reso/P 1684 dated November 11, 1994 r-15 to r-21
TC2 Reso/P 1685 dated November 11, 1994 r-22 to r-25
TC2 Reso/P 1686 dated November 11, 1994 r-26
TC2 Reso/P 1687 dated November 11, 1994 r-27 to r-31
TC2 Reso/P 1688 dated November 11, 1994 r-32 to r-33
TC2 Reso/P 1689 dated November 11, 1994 r-34
Expedited Within Europe Resolutions
Proposed Effective Date: expedited January 1, 1995

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–29209 Filed 11–25–94; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended November 18, 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: 49896
Date Filed: November 14, 1994
Due Date for Answers Conforming Applications, or Motion to Modify Scope: December 12, 1994
Description: Application of MVP Airlines, Inc., pursuant to Section 401 of the Act and Parts 201, 204 and 302 of the Act and Subpart Q of the Regulations, for a certificate of public convenience and necessity for scheduled and charter interstate and overseas air transportation of persons, property and mail within the United States.

Docket Number: 49001
Date filed: November 15, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 13, 1994
Description: Application of All Nippon Airways Co., Ltd., pursuant to 49 U.S.C. Section 41302 and Subpart Q of the Regulations, applies for an amendment to its foreign air carrier permit to engage in scheduled foreign air transportation of persons, property and mail between Osaka, Japan and Guam.

Docket Number: 49906
Date filed: November 17, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 15, 1994
Description: Application of Brasair Transportes Aereos Ltda, pursuant to Section 402 of the Act and Subpart Q of the Regulations, applies for a foreign air carrier permit authorizing the carriage of cargo and mail on a charter basis between a point or points in Brazil and a point or points in the United States.

Docket Number: 49911
Date filed: November 18, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 16, 1994
Description: Application of Executive Airlines Inc., pursuant to Section 402 of the Act and Subpart Q of the Regulations, requests a foreign air carrier permit to provide charter air transportation of goods between points in the United States and points in Canada, and between points in the United States and other points worldwide.

Docket Number: 49244
Date filed: November 15, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 13, 1994
Description: First Amendment to Application of Sociedad Ecuatoriana De Transportes Aereos SAETA S.A. pursuant to Section 402 of the Act and Subpart Q of the Regulations, to reflect the changes which have occurred since the time of filing of SAETA's Foreign Air Carrier Permit.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–29210 Filed 11–25–94; 8:45 am]

BILLING CODE 4910–62–P

Federal Highway Administration

Environmental Impact Statement; Berkeley and Jefferson Counties, West Virginia

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Revised notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement being prepared for the proposed highway project in Berkeley and Jefferson Counties, West Virginia, has revised project limits.

FOR FURTHER INFORMATION CONTACT: Bobby W. Blackmon, Acting Division Administrator, Federal Highway Administration, 550 Eagan Street, Suite 300, Charleston, West Virginia 25301, Telephone: (304) 347–5929, or Ben L. Hark, Environmental Section Chief, Roadway Design Division, West Virginia Department of Transportation, 1900 Kanawha Boulevard East, Building 5, room A–830, Capitol Complex, Charleston, West Virginia 25305–0430, Telephone: (304) 558–3236.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the West Virginia Department of Highways (WVDOH), will prepare an Environmental Impact Statement (EIS) on a proposal to improve West Virginia Route 9 (WV 9) between Charles Town and Martinsburg. The improvement as previously proposed would provide a four-lane controlled access roadway for WV 9 from the existing Charles Town Bypass to just east of South Queen Street in Martinsburg. The improvement as currently proposed reduces the project limit by 0.92 mile on the eastern terminus so that a four-lane controlled access roadway would be provided from the existing Charles Town Bypass to Berkeley County Route 9/36 (Grapevine Road). This 0.92 mile section between South Queen Street and Grapevine Road will be considered as a separate project in order to address current unacceptable access and safety problems associated with that section.

Improvements to the WV 9 corridor between Charles Town and Martinsburg are considered to adequately provide for a safe and efficient transportation system to serve the existing and future transportation needs of the area and to sustain and encourage local and regional economic development. Alternatives under consideration for the environmental impact statement include (1) No Build; (2) widening portions of the existing two-lane highway to four lanes; and (3) constructing a four-lane, controlled access highway along new alignment.

Informational public meetings were held February 18, 1992 in Charles Town and February 19, 1992 in Martinsburg to present preliminary information and solicit questions, comments and concerns. The previous Notice of Intent appeared in the **Federal Register** June 1, 1992. The scoping meeting was held October 21, 1992 with participants from federal, state, and local agencies in attendance. A public workshop was held November 3, 1993 and a public meeting on December 21, 1993, both in Kearneysville to present updated information and continue the public involvement process. The pre-draft EIS was circulated to federal, state, and county agencies January 1994. The draft EIS is not yet available for public circulation. A section 106/public meeting was held June 29, 1994 in Martinsburg to present current information and solicit additional information regarding history and archaeology in the area. Additional meetings and hearings will be scheduled when a draft EIS is available for circulation. Notice will be given of the time and place of the meetings and hearings. A public hearing for the 0.92 mile section as a separate project was held August 11, 1994. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided.

(Catalog of Federal Domestic Assistance Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.)

Issued on: November 17, 1994.

Bobby W. Blackmon,

Acting Division Administrator, Charleston, West Virginia.

[FR Doc. 94–29123 Filed 11–25–94; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement; Greene County, Pennsylvania

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Greene County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Kevin Mahoney, P.E., District Engineer, Federal Highway Administration, 228 Walnut Street, P.O. Box 1086, Harrisburg, Pennsylvania 17108–1086, Telephone: (717) 782–3411, or George W. Tanner, P.E., District Liaison Engineer, Pennsylvania Department of Transportation, P.O. Box 459, North Gallatin Avenue Extension, Uniontown, PA 15401, Telephone: (412) 439–7315.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation (PADOT), will prepare an Environmental Impact Statement (EIS) for improvement of a portion of U.S. Route 19 (U.S. 19). This section of U.S. 19 is located in the community of Morrisville in Franklin Township, Greene County, Pennsylvania. Generally, U.S. 19 is a north-south roadway, but through the project area travels east-west. The limits of the proposed project will be from the Waynesburg borough line eastward to the intersection of U.S. 19 and S.R. 0021, having a total length of approximately 3244 feet. The project area is bordered by the south fork of Tenmile Creek to the north and Morris Street (T–541) to the south. Improvements in the study area are considered necessary to adequately provide for a safe and efficient transportation system to serve the existing and future transportation needs of the project area.

A phased approach will be utilized to complete the preliminary design studies for this proposed highway project. Included in the first phase of the preliminary engineering and environmental studies will be a detailed needs analysis, an environmental overview, and a preliminary alternatives analysis. The second and final phase will include a detailed environmental analysis of alternatives which are recommended for further study as a result of the first phase studies.

Alternatives under consideration will include but are not limited to: (1) Taking no action; (2) Transportation System Management (TSM) improvements to the existing U.S. 19, (3) upgrading existing U.S. 19; (4) two-lane relocation to the northern side of U.S. 19; and (5) two-lane relocation to the southern side of U.S. 19. Additional alternatives may be evaluated based on the findings and recommendations of the Phase 1 studies and public agency involvement process. Design variations of grade and alignment will be incorporated and studied with the various build alternatives.

During the preparation of the EIS, the following subject areas will be investigated: traffic, air quality; noise and vibration; surface water resources; aquatic environments; floodplains, groundwater; soils and geology;

wetlands; vegetation and wildlife; endangered species; agricultural lands assessment; visual; socioeconomics and land use; construction impacts; energy; municipal, industrial, and hazardous waste facilities; historic and archaeological structures and sites; Section 4(f) evaluation; wild and scenic rivers; natural and wild areas and national natural landmarks.

Information describing the proposed action and study process (EIS Plan of Study) will be sent to appropriate federal, state, and local agencies and to private organizations and citizens who have previously expressed or are known to have interest in this project to solicit comments. A series of public meetings will be held in the area. Public notices of the time and place of these meetings and any required public hearings will be given in a timely fashion. The Draft EIS will be available for agency and public review and comment prior to the public hearing. Public involvement and interagency coordination will be maintained throughout both phases of the study process. A formal scoping meeting will be held upon request.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Bradley D. Keazer,

Acting Assistant Division Administrator, Harrisburg, Pennsylvania.

[FR Doc. 94–29141 Filed 11–25–94; 8:45 am]

BILLING CODE 4910–22–M

Maritime Administration

Correction to Federal Register Notice

Notice is hereby given that State Street Bank and Trust Company, Boston, Massachusetts, purchased the corporate trust business of the Connecticut Bank and Trust Company, N.A., Hartford, Connecticut. State Street Bank and Trust Company's, wholly-owned subsidiary, State Street Bank and Trust Company of Connecticut, N.A., Hartford, Connecticut, will service all trust accounts previously serviced by The Connecticut Bank and Trust Company.

This Notice supersedes **Federal Register** Notice dated August 15, 1994, published August 23, 1994 (59 FR 4337) which was in error.

Dated: November 18, 1994.

By Order of the Maritime Administrator.

Joel C. Richard,

Acting Secretary.

[FR Doc. 94–29233 Filed 11–25–94; 8:45 am]

BILLING CODE 4910–81–M

National Highway Traffic Safety Administration

Announcing the Twelfth Meeting of the Motor Vehicle Safety Research Advisory Committee

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

ACTION: Meeting announcement.

SUMMARY: This notice announces the twelfth meeting of the Motor Vehicle Safety Research Advisory Committee (MVSRAC). The Committee was established in accordance with the provisions of the Federal Advisory Committee Act to obtain independent advice on motor vehicle safety research. Discussions at this meeting will include NHTSA's fiscal year 1995 research programs, update activities of the Heavy Truck and Crashworthiness Subcommittees, and discuss vehicle safety design to match a changing labor force.

DATE AND TIME: The meeting is scheduled to begin at 10:30 a.m., on Thursday, December 15, 1994, and conclude at 4:00 p.m., that afternoon.

ADDRESSES: The meeting will be held in Room 6244 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street, SW., Washington, DC.

SUPPLEMENTARY INFORMATION: In May 1987, the Motor Vehicle Safety Research Advisory Committee was established. The purpose of the Committee is to provide an independent source of ideas for motor vehicle safety research. The MVSRAC will provide information, advice and recommendations to NHTSA on matters relating to motor vehicle safety research, and provide a forum for the development, consideration and communication of motor vehicle safety research, as set forth in the MVSRAC Charter.

The meeting is open to the public, but attendance may be limited due to space availability. Participation by the public will be determined by the Committee Chairman.

A public reference file (Number 88–01) has been established to contain the products of the Committee and will be open to the public during the hours of 9:30 a.m. to 4:00 p.m. at the National Highway Traffic Safety Administration's Technical Reference Division in Room 5108 at 400 Seventh Street, SW., Washington, DC 20590, telephone: (202) 366–2768.

FOR FURTHER INFORMATION CONTACT: Mary Coyle, Office of Research and Development, 400 Seventh Street, SW., Room 6206, Washington, DC 20590, telephone: (202) 366–5926.

Issued on: November 18, 1994.

George L. Parker,

Chairman, Motor Vehicle Safety Research Advisory Committee.

[FR Doc. 94–29190 Filed 11–25–94; 8:45 am]

BILLING CODE 4910–59–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43d F.R. 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985), I hereby determine that the objects in the exhibit, "Korean Exhibit" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition of the objects at the Asian Art Museum of San Francisco from on or about December 13, 1994, to on or about August 31, 1996, is in the national interest. Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: November 21, 1994.

Les Jin,

General Counsel.

[FR Doc. 94–29156 Filed 11–25–94; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Neila Sheahan of the Office of the General Counsel of USIA. The telephone number is 202/619–5030, and the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547.

Sunshine Act Meetings

Federal Register
Vol. 59, No. 227
Monday, November 28, 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).

AFRICAN DEVELOPMENT FOUNDATION

Board of Directors Meeting

TIME: 11:00 a.m.–1:00 p.m.

PLACE: ADF Headquarters.

DATE: Monday, December 5, 1994.

STATUS: Open.

Agenda

11:00–11:15 NPR Streamlining
11:15–11:30 Advisory Council
11:30–12:00 Executive Session (Closed)
12:00 Adjournment

If you have any questions or comments, please direct them to Ms. Janis McCollim, Executive Assistant to the President, who can be reached at (202) 673–3916.

Gregory Robson Smith,

President.

[FR Doc. 94–29323 Filed 11–23–94; 11:20 am]

BILLING CODE 6116–01–M

BOARD FOR INTERNATIONAL BROADCASTING

TIME AND PLACE: 2:00 p.m., November 30, 1994.

PLACE: American Council of Life Insurance, 1001 Pennsylvania Avenue, N.W., Suite 500, Great Lakes Room, Washington, D.C. 20004.

OPEN MEETING: The members of the Board for International Broadcasting (BIB) will meet in open session from 2:00 P.M. to 3:30 P.M. to discuss the following matters: (1) approval of the minutes of the most recent BIB meeting; (2) the Chairman's report; (3) RFE/RL President's report; and (4) new business, including reports by working groups.

CLOSED MEETINGS: The open session of the BIB meeting will be followed by a closed meeting of the Board of Directors of RFE/RL, Inc., a nonprofit private corporation. After completion of this corporate meeting, the members of the BIB will reconvene in closed session, if necessary. They would consider the potential use of grant funds to achieve budget reductions consistent with the broad foreign policy objectives of the United States. This BIB meeting would be closed, therefore, pursuant to 5 U.S.C. 552b(c) (1), (2), and (9)(B). Premature disclosure of the information discussed would likely: (1) significantly frustrate implementation of proposed agency action, including but not limited to negotiations abroad; (2) disclose matters that would be properly classified to be kept secret in the interests of foreign policy; and (3) in some instances, relate solely to internal personnel rules and practices of an agency.

CONTACT PERSON FOR MORE INFORMATION: Patricia Sowick, Program Officer, Board for International Broadcasting, Suite 400, 1201 Connecticut Avenue, N.W., Washington, D.C. 20036. (Tel: 202–254–8040).

Dated: November 23, 1994.

Richard W. McBride,

Executive Director.

[FR Doc. 94–29394 Filed 11–23–94; 3:14 pm]

BILLING CODE 6155–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the December 8, 1994 regular meeting of the Farm Credit Administration Board (Board) will not be held and that a special meeting of the Board is scheduled for Wednesday, December 7, 1994 at 10:00 a.m. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Acting Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: November 23, 1994.

Floyd Fithian,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 94–29348 Filed 11–23–94; 2:29 pm]

BILLING CODE 6705–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 10:15 a.m., Wednesday, November 30, 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, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 23, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–29306 Filed 11–23–94; 10:18 am]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, November 30, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda: Because of their routine nature, no discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that the items be moved to the discussion agenda.

1. Proposed amendments to the Board's risk-based capital guidelines for state member banks and bank holding companies to exclude from Tier 1 capital net unrealized holding gains and losses on securities available for sale. (Proposed earlier for public comment; Docket No. R–0823)
2. Proposed amendments to Regulation H (Membership of State Banking Institutions in the Federal Reserve System) regarding public welfare investments by state member banks (proposed earlier for public comment; Docket No. R–0838), and a corresponding Regulation Y (Bank Holding Companies and Change in Bank Control) interpretation for bank holding companies.
3. Any items carried forward from a previously announced meeting.

Discussion Agenda: PLEASE NOTE THAT NO DISCUSSION ITEMS ARE SCHEDULED FOR THIS MEETING.

Note: If the items are moved from the Summary Agenda to the Discussion Agenda, discussion of the items will be recorded. Cassettes will then be available for listening in the Board's Freedom of Information Office, and copies can 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, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: November 23, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–29307 Filed 11–23–94; 10:18 am]

BILLING CODE 6210–01–P

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 November 28, 1994.

An open meeting will be held on Thursday, December 1, 1994, at 10:00 a.m., in Room 1C30. A closed meeting will be held on Thursday, December 1, 1994, following the 10:00 a.m. open meeting.

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 Wallman, 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 Thursday, December 1, 1994, at 10:00 a.m., will be:

1. The Commission will consider whether to adopt proposed Rule 17Ad–16 under the Securities Exchange Act of 1934. The proposed rule would require a registered transfer agent to provide written notice to securities depositories when terminating or assuming transfer agent responsibilities on behalf of an issuer or when changing its name or address. For further information, please contact Ester Saverson, Jr. at (202) 942–4187.

The Commission will consider whether to issue a release soliciting comment on interpretation of transfer agent rules to address the problems of undeliverable dividend and interest distributions and other issues related to lost security holders and abandoned property. For further information, please contact Ester Saverson, Jr. at (202) 942–4187.

2. Consideration of whether to publish: (1) a concept release, which solicits public comment on a direct registration system permitting shareholders to hold securities in book-entry form directly with the issuer; and (2) a release proposing amendments to Rules 17Ad–2, 17Ad–10, and 17Ad–12 under the Securities Exchange Act of 1934 ("Exchange Act") regarding turnaround time, recordkeeping, and the safekeeping of funds, and soliciting comment on whether additional rules are needed, including net worth and insurance requirements. For further information, please contact Ester Saverson or Michele Bianco at (202) 942–4187.

Consideration of whether the staff should issue a letter to First Chicago Trust Company of New York granting no-action relief from the registration requirements of the Securities Act of 1933, and certain statutory provisions of the Exchange Act, and Rules 10b–6 and 10b–13 thereunder, in connection with a limited version of a direct registration system. For further information, please contact Susan Grafton at (202) 942–0779.

Consideration of whether the staff should issue a letter granting a class exemption from Rule 10b–6 under the Exchange Act for issuers' dividend reinvestment stock purchase plans ("DRSPPs"), subject to certain conditions. This letter also sets forth the staff's views regarding broker-dealer registration issues under Section 15(a) of the Exchange Act. For further information, please contact Susan Grafton at (202) 942–0779 (for issues relating to Rule 10b–6), or Belinda Blaine at (202) 942–0073 (for issues relating to Section 15(a)).

Consideration of whether the staff should issue a letter to the New York Stock Exchange, granting no-action relief from Section 16 of Regulation T, subject to certain conditions, if broker-dealers borrow securities for the purpose of participating in DRSPPs. For further information, please contact Thomas McGowan at (202) 942–4886.

3. Consideration of recommendation of amendments regarding limited partnership roll-up transactions that implement the provisions of the Limited Partnership Rollup Reform Act of 1993 ("Act"). The amendments revise the current definition of "roll-up transaction" in Regulation S–K to conform more closely to the definition of that term in the Act, and add to the Commission's rules certain disclosure and other requirements with respect to roll-up transactions. For further information, please contact Robert B. Toomey at (202) 942–2910.

The subject matter of the closed meeting scheduled for Thursday, December 1, 1994, following the 10:00 a.m. open meeting will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

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: The Office of the Secretary (202) 942–7070.

Dated: November 23, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–29416 Filed 11–23–94; 3:50 pm]

BILLING CODE 8010–01–M

federal register

Monday
November 28, 1994

Part II

Department of Health and Human Services

Food and Drug Administration

International Harmonization; Draft Policy on Standards; Availability; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94D-0300]

International Harmonization; Draft Policy on Standards; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a draft policy on its development and use of standards with respect to international harmonization of regulatory requirements and guidelines. Specifically, the draft policy is intended to address the conditions under which FDA participates with standards bodies outside of FDA, domestic or international, in the development of standards applicable to products regulated by FDA. The policy also covers the conditions under which FDA uses the resultant standards, or other available domestic or international standards, in fulfilling its statutory mandates for safeguarding the public health.

DATES: Written comments by February 13, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Linda R. Horton, Director, International Policy Staff (HF-23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2831.

SUPPLEMENTARY INFORMATION:

The text of the draft policy follows:

International Harmonization of Regulatory Requirements and Guidelines

I. Background

The purpose of this document is to articulate FDA's policy on development and use of standards with respect to international harmonization of regulatory requirements and guidelines. As used throughout this document, the term "standards" includes what are commonly referred to as "consensus standards," "voluntary standards," and "industry standards." Also, FDA sometimes adopts standards, making them mandatory regulatory requirements. Although the draft policy focuses on international harmonization and international standards, its principles are applicable as well to domestic standards activities in which FDA participates.

A. Statutory Mandates for FDA-Regulated Products

FDA is the principal regulatory agency within the Public Health Service (PHS). The agency protects the public health by, among other things, implementing statutory provisions designed to ensure that food is safe and otherwise not adulterated or misbranded; that human and veterinary drugs, human biological products, and medical devices are safe and effective; that cosmetics are safe; and that electronic product radiation is properly controlled. FDA-regulated products must be truthfully and accurately labeled and in compliance with all applicable laws and regulations. The statutory mandates for safeguarding the public health in these product sectors are prescribed in several statutes, notably in the Federal Food, Drug, and Cosmetic Act; the Public Health Service Act; and the Fair Packaging and Labeling Act.

B. International Harmonization of Regulatory Requirements

In recent decades, great changes in the world economy, together with expanded working relationships of regulatory agencies around the globe, have resulted in increased interest in international harmonization of regulatory requirements. Increased international commerce, opportunities to enhance public health through cooperative endeavors, and scarcity of government resources for regulation have resulted in efforts by the regulatory agencies of different nations to work together on standards and harmonize their regulatory requirements. Such harmonization enhances public health protection and improves government efficiencies by reducing both unwarranted contradictory regulatory requirements and redundant applications of similar requirements by multiple regulatory bodies. Harmonization facilitates cooperation in regulatory activities.

In 1991, the FDA Task Force on International Harmonization was formed to provide a broad assessment of the goals, scope, and direction of FDA's international harmonization activities. These activities were found to comprise a wide variety of efforts by FDA to retain and strengthen its public health safeguards, while trying to reach common ground with its foreign government counterparts on product standards, criteria for the assessment of test data, and enforcement procedures. Based on these findings, the task force, in its report of December 1992, formulated a number of recommendations for the agency, including an overall policy with goals and general principles. As reflected in that report, the FDA policy on international harmonization is: "* * * to encourage the initiation and support of efforts, consistent with the goals and principles below, that will further the international harmonization of standards and policies for the regulation of products for which FDA has authority."

1. Goals

FDA's goals in participating in international harmonization activities are:

- To safeguard U.S. public health,
- To assure that consumer protection standards and requirements are met,
- To facilitate the availability of safe and effective products,
- To develop and utilize product standards and other requirements more effectively, and
- To minimize or eliminate inconsistent standards internationally.

2. General Principles

FDA participation in international harmonization should be guided by the following general principles:

- The harmonization activity should be consistent with U.S. Government policies and procedures and should promote U.S. interests with foreign countries.
- The harmonization activity should further FDA's mission to protect the public health by, among other things, ensuring that food is safe and otherwise not adulterated or misbranded; that human and veterinary drugs, human biological products, and medical devices are safe and effective as required by law; that cosmetics are safe; and that electronic product radiation is properly controlled; and that these products are labeled truthfully and informatively.
- FDA's input into international standard setting activities should be open to public scrutiny and provide the opportunity for the consideration of views of all parties concerned.
- FDA should accept, where legally permissible, the equivalent standards, compliance activities, and enforcement programs of other countries, provided that FDA is satisfied such standards, activities, and programs meet FDA's goals.
- Scientific and regulatory information and knowledge should be exchanged with foreign government officials, to the extent possible within legal constraints, to expedite the approval of products and protect public health.

Thus, the agency's primary goal in all of its international harmonization activities is to preserve and enhance its ability to accomplish its public health mission. Global harmonization is also approached with the aim of enhancing regulatory effectiveness, by providing more consumer protection with scarce government resources, and increasing worldwide consumer access to safe, effective, and high quality products.

C. Other Obligations and Policies

1. International Agreements

The U.S. Government is a party to international trade agreements. In the United States, such trade agreements become effective only after implementing legislation is signed into law. FDA has participated in recent international trade negotiations to ensure that FDA's requirements are preserved and the regulatory practices can remain focused on fulfilling the agency's mission to protect the public health while being supportive of emerging, broader U.S. Government obligations and policies.

The principal international trade agreement is the General Agreement on Tariffs and Trade (GATT), which entered into force on January 1, 1948. GATT has since been amended several times following negotiation sessions known as rounds.

The GATT Agreement on Technical Barriers to Trade (TBT), popularly known as the Standards Code, was negotiated during

the Tokyo Round of the GATT in the 1970's and entered into force on January 1, 1980. As part of a general effort to reduce unnecessary nontariff barriers to trade, the TBT agreement was intended to promote use by countries of standards, technical regulations, and conformity assessment procedures that have been developed by international standard bodies. To assure that such harmonization would not result in lowering safety or quality standards for U.S. consumers, the implementing legislation for the TBT agreement, provided in the Trade Agreements Act of 1979 (Pub. L. 96–39; 19 U.S.C 2531–2582), provides additional authority for FDA's international standards activity and contains the safeguard that:

"* * * No standard-related activity of any private person, Federal agency, or State agency shall be deemed to constitute an unnecessary obstacle to the foreign commerce of the United States if the demonstrable purpose of the standards-related activity is to achieve a legitimate domestic objective including, but not limited to, the protection of legitimate health or safety, essential security, environmental, or consumer interests and if such activity does not operate to exclude imported products which fully meet the objective of such activity."

The most recent GATT round, the Uruguay Round, was concluded on December 15, 1993, and was formally signed at the Marrakech Ministerial Meeting on April 15, 1994. Congressional consideration of the legislation to implement the Uruguay Round is now occurring.

One of the agreements of the Uruguay Round, the new GATT agreement on TBT, is similar in many respects to the 1980 TBT agreement. As with the 1980 TBT agreement, the purpose of the new TBT agreement is to ensure that product standards, technical regulations, and related procedures do not create unnecessary obstacles to trade. The new World Trade Organization (WTO) will administer the new TBT agreement, and every country that is a member of the WTO will be required to adhere to it.

The new TBT agreement ensures, and clearly states, that each country has the right to establish and maintain technical regulations for the protection of human, animal, and plant life, and health of the environment and for prevention against deceptive practices. The new TBT agreement provides that each country may determine its appropriate level of protection and ensures that the encouragement to use international standards as the bases for technical regulations will not result in "downward harmonization."

In the new TBT agreement, the term "standard" is defined as:

"[A] document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, *with which compliance is not mandatory* (emphasis added). It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method."

Also, "technical regulation" is defined as:

"[A] document which lays down product characteristics or their related processes and production methods, including applicable administrative provisions, *with which compliance is mandatory* (emphasis added). It may also include or deal exclusively with terminology, symbols, packaging, marking, or labelling requirements as they apply to a product, process or production method."

Thus, in the language of the new TBT agreement, when a government acts to adopt a voluntary standard to make it mandatory, the resulting document is a technical regulation. A measure used to ascertain compliance with a standard or technical regulation is a conformity assessment procedure.

The new TBT agreement continues and strengthens the reference to international standards found in the 1980 TBT agreement. Specifically, the agreement states that, where technical regulations are required and relevant international standards exist or their completion is imminent, WTO-member countries shall use them, or the relevant parts of them, as a basis for their technical regulations, except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfillment of the legitimate objectives pursued. Further, the agreement states that with a view towards harmonizing technical regulations on as wide a basis as possible, WTO-member countries shall play a full part within the limits of their resources in the preparation by appropriate international standards bodies of international standards for products for which they either have adopted or expect to adopt technical regulations.

Another agreement of the Uruguay Round is the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS). SPS pertains to those measures intended: (1) To protect animal or plant life or health within a territory from risks arising from the entry, establishment, or spread of pests, diseases, disease carrying organisms, or disease causing organisms; (2) to protect human or animal life or health within a territory from risks arising from additives, contaminants, toxins, or disease-causing organisms in foods, beverages, or feedstuffs; (3) to protect human life or health within a territory from risks arising from diseases carried by animals, plants, or products thereof, or from entry, establishment, or spread of pests; or (4) to prevent or limit other damage within a territory from the entry, establishment, or spread of pests. The SPS agreement like the new TBT agreement encourages use of international standards. The SPS agreement refers specifically to standards established by the Codex Alimentarius Commission, as discussed below.

The North American Free Trade Agreement (NAFTA) also contains TBT and SPS agreements similar to those in the new GATT agreements to be administered by WTO.

2. Internal U.S. Government

The United States Office of Management and Budget (OMB), in its revision to OMB Circular No. A–119 (58 FR 57643, October 26, 1993), provides policy on Federal use of standards and agency participation in voluntary standards bodies and standards-developing groups:

"It is the policy of the Federal Government in its procurement and regulatory activities to:

a. Rely on voluntary standards, both domestic and international, whenever feasible and consistent with the law and regulation pursuant to law;

b. Participate in voluntary standards bodies when such participation is in the public interest and is compatible with agencies' missions, authorities, priorities, and budget resources; and

c. Coordinate agency participation in voluntary standards bodies so that: (1) The most effective use is made of agency resources and representatives; and (2) the views expressed by such representatives are in the public interest and, as a minimum, do not conflict with the interests and established views of the agencies."

OMB Circular No. A–119 also establishes additional policy guidance and responsibilities for U.S. Government agencies. It is applicable to all executive agency participation in voluntary standards activities, domestic and international, but not to activities carried out pursuant to treaties and international standardization agreements.

The term "standard," as defined in OMB Circular No. A–119, means:

"* * * a prescribed set of rules, conditions, or requirements concerned with the definition of terms; classification of components; delineation of procedures; specification of dimensions, materials, performance, design, or operations; measurement of quality and quantity in describing materials, products, systems, services, or practices; or descriptions of fit and measurement of size."

The circular defines "voluntary standards" as:

"* * * established generally by private sector bodies, both domestic and international, and are available for use by any person or organization, private or governmental. The term voluntary standard includes what are commonly referred to as "industry standards" as well as "consensus standards," but does not include professional standards of personal conduct, institutional codes of ethics, private standards of individual firms, or standards mandated by law, such as those contained in the United States Pharmacopeia and the National Formulary, as referenced in 21 U.S.C. 351."

These definitions in OMB Circular No. A–119 conform to common usage and are consistent with the usage of these terms throughout this policy document. It should be noted that under the TBT, "standards" are considered to be nonmandatory (i.e., voluntary) unless promulgated into mandatory technical regulations.

II. Standards Programs and Practices Within FDA

A. Purpose of FDA Involvement in Standards

The central purpose of FDA involvement in the development and use of standards is to assist the agency in fulfilling its public health, regulatory missions. The agency

intends to participate in the development of standards, domestic or international, and adopt or use standards when such action will enhance its ability to protect consumers and the effectiveness or efficiency of its regulatory efforts. In doing so, FDA recognizes that standards often serve as useful adjuncts to agency regulatory controls and that economies of time and human resources are often realized in solving problems when consensus-building activities are undertaken and conducted in open, public arenas. The working together of FDA staff with other professionals outside the agency in standards bodies effectively multiplies the technical resources available to FDA. Further, standards bodies generally have in place procedures for periodically reviewing and updating completed standards, thus extending the resource-multiplier effect, as well as keeping the solutions current with the state of knowledge. The economy of effort translates into monetary savings to the agency, regulated industries, and ultimately consumers. Further, using standards, especially international ones, is a means to facilitate the harmonization of FDA regulatory requirements with those of foreign governments, to better serve domestic and global public health.

Another benefit of participating in the development of standards at both domestic and international levels is that in sharing technical information with technical groups and professionals outside FDA, staff members have opportunities to learn of other viewpoints on an issue, to establish scientific leadership, and to remain informed of state-of-the-art science and technology.

B. Past and Present Activities

FDA has been involved in standards activities for many years, and in June 1977 the agency promulgated a final regulation at 21 CFR 10.95 (§ 10.95) covering the participation by FDA employees in standards-setting activities outside the agency. This regulation encourages FDA participation in standards setting activities that are in the public interest and specifies the respective circumstances under which FDA employees can participate in various types of standards bodies.

Standards activities of multilateral organizations such as the World Health Organization (WHO) and the Organization for Economic Cooperation and Development (OECD) are often important to FDA and frequently involve multiple product types. For example, OECD is developing Genetic Toxicology Test Guidelines that are of interest to all FDA Centers. Similarly, guidelines developed under the International Programme on Chemical Safety of the WHO relate to chemicals that may be in a wide variety of FDA-regulated products, such as food additives, pesticides, drugs, animal drugs, biologics, and devices.

1. Foods and Veterinary Medicine

FDA's Center for Food Safety and Applied Nutrition (CFSAN) and Center for Veterinary Medicine (CVM) actively participate in the development of international standards by the Codex Alimentarius Commission (Codex). Codex is an international organization formed in 1962 to facilitate world trade in foods and to promote consumer protection. It is a subsidiary of two United Nations groups, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex standards cover products such as food commodities, food additives, food contaminants, and residues of veterinary drugs in food. FDA officials chair two Codex committees, the Food Hygiene Committee and the Residues of Veterinary Drugs in Foods Committee, and participate in many others. Through its involvement, FDA has been influential in the establishment of a number of Codex standards. FDA's procedures for reviewing Codex standards for purposes of regulation are codified in 21 CFR 130.6.

In 1988, the governments of the United States and Canada entered into the U.S.-Canada Free Trade Agreement (now largely superseded by NAFTA). Since then, officials from CFSAN and CVM have participated in technical working groups responsible for implementation of the chapter of the agreement that deals with agriculture, food, beverage, and related goods (the CUSFTA Groups).

Officials from CFSAN and CVM also participate in the development of standards by such domestic and international groups as the Food Chemicals Codex (FCC), the Association of Official Analytical Chemists International (AOAC), expert committees of the WHO, the International Organization for Standardization (ISO), and other international consensus standards bodies. Standards developed by these organizations are used by industry, both in the United States and abroad. These standards provide industry with guidance for food grade materials and processes, and thus help elevate the quality of food and food chemicals in domestic and international trade.

CFSAN has adopted many FCC and ASTM standards and AOAC methods, incorporating them into regulations for both food additives and generally recognized as safe food ingredients. CFSAN also refers industry to relevant FCC, Codex, or ASTM standards when discussing particular issues related to good manufacturing practices. CFSAN accepts many AOAC and equivalent methods for use by laboratories in assaying food and in testing for contaminants in food.

CVM accepts many AOAC and equivalent methods for use by laboratories in testing for drug residues in animal tissues. CVM also is working towards harmonizing its approach to the development of standards for drug residues in animal tissues with those of Codex.

2. Biologics and Drugs

There has been active international standard setting for biological products for more than 50 years. Officials from FDA's Center for Biologic Evaluation and Research (CBER) serve as experts or members of a variety of international committees which perform standard-setting functions. Activities have encompassed collaborative studies to establish international units of measure and to develop internationally accepted standards and requirements for control of biologics, including WHO requirements. Efforts have been directed to many kinds of biological products, including vaccines, human blood and plasma products, blood testing reagents, and allergenic extracts, and have extended to biotechnology-derived growth factors, cytokines, and monoclonal antibody products.

FDA's Center for Drug Evaluation and Research (CDER), CBER, and the National Center for Toxicological Research (NCTR) actively participate in the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). This ongoing project begun in 1989 has been undertaken by governmental agencies responsible for regulation of drugs and by industry trade organizations from the European Union (EU), Japan, and the United States. Specifically, ICH is sponsored jointly by the Commission of the European Communities (CEC), the Japanese Ministry of Health and Welfare (MHW), FDA, the European Federation of Pharmaceutical Industries' Associations (EFPIA), the Japan Pharmaceutical Manufacturers Association (JPMA), and the Pharmaceutical Research and Manufacturers Association (PhMA) of the United States. In addition, the International Federation of Pharmaceutical Manufacturers Associations (IFPMA) participates as an umbrella organization for the pharmaceutical industry and provides the secretariat function for ICH, which operates under the direction of the ICH Steering Committee. The Steering Committee is comprised of representatives of these organizations. Official observer status has been given to WHO, the European Free Trade Area (EFTA), and the Health Protection Branch of Canada.

The purposes of ICH are to: (1) Provide a forum for a dialogue between regulatory agencies and the pharmaceutical industry on differences in the technical requirements for product registration (i.e., requirements for product marketing) in the EU, Japan, and the United States; (2) identify areas where modifications in technical requirements or greater mutual acceptance of research and development procedures could lead to more efficient use of human, animal, and material resources without compromising safety, quality, and efficacy; and (3) make recommendations of practical ways to achieve greater harmonization in the interpretation and application of technical guidelines and requirements for registration. The work products of ICH, created in working groups of experts from the regulatory agencies and industry, consist of a series of consensus guidance documents. These guidance documents, after successive ICH steps of review and acceptance, including an opportunity for public review and comment in the respective jurisdictions, are forwarded to the regulatory agencies with the expectation that they will be formally adopted by the agencies.

Officials from both CBER and CDER also participate in a consensus standard setting activity sponsored by the Council for International Organizations of Medical Sciences (CIOMS) that is aimed at standardizing the safety-related terminology used in adverse experience reporting.

3. Medical Devices

FDA's Center for Devices and Radiological Health (CDRH) has had extensive involvement with standards in its regulation of medical devices and electronic products that emit radiation. The development of standards to solve problems related to medical devices involves many groups outside FDA. The interaction between CDRH and the manufacturing and health care communities that frequently occurs during the standards development process provides knowledge and insight into the use of products, problems, and the effectiveness of solutions. Frequently, the public discussion of the problem that occurs in the consensus-building process results in the manufacturers and the users of the subject medical device implementing the solution before a standard is formally completed. Thus, CDRH has encouraged participation in the development of standards as a useful adjunct to regulatory controls. CDRH's general policy on use and participation in the development of consensus standards was set forth in an open letter dated June 29, 1993, to all interested parties from the Director of CDRH. (This policy did not apply to mandatory performance standards (i.e., technical regulations) for class II medical devices as specified under the Medical Device Amendments of 1976 (Pub. L. 94–295). The Safe Medical Device Act of 1990, SMDA (Pub. L. 101–629), puts the promulgation of mandatory standards at the discretion of the agency.)

Over 100 completed consensus standards and selected sections of additional draft standards that are not yet complete have been incorporated into guidance documents for applications for conducting clinical trials with investigational devices and applications for permitting devices to be marketed. Such guidance documents are widely disseminated by CDRH to all interested parties. Other standards used by CDRH, or which CDRH has helped to develop, concern measurement or test methods, or support good manufacturing practices and quality assurance.

CDRH recently proposed to revise the good manufacturing practice regulations for medical devices, in part to ensure that they are compatible with specifications for quality systems contained in an international quality standard developed by ISO, namely ISO 9001 "Quality Systems Part 1. Specification for Design/Development, Production, Installation, and Servicing" (58 FR 61952, November 23, 1993). This standard (ISO 9001) is becoming widely recognized by medical device regulatory authorities worldwide and is finding application in many other industry sectors as well. CDRH officials, working with counterpart foreign government officials, are pursuing in step-wise fashion the harmonization of quality system inspection procedures and enforcement. The process of harmonizing regulatory requirements is facilitated by using an international standard as a basis. Such harmonization is not only recognized public policy, but for medical devices, it is explicitly encouraged by provisions of SMDA (Pub. L. 101–629), which states, in part, that "* * * the Secretary may enter into agreements with foreign countries to facilitate commerce in devices between the United States and such countries consistent with the requirements of the Act."

In a recent November 1993 program review, CDRH reported that it reviews and comments on more than 300 standards documents each year, participating in 388 standards efforts with 36 standards bodies; of these, 94 standards efforts with nine bodies are international. The experience CDRH has acquired over the years has provided the foundation for the standards policy it announced for its own use on June 29, 1993. The essential features of that policy are reflected in the draft FDA policy presented below.

III. FDA Policy on Standards

It is the intent of this policy to enable FDA to: (1) Continue to participate in international standards activities that assist it in implementing statutory provisions for safeguarding the public health, (2) increase its efforts to harmonize its regulatory requirements with those of foreign governments, including setting new standards that better serve public health, and (3) respond to laws and policies such as the Trade Agreements Act of 1979 (19 U.S.C. 2531) and OMB Circular No. A–119 that encourage agencies to use international standards that provide the desired degree of protection. Accordingly, it is the policy of FDA, concerning the development and use of standards that:

A. FDA participation in standards development will be based on the extent to which the development activity and expected standard conform to certain factors, with consideration also being given to the resources available in FDA to devote to the effort and expected efficiencies to be gained as a result of the effort; the factors are as follows:

1. The standard contributes to safer, more effective, and higher quality products;

2. The standard is based on sound scientific and technical information and permits revision on the basis of new information;

3. The development process for the standard is transparent (i.e., open to public scrutiny), consistent with legal or procedural requirements, and commensurate with the codes of ethics that must be followed by FDA employees;

4. The development of an international standard that achieves the agency's public health objectives is generally, but not always, given a higher priority than the development of a domestic standard;

5. The development of a horizontal standard which applies to multiple types of products is generally, but not always, given higher priority than the development of a vertical standard which applies to a limited range of types of products;

6. Wherever appropriate for the product, the standard stresses product performance rather than product design, but where necessary, covers all factors required to ensure safety, effectiveness, and quality; and

7. The development process for the standard complies with applicable statutes, regulations, and policies, specifically including § 10.95 and OMB Circular A–119.

B. FDA is not bound to use standards developed with FDA participation. For example, the agency will not use a standard when, in the judgment of FDA, doing so will compromise the public health.

C. The uses of final (and selected draft or proposed) standards, or selected relevant parts, will include, where appropriate: (1) Incorporating such standards into guidance documents for nonclinical testing, applications for conducting clinical trials with investigational products, and applications for permitting products to be marketed; (2) conducting reviews of such applications; (3) incorporating such standards into compliance policy guides; (4) conducting reviews of test protocols used by firms as part of good manufacturing practices; (5) conducting reviews of study protocols submitted by firms as required for postmarket surveillance studies or programs; (6) serving as the basis for mandatory standards or other regulations promulgated by FDA; and (7) serving as the basis for reference (e.g., evaluation criteria) in a memorandum of understanding with other government agencies.

D. The use of a standard in the regulatory programs of FDA is dependent upon the following factors:

1. The standard, if adhered to, would help ensure the safety, effectiveness, or quality of products;

2. The standard is based on sound science and is current;

3. The development process for the standard was transparent (i.e., open to public scrutiny), consistent with legal or procedural requirements, and commensurate with the codes of ethics that must be followed by FDA employees;

4. Where a relevant international standard exists or completion is imminent, it will generally be used in preference over a domestic standard, except when such international standard would be, in FDA's judgment, insufficiently protective, ineffective or otherwise inappropriate;

5. Where a relevant horizontal standard which applies to multiple types of products exists or completion is imminent, it will generally be used in preference over a vertical standard, which applies to a limited range of types of products, except when such horizontal standard would be ineffective or otherwise inappropriate;

6. Wherever appropriate for the product, the standard stresses product performance rather than product design, but where necessary, covers all factors required to ensure safety, effectiveness, or quality; and

7. The standard is not in conflict with any statute, regulation, or policy under which FDA operates.

E. FDA has a senior official who will serve as the Standards Executive, as specified in OMB Circular No. A–119, to serve on an Interagency Committee on Standards Policy (ICSP). At present, the Standards Executive is the Director, International Policy Staff.

F. FDA employees will comply with agency regulations (§ 10.95) covering participation in standard setting activities outside the agency.

Invitation to Comment

Interested persons may, on or before February 13, 1995, submit to the Dockets Management Branch (address above) written comments regarding this draft policy. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. to 4 p.m., Monday through Friday.

Dated: November 18, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 94–29116 Filed 11–25–94; 8:45 am]

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federal register

Monday
November 28, 1994

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 840 and 842
Surface Coal Mining and Reclamation Operations; Initial and Permanent Regulatory Programs; Abandoned Sites; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 840 and 842

RIN: 1029–AB60

Surface Coal Mining and Reclamation Operations; Initial and Permanent Programs; Abandoned Sites

AGENCY: Office and Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: This rule will change the minimum inspection frequency for surface coal mining and reclamation operation that have been abandoned without completion of reclamation or abatement of violations. The change enables regulatory authorities to eliminate ineffective inspections to redirect resources to minesites where inspection and enforcement will achieve intended results. Before an abandoned site can qualify for a change in inspection frequency under this rule, the regulatory authority must make a written finding that a site is abandoned and that the change in inspection frequency is appropriate based on specified environmental and public health and safety criteria.

EFFECTIVE DATE: December 28, 1994.

FOR FURTHER INFORMATION CONTACT: Daniel Stocker, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240, Telephone: 202–208–2550 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Rule and Response to Public Comments
III. Procedural Matters

I. Background

Section 517(c) of the Surface Mining Control and Reclamation Act of 1977 (the Act) states that the regulatory authority shall inspect on an irregular basis averaging not less than one partial inspection per month and one complete inspection per quarter each surface coal mining and reclamation operation covered by a permit. To implement this requirement, OSM first promulgated rules at 30 CFR 840.11 for State regulatory authorities and at 30 CFR 842.11 for OSM where it is the regulatory authority authority in a State. 44 FR 15455 (March 13, 1979). These rules essentially mirrored the inspection frequency requirements of the Act.

These rules were revised on August 16, 1982 (47 FR 35620). Among other things, the 1982 rules carved out for inspection frequency purposes a distinct category of surface coal mining and reclamation operations where reclamation was in the advanced stages. While retaining the quarterly requirement for complete inspections, these rules allowed regulatory authorities to reduce the number of partial inspections required at these "inactive" operations from an average of one per month to a frequency "as necessary to ensure effective enforcement of the regulatory program." Since abandoned sites are incompletely reclaimed surface coal mining and reclamation operations where the operators will not or cannot return to the minesite to complete reclamation or correct violations, they remain in an "active" status, and, therefore, must continue to be inspected at the full mandated frequency of twelve times per year.

To address the issue of inspection frequency at abandoned sites, the rules were again revised in 1988. (53 FR 24872, June 30, 1988). This time the rules defined an "abandoned site" as a distinct category at surface coal mining and reclamation operations and enabled regulatory authorities to reduce the inspection frequency at these sites and to refrain from issuing additional enforcement actions at abandoned sites under certain conditions. The definition of "abandoned site" specifies that, before a site can be considered abandoned, it must first meet certain criteria which ensure that the regulatory authority has taken or is in the process of taking all enforcement action available to it under the applicable regulatory program to compel abatement of violations and completion of reclamation. Sites meeting the definition could then, instead of twelve times per year, be inspected "as necessary to monitor for changes of environmental conditions or operational status at the site."

The 1988 final rule was subsequently challenged in Federal District Court. On August 30, 1990, the United States District Court for the District of Columbia issued an order in the case of *National Wildlife Federation, et al.*, v. *Manuel Lujan, Jr., et al.*, 31 Env't Rep. Cas. (BNR) 2034, 2042 (D.D.C. 1990) (*NWF* v. *Lujan*). The district court remanded the rule to the Secretary to be withdrawn or revised on the basis that the Secretary's arguments supporting the rule were inconsistent with the inspection frequency requirements of Section 517(c) of the Act. However, the district court conceded that the rule was practical, that it comported with common sense, and that it is not wise to spend a lot of time and effort inspecting abandoned sites every month when nothing changes. To implement the court's order, OSM suspended those parts of the 1988 rule that related to inspection frequency at abandoned sites. The definition of "abandoned site" at 30 CFR 840.11(g) and 842.11(e) and the provision at 30 CFR 843.22 allowing regulatory authorities to refrain from issuing additional enforcement actions at abandoned sites were unaffected by the court order and remain intact today (56 FR 25036, June 3, 1991).

In appealing the district court decision, the Secretary asked the United States Court of Appeals to vacate the district court's remand in order to allow him to promulgate a new regulation redefining "abandoned sites" to include only those sites where a permit has expired or been revoked. Under this approach, Section 517(c) of the Act would not apply to abandoned sites because the inspection frequency requirements of that section speak only to surface coal mining and reclamation operations covered by a permit and a permit that is expired or revoked is no longer considered to be in existence. Without expressing any view about whether the Secretary's proposed reading of Section 517(c) of the Act was permissible, the court of appeals pointed out that the district court remanded the 1988 rule to the Secretary "to be withdrawn or revised" and, in light of this statement, the district court's decision does not stand in the way of the Secretary proceeding with an alternative rulemaking on the subject of inspection frequently at abandoned sites. See *NWF* v. *Lujan*, Civ. Action Nos. 890136, 88–3345 & 88–2416, U.S. App. Ct. (DC Circ., December 10, 1991) mem. op. at 10. Accordingly, on December 18, 1992, OSM proposed for public comment an alternative abandoned sites rule upon which today's final rule is based (57 FR 60410).

The Secretary is required under section 201(c)(2) of the Act, 30 U.S.C. 1211(c)(2), to publish necessary implementing rules. Since regular inspections of abandoned sites are a counterproductive use of limited resources, and since fewer inspections are not likely to result in increased environmental harm, the rule being promulgated today is necessary and is consistent with the district court's opinion in *NWF* v. *Lujan*, which struck down the previous 1988 abandoned sites rule.

In promulgating the 1988 rule on abandoned sites, OSM concluded that repeated inspections of abandoned sites at the frequency required under the

existing rules are ineffective expenditures of resources and that fewer inspections would not result in increased harm to the environment or reduce the likelihood of ultimate compliance at abandoned sites. The time inspectors spend at abandoned sites detracts from the time they can spend at other active or inactive sites working with viable operators to abate present violations and prevent future violations. Thus, reducing the frequency of abandoned sites improves the overall quality and effectiveness of inspection programs under the Act.

Enforcement actions issued as a result of inspections at abandoned sites have proven to be ineffective at compelling abatement of violations or achieving reclamation. Moreover, inspectors normally have cited all violations prior to or shortly after a site becomes abandoned. The persons responsible for abating these violations typically are financially insolvent or cannot be located. In such instances, even when diligent efforts are made to enforce the Act, no one is available to abate violations or to perform or pay for the needed reclamation. Continuing regular partial and complete inspection of these sites serves no useful purpose and wastes finite inspection resources. To illustrate the extent of this waste, OSM has in the past conducted approximately 2,900 inspections each year on an average of 236 abandoned sites in Tennessee. This effort comprises approximately 32 percent of the inspections in that State; however, few, if any, of these inspections have resulted in abatement of violations or completion of reclamation.

OSM experience has shown that environmental conditions at most abandoned sites do not significantly degrade what has been observed during prior inspections and that violations of substantive performance standards do not necessarily deteriorate to imminent danger or harm situations. While these sites do not comply with the Act, many, due to their age or because they were partially reclaimed prior to abandonment, become reasonably well stabilized through natural settlement and revegetation occurring over time.

While the stated goal of section 517 of the Act is to "enforce the requirements of and carry out the purposes of [the] Act," inspecting abandoned sites as frequently as other sites covered by a permit frustrates rather than furthers this goal. Among the mechanisms provided by the Act to achieve the stated goals of section 517(c) are civil penalties under section 518, performance bonds under section 509 and 519, citizen suits under section 520, and enforcement under section 521. Each of these mechanisms has as its underlying premise the existence of a person against whom an action can be taken, or of a bond that can provide the funds to abate violations and secure reclamation. If no such person can be found, or if the regulatory authority is taking other appropriate legal actions to ensure reclamation or abatement, and any permit has been revoked and any bond is being forfeited, issuing multiple violation notices and cessation orders and assessing uncollectible penalties as a result of the fixed inspection frequency requirement are not productive tools to enforce the Act. The waste of resources also extends beyond the inspector level as other units within the regulatory authority must assess and attempt to collect civil penalties. Under the foregoing circumstances, inspections of abandoned sites performed at a minimum frequency less than that for other sites based on the particular characteristics of the site are a far more reasonable and realistic alternative. Moreover, the conservation of resources that will flow from this rule promotes the principles embodied in OSM's mission and vision statement by creating fair and more efficient and effective processes for achieving the objectives of the Act.

II. Discussion of Final Rule and Response to Public Comments

Section 840.10

Section 840.10 is being revised to include an estimate of the average public reporting burden for the collections of information under all of Part 840 as such part is revised by this final rule. The section also lists the addresses for OSM and the Office of Management and Budget where comments on the information collection requirements may be sent.

Combined Section-by-Section Analysis

Since the revisions adopted for State regulatory authorities at 840.11 are identical to those adopted at 842.11 where OSM is the regulatory authority, they will be combined for ease of discussion.

Section 840.11(g)(4)(i)/842.11(e)(i).

These sections are being adopted as proposed. They require that before a site could meet the definition of "abandoned site," the permit covering the surface coal mining and reclamation operation must be either revoked or expired. The existing rules allow a site to be classified as abandoned on the basis that permit revocation proceedings have only been initiated and are being pursued diligently.

The final provision will have two effects. First, a person who has not or will not respond to enforcement action issued by the regulatory authority and who cannot or will not meet his/her obligations to abate violations or complete reclamation will not be entitled to resume coal production under a valid permit. Second, the constraints of section 517(c) of the Act would be lifted for abandoned sites since the fixed inspection frequency requirements of that section apply only to surface coal mining and reclamation operations covered by each permit. The preamble to OSM's final rule at 30 CFR 773.11, Requirements to obtain permits, articulated and codified the concept that a surface coal mining permit is required only where surface coal mining operations defined under section 701(28) of the Act are occurring and that if this authorization to extract coal expires or is revoked, it amounts to the absence or the non-existence of the permit that once was in force (i.e. the minesite is no longer considered to be covered by a permit). Of course, this does not affect the permittee's legal obligation to reclaim a site that has been abandoned, since, in accordance with 30 CFR 733.11, that obligation continues until all reclamation is completed, regardless of whether the authorization to conduct surface coal mining operations has expired or has been revoked. See 54 FR 13814 (April 5, 1989).

The National Wildlife Federation and the Kentucky Resources Council, Inc. (hereafter NWF) concurred with this change to the definition of abandoned site to the extent that the plain language of the term "abandoned site" suggests that there should not be an existing permit that is renewable or revisable by the operator.

The Joint National Coal Association and American Mining Congress on Surface Mining Regulations (NCA/AMC), the National Coal Association (NCA) and the Kentucky Coal Association supported this revision saying that the proposed rule differs significantly from the abandoned sites rule remanded in 1990 because the proposed rule defines "abandoned sites" to include only those sites whose permits have either expired or been revoked. Because the Act's inspection requirements only apply to operations under permit, they believe that the revised definition can no longer be considered inconsistent with section 517(c) of the Act and consequently, the district court's earlier criticism of OSM's statutory interpretation is no

longer valid. They added that neither the language nor legislative history of the statute indicates any intent that the regulatory authority continue to expend its resources to inspect an abandoned site where no activities listed in section 701(28) of the Act are currently conducted and enforcement action has proven futile in compelling the correction of prior violations. Finally, they believed that the U.S. Court of Appeals for the District of Columbia gave tacit approval for OSM's revised reading of the "covered by each permit" language of section 517(c) because the court clearly would have rejected OSM's announced efforts before the court to undertake a curative rulemaking using this revised reading if it perceived such a reading as inconsistent with the Act.

OSM agrees with the commenters, except for the proposition that the U.S. Court of Appeals decision concerning the remanded 1988 abandoned sites rule amounts to tacit approval of the Secretary's "covered by each permit" reading of Section 517(c). The Secretary requested the appeals court to vacate the district court's opinion remanding the 1988 abandoned sites rule because he believed that step was necessary before engaging in a new rulemaking based on the interpretation that abandoned sites for which the permits have expired or been revoked are not subject to section 517(c) of the Act. In declining the Secretary's request to vacate, the appeals court stated "We express no view about the validity of the Secretary's proposed reading. The significant point on this appeal is that the district court's decision does not stand in the way of the Secretary adopting it in a new rulemaking." Whether or not the revised reading set forth as a basis for this rule would be sustained by the appeals court will only be known if this rule becomes ripe for a decision before that judicial body.

A State regulatory authority (SRA) said it would make more sense to require the permit to be revoked/expired "or" actually be forfeited. This could be accomplished by replacing the word "and" by the word "or" and deleting the phrase "has initiated and is diligently pursuing forfeiture of" in subparagraph (ii). The commenter explained that bond forfeiture proceedings may not always be accomplished concurrently with permit expiration, that if a permit expires there may not be a reason to immediately forfeit the bond and by requiring both expiration and forfeiture to occur simultaneously could be a waste of manpower and funds. This comment is not being adopted. As discussed above, allowing a reduction from the inspection requirements of section 517(c) of the Act under this rule is based on the premise that revocation or expiration of a permit is a necessary prerequisite in order for an abandoned site not to be considered "covered by a permit." If, as the commenter suggests, bond forfeiture is an alternative to revocation or expiration, an abandoned site could not escape the constraints of section 517(c) of the Act since bond forfeiture does not necessarily require permit revocation. In view of the often prolonged process of bond forfeiture, this final section of the rule does not require that bond forfeiture be completed, but rather that it be initiated and diligently pursued and thus, the rule will have more immediate applicability.

Section 840.11(g)(4)(ii)/842.11(e)(4)(ii).

To qualify under the definition of "abandoned site," the existing rules require that the regulatory authority has initiated and is diligently pursuing forfeiture of, or has forfeited, the performance bond. These sections are being revised by adding the phrase "any available" before the phrase "performance bond." This change is minor and is intended to recognize that there is a relatively small number of sites that are or were permitted, but for which a performance bond was never required or no longer exists. The absence of a performance bond has no bearing on whether a site should be classified as abandoned for inspection purposes.

NWF supported the addition of the phrase "any available" agreeing that the absence of a performance bond has no bearing on whether a site should be classified and abandoned for inspection purposes. One SRA, noting the time lag between initiation of bond forfeiture and actual collection, supported the proposal to allow reduction of inspections while the regulatory authority is diligently pursuing bond forfeiture. This commenter believed that inspection resources would be used much more efficiently by this change. Another SRA commented that this provision should include those sites where no reclamation bond is available due to insolvency of surety companies. These sections are being adopted as proposed. To address the latter SRA's concern, if no performance bond exists because of the insolvency of a surety company, then under this rule a performance bond would not be considered available.

Sections 840.11(h) introductory text/ 842.11(f) introductory text

These sections as proposed provided that the regulatory authority shall inspect each abandoned site at a rate of no less than one complete inspection per calendar year. This minimum inspection frequency is being retained under this final rule. However, the language has been revised to provide that the regulatory authority shall inspect each abandoned site on a set frequency commensurate with the public health and safety and environmental considerations present at each specific site, but in no case shall the inspection frequency be set at less than one complete inspection per calendar year. This revised language emphasizes the requirement that the regulatory authority must tailor an appropriate frequency to the site-specific conditions that exist at each mine. That frequency could vary from one to twelve or more per calendar year.

Most commenters supported a reduced inspection frequency for abandoned sites and commended OSM for taking the initiative on this rulemaking. Eight SRAs voiced strong support for the rule. One SRA stated that, based on its long history of regulating coal mining operations, it supported OSM's conclusions that fewer inspections of certain abandoned sites would not harm the environment; the States' finite resources could be used more effectively; all significant violations are cited prior to abandonment; and that abandoned sites often remain stable over the course of several years. Another SRA stated that its inspection staff is being required to inspect abandoned sites regularly under circumstances that serve absolutely no purpose other than to meet an arbitrary inspection mandate and that eliminating or curtailing redundant inspections will greatly improve the efficiency of its inspection staff. A third SRA said that in these days of increasingly restrictive State and Federal budgets, it is imperative that our resources are effectively allocated to further the purposes of the Act and that the time spent inspecting abandoned sites detracts from the time that can be spent to ensure compliance at non-abandoned sites. Finally, a fourth SRA maintained that the States continue to be best suited and capable of deciding the appropriate frequency for inspection of abandoned sites where all other enforcement measures have failed to force compliance.

The Interstate Mining Compact Commission (IMCC), which represents the natural resource interests of its 17 member States, strongly supported the rule agreeing with OSM's analysis and conclusions in the preamble to the proposed rule and noting that the States would not support a situation where

environmentally sensitive sites are left unattended, unabated, or without meaningful followup in the way of alternative enforcement proceedings such as those required in the proposed rule.

The NCA and the Kentucky Coal Association fully supported the proposed rule, characterizing it as a proper exercise of OSM's discretion to provide regulatory authorities the necessary flexibility to deploy limited resources in an efficient manner. The NCA/AMC also supported the rule pointing out that along with the rules practical benefits, the regulatory history of the Act shows that there is precedent for the selective inspection of mines that pose no threat to the environment as exemplified by the 1982 revised Federal rules that allowed a reduction in the partial inspection frequency for "inactive" operations.

The United States Environmental Protection Agency (EPA) stated that it is not unreasonable for OSM to conduct complete inspections twice a year at a minimum on sites causing or likely to cause water pollution or other nonpoint source problems. However, the EPA recommended that the rule include criteria upon which the frequency of inspections would be based, including the potential for the site to become further degraded. As discussed later in this preamble, the final rule will incorporate criteria, including a criterion similar to that suggested by EPA, that must be taken into consideration and documented before regulatory authorities can reduce inspection frequencies at abandoned sites.

One commenter said that OSM'S statement in the preamble to the proposed rule that reducing inspections at abandoned sites "would allow the regulatory authorities to redirect those inspection resources to operations where inspection and enforcement would achieve the intended results" points to the failure of regulatory authorities to achieve the intended results in the first place by preventing non-compliance through inspection and enforcement during the mining and reclamation phases. The commenter questioned why OSM is not concerning itself with how to prevent abandonment rather than a way to assist operators through reduced inspections. The commenter added that since existing regulations require adequate bond be in place, abandonment becomes irrelevant if those regulations are properly implemented.

OSM concurs with the commenter's view that not enough has been done in the past to prevent abandonment and will place greater emphasis on prevention. Prevention of environmental problems and inadequate performance bonds often associated with abandoned sites are priorities to OSM and the agency will work with the States to improve efforts in these key areas. This rule promotes a policy of prevention because it frees resources that can focus on existing or potential problems at high risk sites that would result in long term adverse effects or reclamation difficulties in the event of abandonment.

The NWF opposed the proposed reduction in the minimum inspection frequency for abandoned sites because it allegedly fails to provide adequately for the protection of public health and safety and the environment from the adverse impacts of improperly conducted coal mining and operations, and therefore contravenes the underlying purpose of the Act. They maintained that the dramatic reduction in frequency or even elimination of inspections altogether at abandoned sites as proposed would unquestionably heighten the risk that site conditions may worsen to create an imminent harm and trigger violations of on-or-off site performance standards in addition to those violations already cited by a regulatory authority. NWF stated that abandoned sites need to be monitored to avert deterioration of site conditions into imminent harms, to ensure no uncited violations exist, to provide early warning to the public in the event of imminent harm and to determine or prioritize sites that are eligible for abandoned mine lands funding. They urged that OSM withdraw this proposal, or at a minimum, that a more carefully designed, comprehensive clear and precise rule, explained in greater detail, be substituted.

NWF asserts that the proposed rule is deficient because: (1) It is excessively permissive in delegating decision making to the regulatory authority without a meaningful check based on specified criteria or site characteristics guiding reductions in frequency; (2) there is an absence of binding criteria for "tailoring" inspection schedules for sites requiring more than the minimum one inspection per year, but less than currently required 12 per year; and (3) while OSM indicates in the preamble that regulatory authorities may subsequently readjust a reduced frequency as new information about the conditions at a site become available, there are no criteria for what would trigger such a readjustment.

NWF agrees, however, for some abandoned sites, rigid adherence to the inspection requirements under Section 517(c) of the Act may be a poor expenditure of limited inspection resources and to the extent that the change to the definition of "abandoned site" enables regulatory authorities to make limited reductions in inspection frequencies without offending the language of Section 517(c), the rule is a sensible one. However, they state that any change to the definition of "abandoned site" in order to allow reductions in inspection frequencies must be accompanied by a comprehensive regulatory program such as that they outline below. They assert that failure of OSM to promulgate abandoned site inspection rules fitting this description would offend the purpose of the Act as a whole, even where the "covered by each permit" definitional change of "abandoned site" has rendered Section 517(c) no longer at issue.

NWF asserts that, as part of their suggested program, any attempt to reduce inspection frequencies must begin by creating a categorical exclusion for which there can be no reduction from the existing requirements of 12 inspections per year. This exclusion should at a minimum include sites with potentially unstable structures, such as impoundments or hollow or valley fills, and sites with existing on-or-off site impacts, such as acid mine drainage. Moreover, NWF urged that, where abandoned sites are not categorically excluded from any reduction in inspection frequency, they should remain subject to an absolute minimum frequency of one complete inspection per year and not have their inspection frequencies eliminated altogether as the rule would allow.

The comprehensive detailed inspection program suggested by NWF would also need to include the following: (1) Quantitative inspection requirements like the existing rule including an absolute minimum (e.g. one complete inspection per year); (2) a standardized or regionalized protocol so that criteria are applied consistently across different inspectors and different regulatory authority jurisdictions or regions; (3) specific written findings for all relevant on-and-off site performance standard parameters and public health and safety concerns; (4) based on quantitative inspection data charted over time, a published table for which the regulatory authority could proceed to the appropriate coordinates to determine the appropriate inspection frequency and trigger any necessary subsequent adjustments; and (5) traceable written documentation relating to inspection frequencies at

abandoned sites amenable to administrative review.

Finally, NWF's suggested comprehensive program also would include opportunities for structured public participation in the decision making process. NWF contends that OSM's regulation should begin with a rebuttable presumption that inspection frequencies should not be reduced from currently required levels unless that presumption can be overcome by an affirmative showing of reasonableness and general public notice, specific personal notice to identifiable parties that might be adversely affected by on-or-off site impacts, and public comment periods for all proposed changes in frequency. Also, if the regulatory authority demonstrates that a reduced frequency is appropriate, NWF asserts that there should be a general provision granting reasonable citizen access, when requested in writing, to inspect any areas of the site that would otherwise be inaccessible except to the regulatory authority.

NWF charges that the absence of any discussion of why OSM has not developed a more comprehensive and structured abandoned sites inspection program is offensive to established principles of administrative law. Citing *National Wildlife Federation* v. *Hodel*, 839 F.2d 694 (1988), NWF points out that the court condemned precisely the type of conclusory rulemaking OSM has undertaken with its current proposal, "The Secretary * * * if he determines that there is no need to 'flesh out' the statute, must 'flesh out' his explanations so that we can review the rationality of his decision." In light of this clear directive, NWF asserts OSM must at a minimum, repropose this rule and explain to the public why it is declining to establish a detailed regulatory program.

OSM set forth an adequate explanation of its rationale underlying the proposed rule that has been greatly supplemented with the preamble discussion and response to comments in this final rule. OSM appreciates NWF's views and has decided to adopt most of the elements of NWF's program in this final rule. OSM will include in the final rule NWF's recommendation for an absolute minimum inspection frequency of not less than one complete inspection per calendar year, criteria for "tailoring" inspection schedules for sites requiring more than one inspection per year, and a requirement for specific and traceable written findings by the regulatory authority based on relevant environmental and public health and safety concerns and newspaper advertisement providing the opportunity for public comment on any proposed reduction in inspections of abandoned sites. These adopted provisions are discussed below and under the discussion of final §§ 840.11(h)(1)/842.11(f)(1). OSM considered, but is not adopting, NWF's request for quantitative fixed inspection frequencies in the form of categorical exclusions, standardized or regionalized protocols, published "matrix" tables, or public access to abandoned sites for inspection purposes in light of the opportunities already available under existing regulations.

Under this final rule the responsibility for selection of the appropriate inspection frequency necessary to comply with this rule rests with the expertise and judgment of each regulatory authority, guided by specific written findings required in the final rule. With site-specific historical knowledge at hand and through their experience with local conditions and informal consultations with affected residents, the regulatory authorities are well qualified to identify sites with the potential for harm and to carefully tailor an appropriate inspection frequency for individual abandoned sites, each of which is unique, both in terms of its physical environment and the problems it presents. This rule will maintain the regulatory authority's responsibility for administering its regulatory program consistent with congressional intent to have primary regulatory authority rest with the States.

OSM is not adopting categorical exclusions or other fixed inspection frequencies for abandoned sites beyond the minimum one per year because to do so would merely substitute one inflexible frequency for another and thus fail to achieve fully the goal of eliminating counterproductive inspections. An arbitrary fixed inspection frequency cannot account for the unique physical environment at each abandoned site nor the variation of problems that each abandoned site may pose. A fixed predetermined frequency is just as likely to yield too many inspections, or too few inspections, as it is to yield a suitable number. Categorical exclusions or inclusions also would almost certainly result in inappropriate applications of the rule in many cases. Further, the U.S. Court of Appeals explicitly acknowledged the legal defensibility of OSM's "flexible" implementation of statutes that allow regulatory authorities to consider the myriad site specific situations that cannot be fully anticipated in writing a Federal regulation. *NWF* v. *Hodel*, 839 F.2d 694, 745 (D.C. Cir. 1988). However, nothing in this rule would preclude regulatory authorities from establishing for administrative convenience categories of sites with similar characteristics and evaluating and documenting the necessary inspection frequency for each category as a whole.

As previously discussed, the reason inspections of abandoned sites at the frequency imposed under section 517(c) of the Act are counterproductive and a waste of resources is that enforcement actions at the inspector level are no longer effective. Alternative enforcement that must be initiated beyond the level of inspectors is generally the only viable means to compel abatement of violations or completion of reclamation at abandoned sites, even if conditions deteriorate. Where the regulatory authority is taking all appropriate enforcement action available to it as required under the definition of "abandoned site," nothing more can be done through repeated inspections to reclaim a site or abate violations than is already occurring. Thus, while a fixed inspection frequency like that for active sites under the existing rules might cause the regulatory authority to be informed of a problem at an abandoned site more quickly, it will not provide any new remedy to compel compliance. Accordingly, OSM believes that the inspection frequency program under this rule strikes a sound balance between the fixed inspection frequency required for active and inactive sites and the need to periodically, but not less than once per year, inspect abandoned sites to monitor environmental conditions or other changes in the status of a site and to ensure bond forfeiture reclamation priorities are adjusted as necessary.

Since OSM is accepting NWF's suggestion to set an absolute minimum inspection frequency of not less than one complete inspection per year, §§ 840.11(h)(1)/842.11(f)(1) will not be adopted as proposed. Those proposed sections would have enabled the regulatory authority to further reduce the minimum inspection frequency required under paragraphs (h) introductory text and (f) introductory text, possibly to zero, if, based on no less than three consecutive complete annual inspections conducted during a three-year period before or after the effective date of this rule, the regulatory authority would have found in writing that an abandoned site satisfies two criteria. The first criterion would have been that no conditions or structures existed at the site that could have created an imminent danger to the health or safety of the public or an imminent harm to the environment. The

second criterion would have been that the site had become reasonably stable through natural settlement or revegetation processes.

Eight SRAs, the NCA/AMC, the NCA and the Kentucky Coal Association supported these proposed provisions without providing substantive comments. The NWF was strongly opposed. It commented that under this proposal, inspections at some abandoned sites could be discontinued altogether even where serious deterioration of conditions occurred subsequent to the decision to suspend inspections indefinitely. They said that no State or Federal regulatory authority would have the duty to revisit the abandoned site and would have every administrative and budgetary incentive not to.

OSM acknowledges NWF's concern over the potential for misapplication of these proposed sections. While some abandoned sites may be so stable and so operationally defunct as to make further inspections completely unnecessary, OSM believes that deletion of these provisions will act as a safeguard against premature termination of inspections at what could be a large number of abandoned sites where conditions do not justify ending inspections altogether. OSM believes that monitoring each abandoned site at least once per year to evaluate the environmental conditions, operational status, and the bond forfeiture reclamation priority is reasonable public policy that would not excessively strain the resources of Federal or State regulatory authorities, especially since many abandoned sites are located near active and inactive sites requiring frequent inspections. Moreover, there must be some minimum in place to ensure that each abandoned site continues to be inspected at a frequency commensurate with public safety and environmental considerations present at each specific site as required under the final rule. Also, if there were no minimum frequency, the regulatory authority might not become aware, other than from information provided by citizens, that conditions had worsened to the point that a higher alternative frequency would need to be set in order for the frequency to be commensurate with the deteriorating conditions.

Turning to NWF's recommendation that the rule contain enhanced opportunities for public participation in the abandoned sites inspection process, OSM is including a public notice provision that provides the general public with the opportunity to submit written comments to the regulatory authority when concerns are raised as to a particular inspection frequency adjustment. This enhancement coupled with opportunities for private citizen involvement in the inspection process already provided under other regulations and discussed below will provide ample public participation in the inspection of abandoned sites. 30 CFR 842.14 provides that any person who is or may be adversely affected by a surface coal mining and reclamation operation may notify the Director in writing of any alleged failure on the part of OSM to make adequate and complete periodic inspections and the Director must respond with a determination including any actions to be taken to remedy any noncompliance. When a person provides OSM with reason to believe that there exists any violation at an abandoned site, that person may request a Federal inspection and has the right to accompany the inspector during the inspection. To the extent a person is not satisfied with a Federal inspector's decision not to inspect or enforce, the person is entitled to informal review of that decision by the Director of OSM, and can subsequently appeal to the Office of Hearings and Appeals within DOI. Finally, 30 CFR 840.15 provides that each State program shall provide for public participation in the enforcement of the State program consistent with the Federal provisions cited above.

OSM encourages States to work with potentially affected citizens where a concern arises for a particular minesite. The ability and willingness of State regulatory authorities to work closely with citizens is clearly recognized in OSM's mission and vision statement and is a key part of making the Act work successfully. As part of its oversight duties, OSM will monitor the willingness of States to be responsive to the concerns of citizens and to allow them full access to information needed to evaluate the effect of mining on their health, safety, general welfare and property.

Final Sections 840.11(h)(1)/842.11(f)(1)

As discussed above, sections 840.11(h)(1)/842.11(f)(1) are not being adopted as proposed, but instead are being revised. Under the final rule, before proceeding to reduce the inspection frequency at any abandoned site as authorized under 840.11(h) introductory text/842.11(f) introductory text, the regulatory authority must first conduct a complete inspection of the site. On that basis and on the basis of comments received during the public notice period required under this paragraph, the regulatory authority shall prepare and maintain for public review and Federal oversight purposes a written finding justifying the alternative inspection frequency selected. The prerequisite complete inspection is an on-site status review of all applicable performance standards conducted with an eye towards the long term effects of reducing the inspection frequency. Regulatory authorities shall make the written finding immediately available to OSM and the public in the area of mining in accordance with 30 CFR 840.14, *Availability of records*. To assist the public and OSM in reviewing written findings in a meaningful and expeditious manner, regulatory authorities are expected under this provision to maintain or be able to generate within a reasonable time a current compilation or index of all abandoned sites for which an inspection frequency adjustment has been made under this rule. Each written finding shall justify a reduced inspection frequency by affirmatively addressing in detail all of the following criteria.

(h)(1)(i)/(f)(1)(i)

As a prerequisite to any reduction in inspection frequency, the regulatory authority must explain how the site meets each of the criteria under the definition of an abandoned site under 30 CFR 840.11(g)/842.11(e). Meeting these criteria demonstrates that the regulatory authority has taken, and continues to be in the process of taking, all available enforcement within its reach under its regulatory program to secure abatement of violations and completion of reclamation at an abandoned site.

(h)(1)(ii)/(f)(1)(ii)

The regulatory authority must document whether there exist impoundments, earthen structures or other conditions such as acid mine drainage that pose, or reasonably may be expected to progress into, imminent dangers to the health and safety of the public or significant environmental harms to land, air, or water resources as defined under 30 CFR 701.5. Depending on the circumstances, this criterion alone may be sufficient to warrant no reduction in inspection frequency or at least selection of a frequency in the high range. Even though there may be no remedy immediately available to abate any such dangers or harms, frequent monitoring can serve to give advance warning to the public or appropriate government agencies and serve as a basis to expedite reclamation or abatement of dangers or harms through the bond forfeiture process.

(h)(1)(iii)/(f)(1)(iii)

The regulatory authority must document the extent to which existing impoundments or earthen structures were constructed and certified in accordance with prudent engineering practices and designs approved in the permit. This could be beneficial in support of a reduced frequency since structures such as ponds, head of hollow and valley fills, coal waste refuse piles, backfills or impoundments pose less risk of failure when constructed as designed and certified than structures that were not.

(h)(1)(iv)/(f)(1)(iv)

This criterion addresses the degree to which erosion and sediment control are present and functioning. Monitoring for damage caused by off-site sedimentation may need to be more frequent where there are extensive or critically located areas of loose soils that are not controlled by any or by non-functioning sediment controls.

(h)(1)(v)(f)(1)(v)

Another factor to be considered by the regulatory authority is the proximity of the abandoned site to urbanized areas, communities, occupied dwellings, schools, and other public or commercial buildings and facilities. This criterion will become either more or less important depending on the regulatory authority's findings under the other criteria.

(h)(1)(vi)/(f)(1)(vi)

This criterion concerns the extent of reclamation conducted prior to abandonment and the degree of stability of unreclaimed areas. Abandoned sites vary widely in this respect, ranging from no reclamation at all to various combinations of backfilling, grading, revegetation, and bond release.

(h)(1)(vii)/(f)(1)(vii)

This last criterion requires the regulatory authority to document the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate based on the record of complete and partial inspection reports during the last two consecutive years of inspections of the site. This snapshot through time can be useful in predicting whether adverse conditions can be expected in the future and their rate of acceleration, which may have an important bearing on justifying any reduction in inspection frequency.

Final Sections 840.11(h)(2)/842.11(f)(2)

In response to public comment, this section is being added to require the regulatory authority to advertise each proposed frequency reduction in the newspaper with the broadest circulation in the locality of the abandoned site. The public will be provided a 30 day period in which to submit written comments. Paragraph (h)(2)(ii)/(f)(2)(ii) specifies the nature of the information that at a minimum must be contained in the public notice. Nothing in this section precludes the regulatory authority from consolidating more than one permit into the same advertisement as long as all the information required reflects site-specific differences in the permits included. It is expected that the regulatory authority will give careful consideration to the comments it receives and work with the public to arrive at an inspection frequency acceptable to all parties with an interest.

III. Procedural Matters

Effect in Federal Program States and on Indian Lands

These final rules will apply through cross-referencing in those States with Federal programs and on Indian lands. The programs with Federal programs are California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947 respectively. The Indian lands program appears at 30 CFR part 750.

Executive Order 12778 on Civil Justice Reform

This rule has been reviewed under the applicable standards of Section 2(b)(2) of Executive Order 12778, Civil Justice Reform (56 FR 55195). In general, the requirements of Section 2(b)(2) of Executive Order 12778 are covered by the preamble discussion of this rule. Additional remarks follow concerning individual elements of the Executive Order:

A. What is the preemptive effect, if any, to be given to the regulation?

The rule would not preempt State law or regulation. States would not be required to adopt similar provisions and could continue to inspect abandoned sites at the current frequency required by existing regulations if they so choose.

B. What is the effect on existing Federal law or regulation, if any, including all provisions repealed or modified?

The proposed rule modifies the implementation of the Act as described herein, and is not intended to modify the implementation of any other Federal statute. The preceding discussion of this rule specifies the only Federal regulatory provisions that are affected by this proposed rule.

C. Does the rule provide a clear and certain legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction?

The standards established by this rule are as clear and certain as practicable, given the complexity of the topics covered and the mandates of the Act.

D. What is the retroactive effect, if any, to be given to the regulation?

The inspection reduction provisions of this rule may be applied to any surface coal mining and reclamation operation conducted after the effective date of the Act.

E. Are administrative proceedings required before parties may file suite in court? Which proceedings apply? Is the exhaustion of administrative remedies required?

No administrative proceedings are required before parties may file suit in court challenging the provisions of this rule under section 526(a) of the Act, 30 U.S.C. 1276(a). Prior to any judicial challenge to the application of the rule, however, administrative procedures must be exhausted. In situations involving OSM application of the rule, applicable administrative procedures may be found at 43 CFR part 4. Applicable administrative procedures may be found at 43 CFR part 4.

F. Does the rule define key terms, either explicitly or by reference to other regulations or statutes that explicitly define those items?

Terms which are important to the understanding of this rule are set forth in 30 CFR 700.5 and 701.5.

G. Does the rule address other important issues affecting clarity and general draftsmanship of regulations set forth by the Attorney General, with the concurrence of the Director of the Office of Management and Budget, that are determined to be in accordance with the purposes of the Executive Order?

The Attorney General and the Director of the Office of Management and Budget have not issued any guidance on this requirement.

Federal Paperwork Reduction Act

The collections of information contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0051.

Executive Order 12866

This rule has been reviewed under the Executive Order 12866.

Regulatory Flexibility Act

The DOI certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The rule does not distinguish between small and large entities. This determination is based on the findings that the regulatory changes contained in this rule would serve to reduce the costs incurred by OSM and State regulatory authorities in making routine inspections of abandoned sites. Therefore, the rule will not add to the cost of operating a mine under an approved regulatory program.

National Environmental Policy Act

OSM has prepared an environmental assessment (EA) of the rule and has made a finding that it would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). A finding of no significant impact (FONSI) has been approved in accordance with OSM procedures under NEPA. The EA is on file in the OSM Administrative Record at the address previously specified (see **ADDRESSES**).

Author

The author of this rule is Daniel Stocker, Chief, Branch of Inspection and Enforcement with assistance from Frederick W. Fox. The author may be reached at the Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington DC 20240; Telephone 202–208–2550.

List of Subjects

30 CFR Part 840

Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 842

Law enforcement, Surface mining, Underground mining.

Dated: October 14, 1994.

Bob Armstrong,

Assitant Secretary for Land and Minerals Management.

Accordingly, 30 CFR Parts 840 and 842 are amended as set forth below:

PART 840—STATE REGULATORY AUTHORITY—INSPECTION AND ENFORCEMENT

1. The authority citation for Part 840 continues to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, and Pub. L. 100–34, unless otherwise noted.

2. Section 840.10 is revised to read as follows:

§ 840.10 Information collection.

(a) The collections of information contained in part 840 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0051. The information is being collected by States for use in assessing penalties as evidence in enforcement cases and as an inspection management record. The obligation to respond is required to obtain a benefit in accordance with 30 U.S.C. 1201 *et seq.*

(b) Public reporting burden for this information is estimated to average 3.7 hours per response, including the time for the reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, 1951 Constitution Ave, NW, Room 640, NC, Washington DC 20240; and the Office of Management and Budget, Paperwork Reduction Project 1029–0051, Washington, DC 20503.

3. Section 840.11 is amended by revising paragraphs (g)(4) and (h) to read as follows:

§ 840.11 Inspection by State Regulatory Authority.

* * * * *

(9) * * *

(4) Where the site is, or was, permitted and bonded:

(i) The permit has either expired or been revoked; and

(ii) The regulatory authority has initiated and is diligently pursuing forfeiture of, or has forfeited, any available performance bond.

(h) In lieu of the inspection frequency established in paragraphs (a) and (b) of this section, the regulatory authority shall inspect each abandoned site on a set frequency commensurate with the public health and safety and environmental considerations present at each specific site, but in no case shall the inspection frequency be set at less than one complete inspection per calendar year.

(1) In selecting an alternate inspection frequency authorized under the paragraph above, the regulatory authority shall first conduct a complete inspection of the abandoned site and provide public notice under paragraph (h)(2) of this section. Following the inspection and public notice, the regulatory authority shall prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. This written finding shall justify the new inspection frequency by affirmatively addressing in detail all of the following criteria:

(i) How the site meets each of the criteria under the definition of an abandoned site under paragraph (g) of this section and thereby qualifies for a reduction in inspection frequency;

(ii) Whether, and to what extent, there exist on the site impoundments, earthen structures or other conditions that pose, or may reasonably be expected to ripen into, imminent dangers to the health or safety of the public or significant environmental harms to land, air, or water resources;

(iii) The extent to which existing impoundments or earthen structures were constructed and certified in accordance with prudent engineering designs approved in the permit;

(iv) The degree to which erosion and sediment control is present and functioning;

(v) The extent to which the site is located near or above urbanized areas, communities, occupied dwellings, schools and other public or commercial buildings and facilities;

(vi) The extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas, taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with them; and

(vii) Based on a review of the complete and partial inspection report record for the site during at least the last two consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.

(2) The public notice and opportunity to comment required under paragraph (h)(1) of this section shall be provided as follows:

(i) The regulatory authority shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned site providing the public with a 30-day period in which to submit written comments.

(ii) The public notice shall contain the permittee's name, the permit number, the precise location of the land affected, the inspection frequency proposed, the general reasons for reducing the inspection frequency, the bond status of the permit, the telephone number and address of the regulatory authority where written comments on the reduced inspection frequency may be submitted, and the closing date of the comment period.

PART 842—FEDERAL INSPECTIONS AND MONITORING

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

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, and Pub. L. 100–34, unless otherwise noted.

5. Section 842.11 is amended by revising paragraphs (e)(4) and (f) to read as follows:

§ 842.11 Federal inspections and monitoring.

* * * * *

(e) * * *

(4) Where the site is, or was, permitted or bonded:

(i) The permit has either expired or been revoked; and

(ii) The Office has initiated and is diligently pursuing forfeiture of, or has forfeited, any available performance bond.

(f) In lieu of the inspection frequency established in paragraph (c) of this section, the office shall inspect each abandoned site on a set frequency commensurate with the public health and safety and environmental considerations present at each specific site, but in no case shall the inspection frequency be set at less than one complete inspection per calendar-year.

(1) In selecting an alternate inspection frequency authorized under the paragraph above, the office shall first conduct a complete inspection of the abandoned site and provide public notice under paragraph (f)(2) of this section. Following the inspection and public notice, the office shall prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. This written finding shall justify the new inspection frequency by affirmatively addressing in detail all of the following criteria:

(i) How the site meets each of the criteria under the definition of an abandoned site under paragraph (e) of this section and thereby qualifies for a reduction inspection frequency;

(ii) Whether, and to what extent, there exist on the site impoundments, earthen structures or other conditions that pose, or may reasonably be expected to ripen into, imminent dangers to the health or safety of the public or significant environmental harms to land, air or water resources;

(iii) The extent to which existing impoundments or earthen structures were constructed and certified in accordance with prudent engineering designs approved in the permit;

(iv) The degree to which erosion and sediment control is present and functioning;

(v) The extent to which the site is located near or above urbanized areas, communities, occupied dwellings, schools and other public or commercial buildings and facilities;

(vi) The extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas, taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with time; and

(vii) Based on a review of the complete and partial inspection report record for the site during at least the last two consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.

(2) The public notice and opportunity to comment required under paragraph (f)(1) of this section shall be provided as follows:

(i) The office shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned site providing the public with a 30-day period in which to submit written comments.

(ii) The public notice shall contain the permittee's name, the permit number, the precise location of the land affected, the inspection frequency proposed, the general reasons for reducing the inspection frequency, the bond status of the permit, the telephone number and address of the office where written comments on the reduced inspection frequency may be submitted, and the closing date of the comment period.

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LIST OF PUBLIC LAWS

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–022–00001–2)	$5.00	Jan. 1, 1994
3 (1993 Compilation and Parts 100 and 101)	(869–022–00002–1)	33.00	[1] Jan. 1, 1994
4	(869–022–00003–9)	5.50	Jan. 1, 1994
5 Parts:			
1–699	(869–022–00004–7)	22.00	Jan. 1, 1994
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1200–End, 6 (6 Reserved)	(869–022–00006–3)	23.00	Jan. 1, 1994
7 Parts:			
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27–45	(869–022–00008–0)	14.00	Jan. 1, 1994
46–51	(869–022–00009–8)	20.00	[6] Jan. 1, 1993
52	(869–022–00010–1)	30.00	Jan. 1, 1994
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8	(869–022–00026–8)	22.00	Jan. 1, 1994
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81–85	(869–022–00145–1)	23.00	July 1, 1994
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100–149	(869–022–00147–7)	39.00	July 1, 1994
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1994. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1994. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1993. The CFR volume issued January 1, 1993, should be retained.

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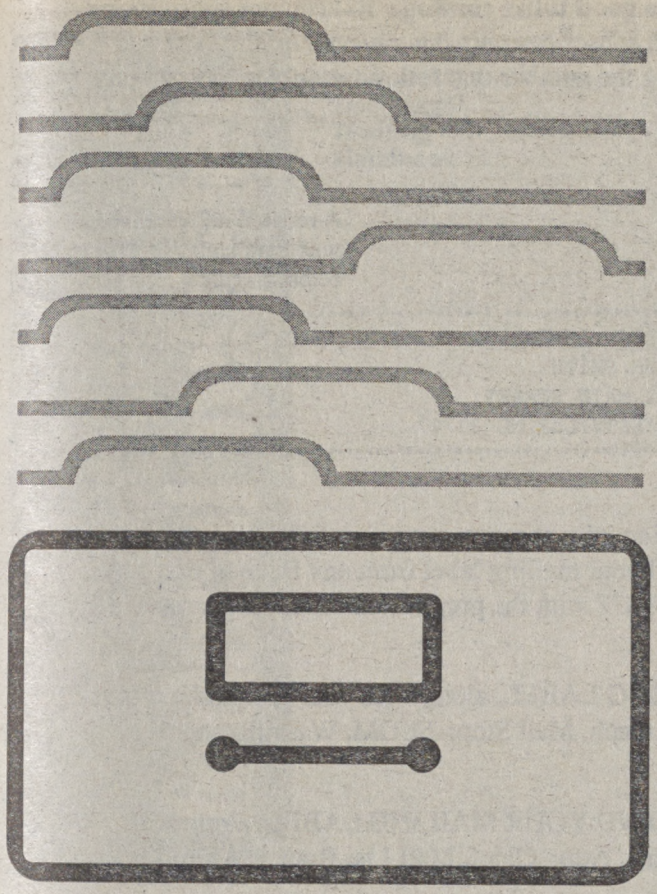

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in the Code of Federal Regulations (CFR)

Revised January 1, 1994

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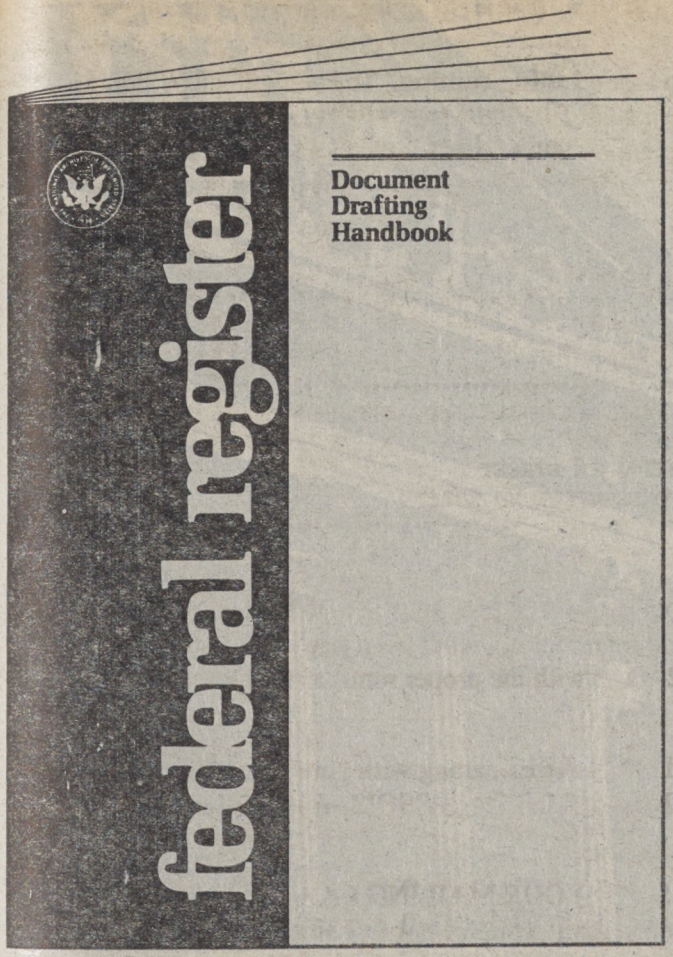

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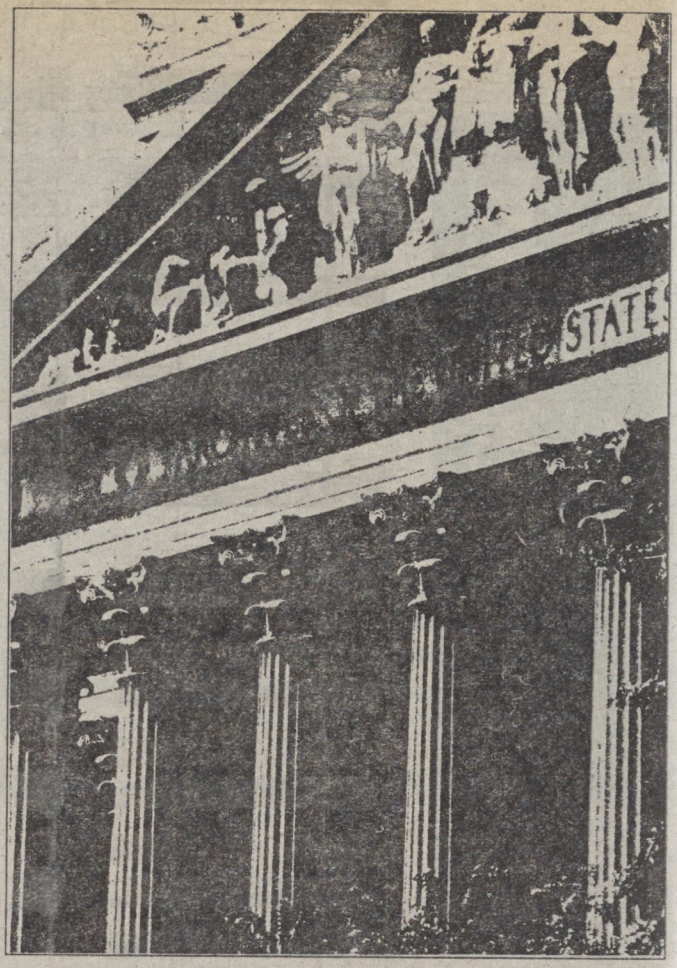

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