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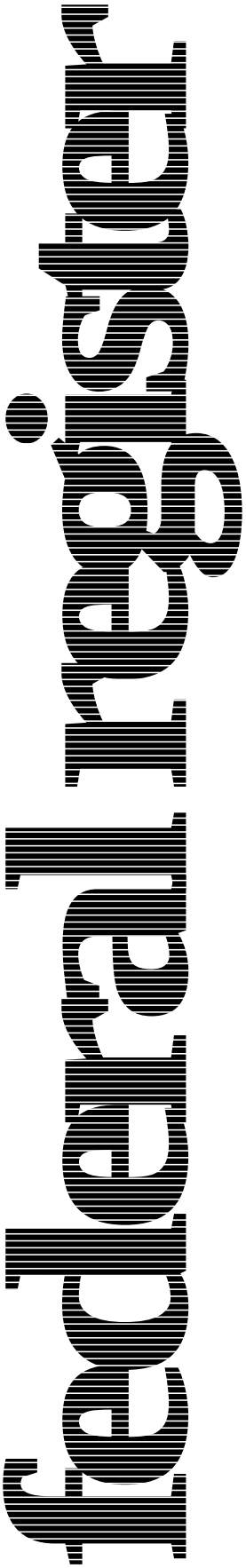

Friday
April 7, 1995

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Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 60, No. 67
Friday, April 7, 1995

EXPORT-IMPORT BANK OF THE UNITED STATES

5 CFR Chapter LII

12 CFR Part 400

RIN 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Export-Import Bank of the United States

AGENCY: Export-Import Bank of the United States (Eximbank).

ACTION: Interim rule with request for comments.

SUMMARY: The Export-Import Bank of the United States, with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for employees of Eximbank that supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. The supplemental rules prohibit certain Eximbank employees and their spouses and minor children from owning securities in any of the entities designated as having the most substantial dealings with Eximbank and require Eximbank employees, other than special Government employees, to obtain prior approval to engage in outside employment.

Eximbank is also repealing its existing regulations setting forth agency standards of ethical conduct which have been substantially superseded by the executive branch-wide Standards of Ethical Conduct and by the executive branch-wide financial disclosure regulations issued by OGE. In place of the existing Eximbank regulations in 12 CFR part 400, Eximbank is substituting a cross-reference to the new executive branch-wide regulations and to these supplemental regulations.

DATES: Interim rule effective April 7, 1995. Comments are invited and must be received on or before May 22, 1995.

ADDRESSES: Send comments to the Export-Import Bank of the United States, 811 Vermont Avenue NW., Washington, DC 20571, Attention: Mr. Paul W. Boyer.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. McKinsey, Export-Import Bank of the United States, Office of The General Counsel, telephone (202) 565–3452.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, OGE published a final rule entitled ''Standards of Ethical Conduct for Employees of the Executive Branch'' (Standards). See 57 FR 35006–35067, as corrected at 57 FR 48557 and 57 FR 52583, with additional grace period extensions at 59 FR 4779–4780 and 60 FR 6390–6391. The Standards, codified at 5 CFR part 2635 and effective February 3, 1993, establish uniform standards of ethical conduct that are applicable to all executive branch personnel.

5 CFR 2635.105 authorizes an executive branch agency to issue, with OGE's concurrence, agency-specific supplemental regulations that are necessary to implement effectively its ethics program. Eximbank, with OGE's concurrence, has determined that the following supplemental rules, being codified in new 5 CFR chapter LII, are necessary for the successful implementation of Eximbank's ethics program, in light of Eximbank's operations.

II. Analysis of the Regulations

Section 6201.101 General

Section 6201.101 explains that the regulations contained in the interim rule apply to employees of Eximbank and are supplemental to the executive branch standards.

Section 6201.102 Prohibited Financial Interests

The Standards, at 5 CFR 2635.403(a), specifically recognize that an individual agency may find it necessary or desirable to issue a supplemental regulation prohibiting or restricting the acquisition or holding of a financial interest or a class of financial interests by its employees, or any category of its employees, and the spouses and minor children of those employees, based on the agency's determination that the acquisition or holding of such financial interests would cause a reasonable person to question the impartiality and objectivity with which agency programs are administered. Eximbank has made such a determination with respect to certain holdings by those employees, other than special Government employees, who are required to file public or confidential disclosure statements. With respect to the spouses and minor children of these Eximbank employees, Eximbank has made an additional determination that there is a direct and appropriate nexus between the prohibition on holding certain financial interests as applied to spouses and minor children and the efficiency of the service provided by Eximbank. To help ensure public confidence in the integrity of Eximbank's programs and operations, this interim rule, for codification at 5 CFR 6201.102, will prohibit covered employees of Eximbank and their spouses and minor children from owning securities of any of the entities designated by Eximbank as having the most substantial dealings with Eximbank.

Section 6201.103 Prior Approval of Outside Employment

The Standards, at 5 CFR 2635.803, also specifically recognize that an agency may find it necessary or desirable to issue a supplemental regulation requiring its employees to obtain approval before engaging in outside employment or activities. The Eximbank standards of conduct regulations have long required employees to obtain written permission prior to engaging in outside employment. Eximbank has found this requirement useful in ensuring that the outside employment activities of employees conform with all applicable laws and regulations. In accordance with 5 CFR 2635.803, Eximbank has determined that it is necessary to the administration of its ethics program to continue to require such prior approval. This interim rule, for codification at 5 CFR 6201.103, will require employees of Eximbank, other than special Government employees, who desire to engage in outside employment to obtain prior approval of such employment from their immediate supervisor and from Eximbank's Designated Agency Ethics Official.

Repeal of Eximbank Standards of Conduct

Eximbank is repealing its existing standards of ethical conduct regulations codified at 12 CFR part 400 which have been largely superseded by the executive branch-wide Standards at 5 CFR part 2635 or the executive branch financial disclosure regulations at 5 CFR part 2634. In place of its old standards at 12 CFR part 400, Eximbank is issuing a residual cross-reference provision at new 12 CFR 400.101 to refer both to the executive branch-wide Standards and financial disclosure regulations and to Eximbank's new supplemental standards regulations.

II. Matters of Regulatory Procedure

Administrative Procedure Act

As General Counsel of Eximbank, I have found good cause pursuant to 5 U.S.C. 553(b) and (d)(3) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to these interim rules and repeals. The reason for this determination is that it is important to a smooth transition from Eximbank's prior ethics rules to the new executive branch-wide Standards and financial disclosure regulations that these rulemaking actions become effective as soon as possible. Furthermore, this rulemaking is related to Eximbank organization, procedure and practice. Nonetheless, this is an interim rulemaking, with provision for a 45-day public comment period. The Export-Import Bank of the United States will review all comments received during the comment period and will consider any modifications that appear appropriate in adopting these rules as final, with the concurrence of the Office of Government Ethics.

Regulatory Flexibility Act

As General Counsel of Eximbank, I have determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that these regulations will not have a significant impact on small business entities because they affect only Eximbank employees and their immediate families.

Paperwork Reduction Act

As General Counsel of Eximbank, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because these regulations do not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects

5 CFR Part 6201

Conflict of interests, Government employees.

12 CFR Part 400

Conflict of interests, Government employees.

Dated: March 1, 1995.

Carol F. Lee,

General Counsel, Export-Import Bank of the United States.

Approved: March 15, 1995.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Export-Import Bank of the United States, in concurrence with the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations and title 12, chapter IV, of the Code of Federal Regulations as follows:

1. A new Chapter LII, consisting of part 6201, is added to title 5 of the Code of Federal Regulations to read as follows:

5 CFR CHAPTER LII—EXPORT-IMPORT BANK OF THE UNITED STATES

PART 6201—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXPORT-IMPORT BANK OF THE UNITED STATES

Sec.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403(a), 2635.803.

§ 6201.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Export-Import Bank of the United States (Bank) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition to the standards in 5 CFR part 2635 and this part, employees of the Bank are subject to the executive branch financial disclosure regulations contained in 5 CFR part 2634.

§ 6201.102 Prohibited financial interests.

(a) *Prohibition.* Except as provided in paragraph (f) of this section, no covered employee or covered family member shall own securities issued by an exporter or lending institution appearing on the List of Designated Entities under paragraph (b) of this section.

(b) *List of Designated Entities*—(1) *Compilation of list of designated entities.* Once each fiscal year, the designated agency ethics official (DAEO) shall compile a List of Designated Entities based upon the following criteria:

(i) All exporters that, during the preceding two fiscal years, exported an aggregate dollar volume of goods and services supported by the Bank in excess of four hundred million dollars ($400,000,000);

(ii) All exporters that, during the preceding two fiscal years, had seven (7) or more aggregate export transactions supported by the Bank;

(iii) All lending institutions that, during the preceding two fiscal years, financed an aggregate dollar volume of export transactions supported by the Bank in excess of one hundred fifty million dollars ($150,000,000); and

(iv) All lending institutions that, during the preceding two fiscal years, financed twenty (20) or more aggregate export transactions supported by the Bank.

(2) *Distribution of list of designated entities.* The DAEO shall distribute the List of Designated Entities to all covered employees promptly after it is compiled, and shall ensure that each new covered employee receives a copy of the current List of Designated Entities promptly after becoming a covered employee.

(c) *Definitions.* For purposes of this section:

(1) *Covered employee* means an employee of the Bank, other than a special Government employee, who is required to file a public or a confidential financial disclosure report (Form SF 278 or SF 450) under 5 CFR part 2634.

(2) *Covered family member* means the spouse or minor child of a covered employee.

(3) *Securities* means all financial interests evidenced by debt or equity instruments. The term includes, without limitation, bonds, debentures, notes, securitized assets and commercial paper, as well as all types of preferred and common stock. The term encompasses both present and contingent ownership interests, including any beneficial or legal interest derived from a trust. It extends to any right to acquire or dispose of any long or short position in such securities and includes, without limitation, interests convertible into such securities, as well as options, rights, warrants, puts, calls, and straddles with respect thereto. It does not include:

(i) An investment in a publicly traded or publicly available mutual fund or other collective investment fund or in a widely held pension or similar fund, provided that the fund does not invest more than ten percent (10%) of the value of its portfolio in securities of any one entity on the List of Designated Entities and the covered employee or covered family member neither exercises control over nor has the ability to exercise control over the financial interests held in the fund; or

(ii) Certificates of deposit, checking accounts, savings accounts and other deposit accounts.

(4) *Support by the Bank* means:

(i) Direct loans made by the Bank;

(ii) Guarantees by the Bank of loans from lending institutions; or

(iii) Insurance policies issued by the Bank under any of its insurance programs.

(d) *Restrictions arising from third party relationships.* If a covered employee has knowledge that any of the entities described in paragraphs (d)(1) through (d)(6) of this section own any security that a covered employee or covered family member would be prohibited from owning by paragraph (a) of this section, the covered employee shall promptly report such interests to the DAEO. The DAEO may require the covered employee to terminate the third party relationship, undertake an appropriate disqualification, or take other appropriate action necessary, under the particular circumstances, to avoid a statutory violation or a violation of part 2635 of this title or of this part, including an appearance of misuse of position or loss of impartiality. This paragraph applies to any:

(1) Partnership in which the covered employee or covered family member is a general partner;

(2) Partnership in which the covered employee and/or covered family member(s) in the aggregate holds more than a ten percent limited partnership interest;

(3) Closely held corporation in which the covered employee and/or covered family member(s) in the aggregate holds more than a ten percent (10%) equity interest;

(4) Trust in which the covered employee or covered family member has a legal or beneficial interest;

(5) Investment club or similar informal investment arrangement between the covered employee or covered family member and others; or

(6) Other entity if the covered employee and/or covered family member(s) in the aggregate holds more than a ten percent (10%) equity interest.

(e) *Period to Divest.* Unless a waiver is granted pursuant to paragraph (f) of this section, a covered employee or covered family member who owns securities of a designated entity as of the date that the initial List of Designated Entities is circulated to covered employees, the date that a revised List of Designated Entities is circulated to covered employees, or the first day that an individual becomes a covered employee, shall divest the securities within six (6) months of such date. The DAEO may, in certain cases of unusual hardship, grant a written extension of up to an additional six (6) months within which a covered employee or covered family member must divest securities of a designated entity. Notwithstanding the grant of an extension, a covered employee remains subject to the disqualification requirements of 5 CFR 2635.402 and 2635.502. A covered employee or covered family member who must divest securities pursuant to this section should refer to section 1043 of the Internal Revenue Code and to the regulations of subpart J of 5 CFR part 2634 under which the covered employee or covered family member may be eligible to defer the recognition of taxable gain on the sale or other divestiture.

(f) *Waivers.* The DAEO may grant a written waiver from the securities prohibition contained in this section based on a determination that the waiver is not inconsistent with 5 CFR part 2635 or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality, or otherwise to ensure confidence in the impartiality and objectivity with which Bank programs are administered. A waiver under this paragraph may be accompanied by appropriate conditions, such as requiring execution of a written statement of disqualification. Notwithstanding the grant of any waiver, a covered employee remains subject to the disqualification requirements of 5 CFR 2635.402 and 2635.502.

(g) *Agency determinations of substantial conflict.* Nothing in this section prevents the Bank from prohibiting or restricting an individual Bank employee from acquiring or holding a financial interest or a class of financial interests based upon the Bank's determination of substantial conflict pursuant to 5 CFR 2635.403(b).

§ 6201.103 Prior approval for outside employment.

(a) *Prior approval requirement.* Before engaging in any outside employment, whether or not for compensation, an employee, other than a special Government employee, must obtain the written approval of the employee's immediate supervisor and the DAEO. Requests for approval shall be forwarded through normal supervisory channels to the DAEO and shall include the name of the person, group, or organization for whom the work is to be performed; the type of work to be performed; and the proposed hours of work and approximate dates of employment.

(b) *Standard for approval.* Approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation (including 5 CFR part 2635). In the case of an employee who wishes to practice a profession involving a fiduciary relationship, as defined in 5 CFR 2636.305(b), approval will be granted only for each individual matter in the course of practicing such profession.

(c) *Definition of employment.* For purposes of this section, ''employment'' means any form of non-Federal employment or business relationship involving the provision of personal services by the employee. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee or teacher. It also includes writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service or civic organization, unless such activities involve the provision of professional services or advice or are for compensation other than reimbursement of expenses.

12 CFR CHAPTER IV—EXPORT-IMPORT BANK OF THE UNITED STATES

2. Part 400 of 12 CFR chapter IV is revised to read as follows:

PART 400—EMPLOYEE FINANCIAL DISCLOSURE AND ETHICAL CONDUCT STANDARDS REGULATIONS

§ 400.101 Cross-reference to employee financial disclosure and ethical conduct standards regulations.

Employees of the Export-Import Bank of the United States (Bank) should refer to:

(a) The executive branch-wide financial disclosure regulations at 5 CFR part 2634;

(b) The executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635; and

(c) The Bank regulations at 5 CFR part 6201 which supplement the executive branch-wide standards.

Authority: 5 U.S.C. 7301.

[FR Doc. 95–8593 Filed 4–6–95; 8:45 am]

BILLING CODE 6690–01–P

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 272 and 273

[Amendment No. 359]

RIN 0584–AB78

Food Stamp Program: Medical Expense Deduction

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes an interim rulemaking published on October 3, 1994. The interim rulemaking amended food stamp regulations to simplify the means by which households with elderly and disabled members claim deductions from income for verified, prospective, non-reimbursed medical expenses.

DATES: The amendments to § 272.1(g)(138), § 273.10(d)(4), and § 273.21(f)(2)(iv), § 273.21(i) and § 273.21(j)(3)(ii)(C) are effective May 8, 1995 and must be implemented no later than September 5, 1995. The remaining provisions of the interim rule which are being adopted as final without change, were effective October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Eligibility and Certification Rulemaking Section, Certification Policy Branch, Program Development Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302, (703) 305–2496.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR 3015, Subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Ellen Haas, the Under Secretary for Food, Nutrition, and Consumer Services, has certified that this interim rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program.

Paperwork Reduction Act

This rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For Program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(1) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or Part 284 (for rules related to QC liabilities); (3) for Program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Background

On October 3, 1994, the Department published an interim rule at 59 FR 50153 (interim regulation) amending the food stamp regulations to simplify the means by which households with elderly and disabled members claim deductions from income for verified, prospective, non-reimbursed medical expenses. Comments were solicited on the provisions of the interim rule through December 2, 1994. This final action addresses the commenters' concerns. Readers are referred to the interim rule for a more complete understanding of this final action.

The Department received 5 comments on the interim rule. Two of the commenters supported the interim rule, believing that it benefitted households and State agencies alike by eliminating unnecessary reporting requirements. Four of the five commenters raised issues which are addressed below.

Budgeting of Medical Expenses

A commenter noted that, although the interim regulations require State agencies to allow households to estimate, prospectively, recurring medical expenses, they do not explicitly prohibit retrospective budgeting of those expenses. Such retrospective budgeting is prohibited by section 5(e) of the Food Stamp Act of 1977, as amended, 7 USC 2014(e) (Act). Since only households in which all members are elderly or disabled with no earned income are amongst those groups of households exempt from retrospective budgeting, the interim rule's failure to explicitly prohibit the retrospective budgeting of medical expenses leaves open the possibility that some households' medical expenses would be budgeted in that manner.

The Department agrees with the commenter that the interim regulations failed to explicitly prohibit the retrospective budgeting of medical expenses. Therefore, the Department is amending current regulations at 7 CFR 273.21(f)(2)(iv) to require that State agencies prospectively budget recurring medical expenses.

Verification of Medical Expenses

The same commenter requested clarification of the procedures for State agency action on a household's voluntary report of a change in medical expenses. Although reporting of changes in medical expenses during the

certification period was not required by the interim rule, the household was given the option of voluntarily reporting any changes in medical expenses it incurred between certifications. If the household voluntarily reported a change in its medical expenses, the interim rule required the State agency to act on the change in accordance with current regulations at 7 CFR 273.12(c).

The commenter felt that the reference was unclear and that further clarification was necessary. The commenter was particularly concerned about instances in which a household voluntarily reports a change in medical expenses that would cause a decrease in the household's allotment. Under current regulations at 7 CFR 273.12(c), the State agency may act on a reported change that would decrease the household's allotment or make the household ineligible without verification, though verification which is required by 7 CFR 273.2(f) has to be obtained prior to the household's recertification. The commenter felt that it should be clear in the regulatory language at 7 CFR 273.2, that if the household voluntarily reports a change in its recurring medical expenses that would decrease its allotment, the State agency should act on the change without requiring the household to verify it.

The Department agrees with the commenter that, with respect to State agency action on a household's voluntary report of changes in medical expenses, additional clarification of the requirements is desirable. Therefore, the Department is amending 7 CFR 273.10(d)(4) and 7 CFR 273.21(i) and (j)(iii)(C) to describe the procedures for acting on a household's voluntary report of changes in its medical expenses. The State agency is required to verify reported changes that would increase a household's allotment. The State agency has the option of either requiring verification prior to acting on the changes, or requiring the verification prior to the second normal monthly allotment after the change is reported. In the case of a reported change that would decrease the household's allotment, or make the household ineligible, the State agency shall act on the change without verification, though verification which is required by 7 CFR 273.2(f) has to be obtained prior to the household's recertification.

Restored Benefits

A commenter stated that the interim rule should have provided for restoration of benefits back to October 1, 1991; the effective date of section 1717 of the Mickey Leland Memorial Domestic Hunger Relief Act of 1990 (1990 Leland Act), Title XVII, Public Law 101–624. The commenter argued that, because the Department failed to issue regulations in connection with section 1717 of the 1990 Leland Act, elderly and disabled households were wrongfully denied allotments based on recurring medical expenses during the period beginning October 1, 1991 (the effective date of section 1717 of the 1990 Leland Act) to October 1, 1994 (the effective date of the October 3, 1994 interim rule). The commenter believed that the interim regulations should permit these households to receive restored benefits back to October 1, 1991.

Another commenter, however, questioned the need for the restoration of benefits under the interim rule. The commenter noted that under previous regulations, eligible households were receiving allowable medical expense deductions and that the interim rule merely simplified the process through which households can claim that deduction. Since eligible households were already receiving a deduction, the commenter asked in what case would a household be entitled to restored benefits.

The Department agrees with the second commenter that restored benefits are not necessary in connection with the interim rule. The provisions of the interim rule did not change eligibility requirements for the medical deduction, but only simplified reporting procedures for claiming the deduction. Households that claimed the deduction under the previous rules should have received a benefit similar to that received under current rules.

It could be argued that some eligible households may have refrained from claiming the medical deduction under the old rules because they felt that the former reporting requirements were too exacting, and that if the simplification provisions of the October 3, 1994 interim regulation had been published by the effective date of the 1990 Leland Act, those households would have claimed the medical deduction. However, restored benefits would not be appropriate for such households since the Department's former reporting requirements were consistent with the statute and within the Department's discretion. Therefore, such households could not argue they were wrongfully denied benefits.

At the time the 1990 Leland Act was enacted, the Department believed that its then existing regulations adequately addressed the intent of section 1717. This claim was made in a proposed rule (Miscellaneous Provisions of the Mickey Leland Memorial Domestic Hunger Relief Act, June 28, 1991, 56 FR 29594), and no comment was received to the contrary. After learning that some States may have been confused and were misapplying the reporting requirements, the Department first issued regional memoranda and then exercised its discretion to revise and simplify its rules in a way designed to ease the reporting burden on both households and State agencies.

The Department maintains that its old rules satisfied the requirements of section 1717 of the 1991 Leland Act. Under the rules that existed at that time, a household's medical expense deduction for the certification period was still based on the household's prospectively estimated recurring medical expenses and there was no change in the procedures that occur at the time of certification or recertification. Households were, however, required to report unanticipated changes of $25 or more which occurred during the certification period.

The major simplification provision of the interim rule was the elimination of the household's requirement to report unanticipated changes of $25 or more in its medical expenses that it experienced during the certification period. The Department believes that this simplification was not required by section 1717 of the 1990 Leland Act but was within the discretion of the Department to further simplify medical deduction reporting procedures for households and beleaguered State agencies alike.

The Department disagrees with the commenter that households eligible for the medical deduction should be issued restored benefits. First, the provisions of the interim rule merely simplified discretionary reporting requirements and did not alter eligibility requirements. Households eligible for the medical deduction would have received essentially the same benefit under the old rules as they did under the interim regulations. Second, though some households may have refrained from claiming the medical expense deduction because of the reporting requirements connected with the deduction, the Department contends that since the regulations in effect prior to the interim rule were reasonably within the Department's discretion when implementing the medical expense provisions of the 1990 Leland Act, no household was wrongly denied benefits.

Consistent with the above, the Department is not amending the interim regulations to provide for the restoration

of benefits back to October 1, 1991 for households eligible for the medical expense deduction. The Department, however, is amending the interim regulations at 7 CFR 272.1(g)(138) to eliminate the requirement that restored benefits be issued back to October 1, 1994, the effective date of the interim rule, for households converted to the interim rule's procedures after the effective date. As noted by the second commenter, households eligible for the medical expense deduction were receiving correct deductions under prior regulations, and thus restored benefits are not necessary. If the household properly reported and verified its allowable medical expenses, it should have received the correct amount of benefits.

On a related issue, a commenter wrote that State agencies should be required to notify eligible households immediately of the provisions of the interim rule. The interim rule required State agencies to implement the changes in medical deduction policy on October 1, 1994, and all households that newly apply for Program benefits on or after October 1, 1994 would be subject to the interim rule procedures. For households participating prior to October 1, 1994, the interim rule required that they be subject to the new provisions at their request, at the time of recertification, or when their case is next reviewed, whichever occurs first. The State agency is required to provide restored benefits to such households back to the required implementation date or the date of application, whichever is later.

The commenter felt that since households are unlikely to know about the changes in medical deduction policy required by the October 3, 1994 interim rule and, therefore, are unlikely to request benefit conversion to the new policy, State agencies should be required to notify households of the provisions of the interim rule immediately and not wait until the household's next recertification or case review. The commenter noted that households with elderly or disabled persons are likely to have longer certification periods, perhaps up to 24 months. Therefore, waiting until a household's next recertification could delay implementation of the interim rule's provisions for several years. The commenter also contended that restored benefits are insufficient because they force vulnerable, hungry households to go without benefits during the certification period when they most need the assistance.

The provisions of the interim rule simplify the means by which households with elderly and disabled members can claim the medical deduction. Those provisions benefit both eligible households and State agencies by reducing the reporting burden associated with the deduction. The Department agrees with the commenter, therefore, that it is in the best interest of both households and State agencies for eligible households to be made aware of the interim rule's procedures as soon as possible. Therefore, the Department is revising the implementation regulations of the interim rule at 7 CFR 272.1(g)(138) to require that State agencies notify all households eligible for the medical expense deduction of the change in medical deduction reporting procedures and of their right to be converted to those new procedures immediately. The method of notification is being left up to the State agencies.

Another commenter requested clarification of a State agency's obligation to establish claims or provide supplemental benefits to households as a result of the changes in medical deduction policy. As noted above, a household's medical deduction is based on expenses reported at certification and changes in those expenses that can be reasonably anticipated. The household does not have to report any changes in its medical expenses during the certification period. The State agency would learn of any difference between the deduction and actual costs at the household's next recertification, when the household would be required to report and verify all of its current medical expenses. However, the State agency would not be allowed to apply this information to the previous (i.e., ending) certification period.

Because of the change in policy regarding the reporting of medical expenses during the certification period, the State agency shall not issue supplements to or establish claims against households that choose not to report and/or verify changes in medical expenses when they occur during the certification period. The Department is amending the interim regulations at 7 CFR 273.10(d)(4) to clarify this requirement.

Implementation

Under the interim rule, the provisions addressed in this final rule were effective October 1, 1994. The Department received one comment criticizing the short implementation time of the interim rule. The commenter wrote that State agencies are put in an awkward position whenever regulatory changes are made effective prior to the date of release of a regulation. This anomaly, the commenter noted, usually results because of the statutory implementation date of a provision. The provisions of the October 3, 1994 interim rule, however, were discretionary, and the commenter felt that the Department could have afforded State agencies a reasonable period of time for implementation.

The Department understands the difficulties State agencies encounter when the effective date of a rule precedes its publication date. However, the Department felt that, due to apparent misapplication of the reporting requirements by some State agencies, the provisions of the interim rule were important enough to warrant a retroactive implementation date. In addition, in the Spring of 1994, the Department informed State agencies through its regional offices of the likelihood of a change in regulations regarding the medical expense deduction, thus giving State agencies the opportunity to do advanced planning in regard to implementing the rule. No change in the interim rule's effective date is being made in this final rule.

The provisions of this final action which adopt as final without change provisions of the interim rule were effective as of October 1, 1994. The provisions of this final action which require alteration of State procedures are to be effective May 8, 1995 and must be implemented no later than September 5, 1995.

Any variance resulting from the implementation of the provisions of this final rule shall be excluded from quality control error analysis for 120 days from the required implementation date in accordance with 7 CFR 275.12(d)(2)(vii).

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs–social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Records, Reporting and recordkeeping requirements, Social security.

Accordingly, the interim rule amending 7 CFR 272 and 273 which was published at 59 FR 50153 on October 3, 1994, is adopted as a final rule with the following changes:

1. The authority citation for 7 CFR parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, paragraph (g)(138) is revised to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) Implementation * * *

(138) *Amendment No. 359* The provision of *Amendment No. 359* regarding the medical expense deduction is effective and must be implemented no later than October 1, 1994. Any variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 120 days from this required implementation date in accordance with 275.12(d)(2)(vii) of this chapter. The provision must be implemented for all households that newly apply for Program benefits on or after the required implementation date. State agencies must notify households eligible for the deduction of the change in medical deduction reporting requirements and the right of the household to be converted to those new procedures immediately. The current caseload shall be converted to these provisions at the household's request, at the time of recertification, or when the case is next reviewed, whichever occurs first.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.10, the eighth sentence of paragraph (d)(4) is removed, and three new sentences are added to the end of paragraph to read as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(d) *Determining deductions.* * * *

(4) *Anticipating expenses.* * * * If the household voluntarily reports a change in its medical expenses, the State agency shall verify the change in accordance with § 273.2(f)(8)(ii) if the change would increase the household's allotment. The State agency has the option of either requiring verification prior to acting on the change, or requiring the verification prior to the second normal monthly allotment after the change is reported. In the case of a reported change that would decrease the household's allotment, or make the household ineligible, the State agency shall act on the change without requiring verification, though verification which is required by § 273.2(f)(8) shall be obtained prior to the household's recertification.

* * * * *

4. In § 273.21:

a. Paragraph (f)(2)(iv) is amended by adding the words '', except medical expenses,'' after the words ''prorated over two or more months'' in the first sentence, and by adding a new sentence after the first sentence.

b. The third sentence of paragraph (i) is revised and a fourth sentence is added.

c. Paragraph (j)(3)(iii)(C) is revised.

The revisions and addition read as follows:

§ 273.21 Monthly Reporting and Retrospective Budgeting (MRRB).

* * * * *

(f) *Calculating allotments for households following the beginning months.* * * *

(2) *Income and deductions.* * * *

(iv) * * * Medical expenses shall be budgeted prospectively. * * *

* * * * *

(i) *Verification.* * * * If the household voluntarily reports a change in its medical expenses, the State agency shall verify the change in accordance with § 273.2(f)(8)(ii) before acting on it if the change would increase the household's allotment. In the case of a reported change that would decrease the household's allotment, or make the household ineligible, the State agency shall act on the change without requiring verification, though verification which is required by § 273.2(f)(8)(i) shall be obtained prior to the household's recertification.

(j) *State agency action on reports.* * * *

(3) *Incomplete filing.* * * *

(iii) * * *

(C) If a household fails to verify a change in reported medical expenses in accordance with § 273.2(f)(8), and that change would increase the household's allotment, the State agency shall not make the change. The State agency shall act on reported changes without requiring verification if the changes would decrease the household's allotment, or make the household ineligible.

* * * * *

Dated: March 30, 1995.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 95–8492 Filed 4–6–95; 8:45 am]

BILLING CODE 3410–30–U

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 95–003–1]

Commuted Traveltime Periods: Overtime Services Relating to Imports and Exports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine by removing and adding commuted traveltime allowances for travel between various locations in Oregon, Washington, and Wyoming. Commuted traveltime allowances are the periods of time required for Plant Protection and Quarantine employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by Plant Protection and Quarantine employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of commuted traveltime between these locations.

EFFECTIVE DATE: April 7, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Paul R. Eggert, Assistant to the Deputy Administrator, Resource Management Staff, PPQ, APHIS, Suite 4C03, 4700 River Road Unit 130, Riverdale, MD 20737–1228; (301) 734–7764.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR, chapter III, and 9 CFR, chapter I, subchapter D, require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals, animal byproducts, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of Plant Protection and Quarantine (PPQ) on a Sunday or holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services in accordance with 7 CFR part 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as

nearly as practicable, the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 354.2 of the regulations by removing and adding commuted traveltime allowances for travel between various locations in Oregon, Washington, and Wyoming. The amendments are set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

The number of requests for overtime services of a PPQ employee at the locations affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

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

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Just Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 354

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

Accordingly, 7 CFR part 354 is amended as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 2260; 21 U.S.C. 136 and 136a; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 354.2 is amended by removing or adding in the table, in alphabetical order, the information as shown below:

§ 354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from	Metropolitan area	
		Within	Outside
[Remove]			
*	* *	*	*
Oregon:			
Astoria ..	.....	1	
Astoria ..	Longview, WA.	.....	3
*	* *	*	*
Coos Bay (including North Bend).	.....	1	

COMMUTED TRAVELTIME ALLOWANCES—Continued

[In hours]

Location covered	Served from	Metropolitan area	
		Within	Outside
Newport ...	Coos Bay .	.....	5
Port Westward.	.....	Astoria	2
*	* *	*	*
Portland ...	Longview, WA.	.....	3
*	* *	*	*
Westport ..	Astoria	.....	2
*	* *	*	*
Washington:			
*	* *	*	*
Grays Harbor.	Astoria, OR.	.....	3
*	* *	*	*
Kalama	Longview .	.....	2
*	* *	*	*
Longview .	Astoria or Portland, OR.	.....	3
Longview .	Longview .	2	
*	* *	*	*
Raymond .	Astoria, OR.	.....	2
*	* *	*	*
Vancouver	Longview .	.....	3
*	* *	*	*
Willapa Bay.	Astoria, OR.	.....	2
*	* *	*	*
Undesignated Ports.	Astoria or Portland, Oregon, Tacoma, Seattle.	.....	3
*	* *	*	*
[Add]			
*	* *	*	*
Washington:			
*	* *	*	*
Longview .	Portland, OR.	.....	3
*	* *	*	*
Undesignated Ports.	Portland, OR, Tacoma, Seattle.	.....	3
*	* *	*	*
Wyoming:			
Cheyenne.	.....	1	

Done in Washington, DC, this 3rd day of April 1995.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–8616 Filed 4–6–95; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR Part 918

[Docket No. FV95–918–1]

Suspension of Provisions of Marketing Order 918; Fresh Peaches Grown in Georgia

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension order.

SUMMARY: This rule is a continuation of a suspension order that suspends, for two additional fiscal years, effective March 1, 1995, through February 28, 1997, all provisions of Federal Marketing Order No. 918 for fresh peaches grown in Georgia (order), and the rules and regulations issued thereunder. This rule is the result of a recommendation for continued suspension made by trustees of the Georgia Peach Industry Committee (trustees). The trustees' recommendation was based upon the belief that a State program, which is currently active in market promotion and merchandising for the Georgia peach industry, could provide the quality, maturity, and size regulations that were in effect under the Federal order, and would result in more efficient use of industry funds. The trustees believe more time is needed to study changes in the industry, and any new developments which could affect the need for, or status of, the order.

EFFECTIVE DATE: March 1, 1995, through February 28, 1997.

FOR FURTHER INFORMATION CONTACT: William Pimental, Southeast Marketing Field Office, 301 3rd St., NW., suite 201, Winter Haven, Florida 33883–2276, telephone 813–299–4770, or Mark Kreaggor, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–720–2431.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 918 (7 CFR part 918) regulating the handling of peaches grown in Georgia. The marketing agreement and order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The suspension action is being taken under the provisions of section 8c(16)(A) of the Act.

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is a continuation of a suspension order than suspends, effective March 1, 1995, through February 28, 1997, all provisions of the marketing order and the rules and regulations issued thereunder. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has as his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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

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

There are approximately 20 handlers of Georgia peaches and approximately 150 peach producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000. Small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of these handlers and producers may be classified as small entities.

Marketing Order 918 has been in effect since 1942. The order provides for the establishment of grade, size, quality, maturity, container and inspection requirements. In addition, the order authorizes production research and marketing research and development projects. It also provides for reporting and recordkeeping requirements on affected handlers. The production and marketing season runs from early March through late July.

The Georgia Peach Industry Committee members met on November 14, 1992, and unanimously recommended suspension of the marketing order at the end of the 1992–93 fiscal period. The recommendation was made to eliminate the expense of administering the marketing order. The members' recommendation was based on the belief that the quality, maturity, and size standards that were in effect under the order could be implemented under a State program that concurrently conducted market promotion activities for the Georgia peach industry. The members believed that by transferring all functions to a single program, industry funds would be used more efficiently. While the Federal order authorizes marketing research and development projects, these activities had been carried out under the authority of the State program for several years. The order also authorizes container requirements and production research, but these provisions had been inactive for many years.

The committee members recommended suspension, not termination, of the marketing order to allow the industry an opportunity to review the effectiveness of operating under only a State program. If problems developed, the committee members wanted the industry to have the alternative of reactivating the Federal marketing order.

During the suspension period, all nine committee members (not including alternates) served as trustees for the Georgia Peach Industry Committee.

The trustees met on November 17, 1994, and unanimously recommended extending the suspension of the marketing order for two additional years. The trustees' recommendation was based on the belief that extending the suspension for two more years will provide the industry with further opportunity to study changes and any new developments which could affect

the need for, or status of, the current order.

The trustees also voted for suspension rather than termination, because they wanted to avoid the complexity of putting together a completely new marketing order; as opposed to amending the existing marketing order should the industry find it in its interest to resume the program.

In addition, the suspension will lower the administrative and inspection costs under the marketing order.

The industry will have the opportunity to continue monitoring the effectiveness of the State program, without Federal marketing order regulations in effect, an additional two marketing seasons. A meeting will be held prior to January 1997 to again discuss reactivating or terminating the marketing order. The current trustees will continue to serve in their capacity during the suspension.

Thus, it is determined that Federal Marketing Order N. 918, and the rules and regulations issued thereunder, do not tend to effectuate the declared policy of the Act. This rule suspends, from March 1, 1995, through February 28, 1997, provisions of Federal Marketing Order No. 918, and the rules and regulations issued thereunder, including, but not limited to, the:

(1) Provisions of the order dealing with the establishment and responsibilities of the committee and the administration of the order;

(2) The quality, size, maturity, and inspection requirements;

(3) The administrative rules and regulations related to exempt shipments; and

(4) Information collection and reporting requirements [In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), such requirements have been approved by the Office of Management and Budget and assigned OMB Control No. 0581–0135].

The Secretary has determined that, during the suspension period, those persons serving as committee members prior to the suspension (not including alternates) will continue to serve as trustees to oversee the administrative affairs of the order. The trustees are responsible for safeguarding program assets and holding committee records. All such actions by the trustees during the period of suspension are subject to the approval of the Secretary. Those designated as trustees are Mr. Robert Dickey III, Mr. Jeff Wainwright, Mr. W.H. Davidson III, Mr. Al Pearson, Mr. Bobby Lane, Mr. Emory Alexander, Mr. William W. Drew, Mr. Howard Lawson, and Mr. Stephen C. Meyers. The trustees shall continue in their capacity until discharged by the Secretary.

When a final determination is made regarding the order, any remaining funds will be used or disbursed in accord with the appropriate order provisions.

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

It is found and determined, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice or to engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action suspends restrictions on handlers by continuing the suspension of the requirements regulating the handling of peaches pursuant to Marketing Order No. 918; (2) handlers are aware of this action, which was discussed and recommended at a public meeting held by the trustees; and (3) no useful purpose would be served by delaying the continued suspension of the marketing order.

List of Subjects in 7 CFR Part 918

Marketing Agreements, Peaches, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, under the authority of 7 U.S.C. 601–674 (7 CFR Part 918), and all provisions therein, is suspended effective March 1, 1995, through February 28, 1997.

Dated: March 31, 1995.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–8615 Filed 4–6–95; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 95–014–2]

Horses From the United Arab Emirates; Change in Disease Status

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the importation of horses to remove the United Arab Emirates from the list of countries in which African horse sickness exists. We have determined that the United Arab Emirates is free of African horse sickness, and that restrictions on the importation of horses from the United Arab Emirates to prevent the spread of African horse sickness into the United States are no longer necessary. This action relieves unnecessary restrictions on the importation of horses from the United Arab Emirates.

EFFECTIVE DATE: April 7, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Staff Veterinarian, Import/Export Products, National Center for Import and Export, VS, APHIS, Suite 3B05, 4700 River Road Unit 40, Riverdale, MD 20737–1228.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 (referred to below as the regulations) state the provisions for the importation into the United States of specified animals to prevent the introduction of various animal diseases, including African horse sickness (AHS). AHS, a fatal equine viral disease, is not known to exist in the United States. Section 92.308(a)(2) of the regulations lists countries that the Animal and Plant Health Inspection Service (APHIS) considers affected with AHS, and sets forth specific requirements for horses which are imported from those countries. APHIS requires horses intended for importation from any of the countries listed, including horses that have stopped in or transited those countries, to enter the United States only at the port of New York and be quarantined at the New York Animal Import Center in Newburgh, NY, for at least 60 days.

On March 15, 1995, we published in the **Federal Register** (60 FR 13929–13930, Docket No. 94–014–1) a proposal to amend the regulations by removing the United Arab Emirates (UAE) from the list of countries in § 92.308(a)(2), which APHIS considers affected with AHS.

We solicited comments concerning our proposal for 15 days ending March 30, 1995. We received three supportive comments by that date. They were from a horse transport company, a horse industry association, and a thoroughbred farm.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the

provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule relieves restrictions which require horses imported from the UAE to enter the United States only at the port of New York and be quarantined at the New York Animal Import Center in Newburgh, NY, for at least 60 days. This rule allows horses from the UAE to be shipped to and quarantined at ports designated in § 92.303, and reduces the quarantine period to an average of three days to meet the quarantine and testing requirements specified in § 92.308. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be made effective on the date of publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

The primary impact of this rule will be on U.S. importers of horses from the UAE. The horses imported from the UAE tend to be higher-valued, purebred horses. These horses are worth 10 to 20 times more than the average price per horse from the rest of the world. Few, if any, of these importers can be considered a small entity. These importers will no longer be required to quarantine horses from the UAE for 60 days at the New York Animal Import Center in Newburgh, NY. This rule will allow horses from the UAE to be shipped to and quarantined at ports designated in § 92.303, and will reduce the quarantine and testing period to an average of three days to meet quarantine requirements specified in § 92.308.

While no horses are reported in the ''Foreign Agricultural Trade of the United States'' as being imported directly from the UAE, we believe that each year an average of 10 to 20 horses are imported indirectly from the UAE through Europe. Removing the requirement for a 60-day quarantine at the New York Animal Import Center in Newburgh, NY, for horses from the UAE will make the importation of these horses less expensive and logistically easier. We anticipate that the number of horses imported from the UAE may slightly increase. We estimate approximately 50 to 100 horses may be imported per year, though some of these horses will only be temporarily imported to the United States for particular events, and then transported back to the UAE. With the very small number of horses imported from the UAE, we anticipate the overall economic impact on businesses and individuals will be minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

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

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 92

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

Accordingly, 9 CFR part 92 is amended as follows:

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

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

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

§ 92.308 [Amended]

2. In § 92.308, paragraph (a)(2) is amended by removing ''the United Arab Emirates,''.

Done in Washington, DC, this 31st day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–8617 Filed 4–6–95; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

12 CFR Part 215

[Regulation O; Docket No. R–0874]

Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks; Loans to Holding Companies and Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is revising Regulation O to implement a recent amendment to section 22(g) of the Federal Reserve Act, contained in the Riegle Community Development and Regulatory Improvement Act of 1994. The revision provides that prior approval of the board of directors is not required before a member bank may make a loan to an executive officer that is secured by a first lien on the executive officer's residence.

EFFECTIVE DATE: April 7, 1995.

FOR FURTHER INFORMATION CONTACT: Gordon Miller, Attorney (202/452–2534), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION

Background

The Riegle Community Development and Regulatory Improvement Act of 1994 (CDR Act), Pub. L. 103–325, 108 Stat. 2160 (1994), effective September 23, 1994, amended section 22(g) of the Federal Reserve Act, 12 U.S.C. 375a, to eliminate the requirement that prior approval of the board of directors be granted before a member bank may make a loan to an executive officer of the member bank that is secured by a first lien on the executive officer's residence. Such loans remain subject to the general requirement for prior approval under section 22(h) of the Federal Reserve Act. See 12 U.S.C. 375b(3); 12 CFR 215.4(b). The Board is revising Regulation O (12 CFR Part 215), effective April 7, 1995, to conform to the amendment.

Need for Final Rule Without Comment

The elimination of the prior approval requirement for loans to an executive officer secured by a first lien on the executive officer's residence was effective immediately upon enactment of the CDR Act, and required no action on the part of the Board to take effect. The Board therefore finds that it is

necessary to revise Regulation O in order to eliminate a requirement that is superseded by the CDR Act, and to clarify that member banks may take advantage of the recent amendment to section 22(g) of the Federal Reserve Act.

The Board, for good cause, finds that the notice and public comment procedure normally required is impractical, unnecessary, and contrary to the public interest under 5 U.S.C. 553(b)(B). The Board further finds under 5 U.S.C. 553(d)(1) that the final rule is a substantive rule that relieves a restriction on lending and therefore is making the final rule effective on April 7, 1995, without regard for the 30-day period provided for in 5 U.S.C. 553(d).

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to publish a final regulatory flexibility analysis at the time it promulgates a final rule. One of the requirements of a final regulatory flexibility analysis, a succinct statement of the need for, and objectives of, the final rule (5 U.S.C. 604(a)(1)), is contained in the supplementary information above. For the reasons stated above concerning the need for public comment, the Board has not sought public comment on the final rule, and the Board has not considered any alternatives to the final rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3507, and 5 CFR 1320.130, the Board, under authority delegated by the Office of Management and Budget, has reviewed its amendments to Regulation O. The Board has determined that its final rule imposes no additional reporting or recordkeeping requirements, and that there are no relevant federal rules that duplicate, overlap, or conflict with the proposed rule. The final rule will apply to all member banks, regardless of size. The final rule should not have a negative economic impact on small institutions. Instead, the rule should relieve the regulatory burden on all member banks.

List of Subjects in 12 CFR Part 215

Credit, Federal Reserve System, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board is amending 12 CFR Part 215, as set forth below:

PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS (REGULATION O)

1. The authority citation for part 215 continues to read as follows:

Authority: 12 U.S.C. 248(i), 375a(10), 375b(9) and (10), 1817(k)(3) and 1972(2)(G)(ii); Pub. L. 102–242, 105 Stat. 2236.

2. In § 215.5, paragraph (c)(2) introductory text is revised to read as follows:

§ 215.5 Additional restrictions on loans to executive officers of member banks.

* * * * *

(c) * * *

(2) In any amount to finance or refinance the purchase, construction, maintenance, or improvement of a residence of the executive officer, provided:

* * * * *

By order of the Board of Governors of the Federal Reserve System, April 3, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–8578 Filed 4–6–95; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[DEA No. 122F]

RIN 1117–AA25

Contents of Records and Reports

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: The interim rule published by the Deputy Administrator of the Drug Enforcement Administration (DEA) to clarify what records shall be adequate to satisfy recordkeeping requirements for Listed Chemical transactions under provisions of the Controlled Substances Act (CSA) as amended by the Chemical Diversion and Trafficking Act of 1988 (CDTA) and the Domestic Chemical Diversion Control Act of 1993 (DCDCA) is adopted without change. Specifically, the amendment clarifies that for prescription drug products, prescription and hospital records shall be adequate to satisfy recordkeeping requirements. In addition, this final rule clarifies that for the distribution of these products to hospitals, pharmacies and other entities, normal business records shall be considered adequate if they meet the requirements of 21 CFR 1310.06 (a) and (b).

EFFECTIVE DATE: April 7, 1995.

FOR FURTHER INFORMATION CONTACT: Howard McClain Jr., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537 Telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION: On October 11, 1994, the Acting Administrator of the DEA published an interim rule (59 FR 51364) which clarified what records shall be adequate to satisfy recordkeeping requirements for listed chemical transactions under provisions of the Controlled Substances Act (CSA) as amended by the Chemical Diversion and Trafficking Act of 1988 (CDTA) and the Domestic Chemical Diversion Control Act of 1993 (DCDCA). Specifically, this interim rule clarified that for prescription drug products, prescription and hospital records kept in the normal course of medical treatment are adequate to meet the recordkeeping requirements for each record required under 21 CFR 1310.03. However, the interim notice stated that reports as specified in 21 CFR 1310.05 and notification requirements as set forth in 21 CFR 1313 must still be satisfied for these products. Interested parties had until November 10, 1994 to submit comments and objections.

In response to the October 11, 1994 interim rule, one comment was submitted by Abbott Laboratories. In this comment Abbott requested that records for the distribution of prescription ephedrine injectable products, which are kept in the normal course of business, be considered adequate to satisfy the recordkeeping requirements, just as prescription and hospital records kept in the normal course of medical treatment shall be considered adequate. Abbott further stated that normal business records contain (1) the name and address of both parties to the transaction; (2) the date of the regulated transaction; (3) the name and quantity of the prescription drug product; (4) the method of transfer; and (5) an Abbott customer identification number.

Upon review of Abbott's comment, DEA has determined that no further amendment to the regulations are required. Existing provisions of 21 CFR 1310.06 (which detail the sufficiency of records kept in the normal course of business) are broad enough to enable businesses to meet the requirements pertaining to injectable ephedrine products without any new burden. Therefore, the interim rule (59 FR

51364) is herein finalized without change.

The contents of records required for regulated transactions are stated in 21 CFR 1310.06. Specifically, 21 CFR 1310.06(a)(5) provides that each record shall include the type of identification used by the purchaser and any unique number on that identification. It is the responsibility of the regulated person who engages in a regulated transaction to identify the other party to the transaction and verify the existence and apparent validity of a business entity ordering a listed chemical in compliance with 21 CFR 1310.07. If the assignment of a company customer identification number is based upon meeting all requirements as specified in 21 CFR 1310.07, and this customer identification number can be cross-referenced with the type of identification used to verify the existence and apparent validity of the purchaser and any unique number on that identification, then a customer identification number will be deemed adequate to meet the requirements of 21 CFR 1310.06(a)(5).

Further, 21 CFR 1310.06(b) states that normal business records shall be considered adequate if they contain the information listed in 21 CFR 1310.06(a) and are readily retrievable from other business records of the regulated person. Thus, if these records are readily retrievable and meet all the requirements of 21 CFR 1310.06(a) then these records shall be deemed adequate. However, it is the responsibility of each regulated person to ensure that all requirements of 21 CFR 1310.06 are adequately met if relying on normal business records to satisfy the recordkeeping requirements of 21 CFR 1310.03.

The products in question are prescription products which are already subject to strict Federal and state controls. This final rule modifies 21 CFR 1310.06(b) to reflect that for purposes of this section, prescription and hospital records kept in the normal course of medical treatment shall be adequate to meet recordkeeping requirements.

This rule has been drafted and reviewed in accordance with Executive Order 12866, Section 1(b), Principles of Regulation. The Deputy Administrator has determined that this rule is not a significant regulatory action under Executive Order 12866 Section 3(f), Regulatory Planning and Review. This action allows relief from regulatory requirements by permitting the use of normal business records for these prescription products rather than requiring the creation of separate records of transactions. Accordingly, this rule has not been reviewed by the Office of Management and Budget.

The Deputy Administrator in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

This action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1310

Drug traffic control, Reporting and recordkeeping requirements.

PART 1310—RECORDS AND REPORTS OF LISTED CHEMICALS AND CERTAIN MACHINES

Accordingly, the interim rule amending 21 CFR part 1310 which was published at 59 FR 51364 on October 11, 1994, is adopted as a final rule without change.

Dated: March 20, 1995.

Stephen H. Greene,

Deputy Administrator, Drug Enforcement Administration.

[FR Doc. 95–8592 Filed 4–6–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[IN–121; Amendment 94–7]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Indiana regulatory program (hereinafter referred to as the ''Indiana program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Indiana proposed revisions to the Indiana Surface Coal Mining rules pertaining to the backfilling and grading of surface coal mining and reclamation operations. The amendment is intended to provide additional safeguards and clarify ambiguities.

EFFECTIVE DATE: April 7, 1995.

FOR FURTHER INFORMATION CONTACT: Roger W. Calhoun, Director, Indianapolis Field Office, OSM, Minton-Capehart Federal Building, Room 301, Indianapolis, Indiana 46204. Telephone: (317) 232–1547.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. Background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the July 29, 1982, **Federal Register** (47 FR 32071). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 914.10, 914.15, and 914.16.

II. Submission of the Proposed Amendment

By letter dated January 31, 1995, (Administrative Record No. IND–1420) Indiana submitted a proposed amendment to its program pursuant to SMCRA at its own initiative. Indiana proposed to revise 310 IAC 12–5–54.1—Surface Mining: Backfilling and Grading, Timing Limitations.

OSM announced receipt of the proposed amendment in the February 17, 1995, **Federal Register** (60 FR 9313), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on March 20, 1995.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

310 IAC 12–5–54.1—Surface Mining: Backfilling and Grading, Timing Limitations

Indiana is revising subsection (a) to make several nonsubstantive wording changes. At subsection (a)(1), Indiana is requiring that backfilling and grading in

mining operations that involve spoil ridges be accomplished in 180 days of deposition, provided that no more than four spoil ridges remain at any one time. The current regulations specify that no more than an average of four spoil ridges by length remain.

Indiana is revising subsection (b) to make two nonsubstantive wording changes and to correct a cross-reference.

Indiana is revising subsection (c) to make two nonsubstantive wording changes and to delete the requirement that requests for an extension of the timing limitation for more than one year be approved by the Natural Resources Commission.

The corresponding Federal regulations at 30 CFR 816.101 were suspended effective August 31, 1992 (57 FR 33875). Therefore, States may adopt backfilling and grading time and distance standards which result in contemporaneous mining and reclamation as required by 30 CFR 816.100. The Director finds the proposed revisions at 310 IAC 12–5–54.1 no less effective than the Federal requirements for contemporaneous reclamation at 30 CFR 816.100 and 817.100.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interests in the Indiana program. No comments were received.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Indiana proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

V. Director's Decision

Based on the above finding, the Director approves the proposed amendment as submitted by Indiana on January 31, 1995.

The Federal regulations at 30 CFR part 914, codifying decisions concerning the Indiana program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the national Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*)

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 30, 1995.

David G. Simpson,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 914.15 is amended by adding paragraph (hhh) to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(hhh) The following amendment (Program Amendment Number 94–7) as submitted to OSM on January 31, 1995 is approved effective April 7, 1995: 310 IAC 12–5–54.1 concerning timing limitations for backfilling and grading of surface coal mining and reclamation operations.

[FR Doc. 95–8583 Filed 4–6–95; 8:45 am]

BILLING CODE 4310–05–M

National Park Service

36 CFR Part 7

RIN 1024–AC14

National Capital Region Parks; Special Regulations

AGENCY: National Park Service, Department of the Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the National Capital Region Parks regulations to limit sales on Federal park land to books, newspapers, leaflets, pamphlets, buttons and bumper stickers, and to set standards for sites, stands and structures used in such sales. By this amendment, the National Park Service (NPS) also rescinds a sales enforcement guideline that allowed the sales of T-shirts that contained a message directly related to a cause or activity. This final rule is adopted because such sales have adversely impacted Federal park land in ways described further below, resulting in discordant commercialism and creating a ''flea market'' atmosphere in the National Parks of the National Capital Region. Finally, pursuant to Public Law 103–279, the NPS no longer has operating responsibilities for the John F. Kennedy Center for the Performing Arts. Accordingly, this final rule removes reference to the Center from the sales regulation.

DATES: The final rule becomes effective May 8, 1995.

FOR FURTHER INFORMATION CONTACT: Sandra Alley, Associate Regional Director, Public Affairs and Tourism, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242, telephone (202) 619–7223; Richard G. Robbins, Assistant Solicitor, National Capital Parks, Office of the Solicitor, Department of the Interior, Washington, D.C. 20240, telephone: (202) 208–4338.

SUPPLEMENTARY INFORMATION:

Background

On May 18, 1994, the NPS proposed a rule that would limit sales to books, newspapers, leaflets and pamphlets on park land of the National Capital Region (59 FR 25855). Copies of the proposed rule have been distributed to demonstration and special event applicants, posted and handed out in the National Capital Region's permit office. Copies were also mailed to past and current demonstration and special event applicants and other interested parties. In addition, the proposed regulation has also received media coverage in stories about the problems caused by sales activities.

Prior to this proposed rulemaking, the majority of applicants who sought to engage in demonstrations or special events on park land within the National Capital Region requested permission to engage in sales activities related to their event. As detailed in the proposed rule dated May 18, 1994, the National Capital Region of the NPS adopted an enforcement guideline reflecting an administrative determination that the term ''newspapers, leaflets, and pamphlets'' under 36 CFR 7.96(k) may cover certain other designated written material. Specifically, under the guideline (a copy of which routinely has been made available to all applicants), allowable materials have included books, bumper stickers, buttons, posters and T-shirts which display a message directly related to the cause or activity. The sale of patches, jewelry, hats, license plates, coffee mugs, flags, records, tapes, pictures, decals and lapel pins has not been permitted under the enforcement guideline.

Adverse park impacts generated by the sale of T-shirts under the enforcement guideline caused the NPS to propose an amendment to the sales regulation. Since then, the amount of T-shirt sales activities on park land in the National Capital Region has increased significantly, and the adverse impacts associated with such sales decidedly worsened.

For example, during calendar year 1994, 4,771 permits were granted for demonstrations or special events and the majority of these involved requests for associated T-shirt sales. After publication of the proposed regulations in May 1994, the Service received 976 T-shirt applications during the remainder of 1994. In 1992, the Service received 3,232 demonstration and special event applications, and, in 1993, there were 3,323. Through March 8, 1995, the NPS had received 3,092 applications, 90% of which sought T-shirt sales opportunities. For the same period of 1994, the NPS had received 2,884 applications, an increase of more than 200 applications.

Application numbers alone do not tell the whole story because many applications apply for multiple dates and sites. For example, on February 28, 1995, the Region received 50 demonstration/special event applications. All sought T-shirt sales permission. Thirty-one of these applications requested single T-shirt sales locations, and 19 applied for multiple locations. The total number of sites applied for in the 50 applications was 112.

For the past several years, the NPS has routinely issued permits for demonstrations and associated sales near the Vietnam Veterans Memorial. But particularly throughout the past year, applicants have sought and gained permission to sell message-bearing T-shirts for repeated demonstration activities for a number of very general causes such as ''conservation of the environment,'' ''to promote and broadcast cultural and environmental messages,'' ''environment protection,'' ''promote the salvation of the environment,'' ''Washington DC statehood,'' and, ironically, ''Preserve National Parks.''

The demonstrator/vendors sales, which began near the Vietnam Veterans Memorial, have now spread throughout Washington's Monumental Core. As explained in the preamble to the proposed regulation, the increase in applications for demonstration/sales sites on the limited amount of park land available near the Vietnam Veterans Memorial forced the NPS to designate additional demonstration/sales sites. Facing ever-increasing numbers of applicants for sales activities, the NPS designated additional sites adjacent to the popular memorials, monuments and museums on the National Mall, Washington Monument grounds and at the Jefferson Memorial.

A fundamental consideration in this rulemaking is the impact of sales activities on the park land of the National Capital Region. This park land enjoys a rich diversity of uses. Located at the seat of the Federal Government, it hosts a wide variety of demonstration activities, ranging from the lone protester to hundreds of thousands of participants championing and opposing all manner of causes.

Visitors are also drawn to the great monuments of the Nation's Capital—most notably, the Lincoln Memorial, Jefferson Memorial, the Vietnam Veterans Memorial and the Washington Monument—which together with the Capitol, the National Mall and the White House area, form Washington's Monumental Core. The National Mall is an integral part of the original L'Enfant Plan for the City of Washington. It is the single most significant public park and open space, providing an unencumbered greensward between the U.S. Capitol to the Washington Monument and the Lincoln Memorial, a distance of 21 blocks. Visited by millions of citizens and international travelers, the National Mall provides a formal work of landscape architecture of monumental proportions and provides the unifying element for the carefully placed, diverse architectural symbols,

repositories and shrines of the heritage of our democracy on and along its length. As part of Washington's Monumental Core, it is unquestionably the most significant park area in the Nation's Capital. Visitors to the National Mall are drawn by its proximity to the great monuments of the Nation's Capital as well as by its vistas and natural beauty. Visitors may enjoy the sights and activities of Washington, or they may seek time for quiet reflection in the midst of this great park.

Flanking this core are world-recognized museums such as the National Air and Space Museum, the National Museum of American History, the National Museum of Natural History, the Freer Gallery, the National Museum of African Art, the Arts and Industries Building, the Arthur M. Sackler Gallery, the Hirshhorn Museum and Sculpture Garden, the West and East Wings of the National Gallery of Art, and the United States Botanic Garden.

These monuments, memorials and museums, together with the commanding vistas and natural beauty, draw several million visitors annually. In 1994, for example, visitation at the Vietnam Veterans Memorial was 1,475,044, for the Washington Monument 1,000,270, and for the Jefferson Memorial 522,339. The Smithsonian's National Air and Space Museum had 8,494,193 visitors, while its Museum of National History had 5,756,861.

Many other parks located throughout the National Capital Region draw hundreds of thousands of visitors. They accommodate recreational activities including picnics, softball, and field hockey. Park visitors may enjoy the sights and activities of Washington and its environs and also seek time for quiet reflection in all of these areas.

Generally, applicants for demonstrations or special events who also seek to engage in T-shirt sales submit applications in twenty-one day increments (the maximum number of days authorized by NPS regulation). See 36 CFR 7.96(g)(5)(iv)(B). Many applicants routinely submit successive applications in twenty-one day increments for periods of several months; one group submitted applications to sell T-shirts on park land through the end of 1996.

The sales that first occurred under the enforcement guideline several years ago were made in the context of large scale, one-day demonstrations. The sales activities, like the demonstrations, lasted but a single day and the T-shirts left with the demonstrators. The current T-shirt sales are far different.

Vendors sell their wares day-in and day-out. The sales occur not between organizers and participants at demonstrations, but between commercial vendors seeking customers from among non-demonstrating visitors at adjacent national monuments.

The consequence of this system of administration has been the proliferation of T-shirt sales throughout the park land of the National Capital Region. It is now commonplace to see large quantities of T-shirts displayed and stored on park land at various demonstration/sales sites, not only near the Vietnam Veterans Memorial where the practice first arose, but also on park land the entire length of Washington's Monumental Core. T-shirt stands now confront park visitors as they approach many of the Nation's monuments, memorials and museums. They are located at the base of the Washington Monument, in front of the Jefferson Memorial, near the National Holocaust Memorial Museum, and on the Mall adjacent to the Museum of Natural History, the Smithsonian Castle and the Smithsonian Metro station. Increasing commercialization within the sales sites has been marked by the use of life-size torso mannequins and commercial clothing racks. As the Smithsonian Institution observed in its comments on the proposed regulation:

> [T]he number of vendors on the Mall increase[d] dramatically especially within the last two years. Rather than occasionally observing vendors associated with demonstrations or special events, we note that vending near Smithsonian museums is now constant activity, [and the] selling of products is done mostly by the same groups.

Analysis of and Response to Comments and Rationale for Final Regulation

A. Overview

The NPS received 4,626 written comments (some accompanied by photographs) regarding the proposed rule. Most were from individuals not indicating a particular affiliation or interest. Of the others, 25 were from veterans organizations, seven from other organizations, 73 were from veterans or relatives of veterans, four from representatives of the legal community, and one from a past Director of the NPS. The Department appreciates the time and effort expended on these comments.

606 comments supported the proposed rule as drafted. Among these were four different preprinted signed letters from 170 individuals as well as one petition signed by 170 individuals. Another 1,438 identical, unsigned letters were received bearing the names and addresses of different persons purporting to support the proposed rule as drafted. The organization responsible for submitting the letters has requested that the NPS disregard all of these unsigned letters because it failed to obtain the consent of the persons named. Accordingly, the NPS has not given these unsigned letters any weight in its decision making.

2,582 comments opposed the proposed rule as drafted. Among these were 2,415 identical, preprinted, signed post cards. (A sampling of 298 of these revealed that 43, or 14%, were duplicate submissions.) One petition in opposition to the proposed rule was signed by 130 individuals. One comment opposed the proposed regulation as drafted because it was ''exceptionally lenient and generous''; another recommended an outright ban on all sales.

There was one request for a public hearing. Given the large number of responses received as well as their breadth and scope, however, the NPS does not believe a public hearing would add to the range of views and solutions considered.

B. Comments in Support of the Proposed Rule Based Upon Degradation of the Park Visitation Experience and Impact on Park Physical Environment

Many of the 606 comments in support of the proposed rule agreed with the NPS's assessment of the damages to park land caused by sales activities. Comments frequently used words such as ''honky-tonk,'' ''open air market,'' ''flea market,'' ''shopping mall,'' ''bazaar,'' ''circus,'' ''carnival,'' ''eye sore,'' ''national embarrassment,'' and ''disgraceful'' to describe park land being used for T-shirt and other sales activities. One comment, by a professor of urban design, stated:

> Your characterization of the current situation at those sites as having resulted in ''discordant commercialization, creating a 'flea market' atmosphere on park land'' resonates the feelings of all concerned with the dignity and elegance of memorial statements in the public domain.

The Smithsonian Institution, National Park Foundation, National Capital Planning Commission, Commission of Fine Arts , National Gallery of Art and National Park Hospitality Association wrote in support of the proposed regulation. The President of the National Park Foundation stated:

> As a resident of the District of Columbia and someone who cares about the Parks, I find the increased commercialism, especially in the National Capital Region, to be exceedingly offensive * * *. Visits to public land/Park land should be visits to uncluttered, noncommercial areas. The law provides ways for individuals representing

causes to get their messages across and leave open ample opportunities for channels of communication of information. It was not intended to create a supermarket for clothing, hats, banners, pins, and other aggressive sales of similar items which rob and deny a visitor the opportunity to see these places as they were intended to be.

One comment describes the area of Washington's Monumental Core as an unsightly ''virtual sea of T-shirt vendors.'' Another lamented that these vendors have made it difficult to enjoy the beauty of the Mall, forcing park visitors to play ''dodge the vendors.''

Sales activities on the Mall adjacent to the National Air and Space Museum are particularly pronounced. Pursuant to the court's order in *ISKCON of Potomac, Inc.* v. *Ridenour*, 830 F. Supp. 1, 4 (D.D.C. 1993) (appeal pending), NPS regulations regarding sales and solicitation may not be enforced at all in ''the area of the Mall adjacent to the Air and Space Museum.'' With no regulatory enforcement mechanism possible under this court order, T-shirt sales tables on park land have multiplied. Displays have stretched to extraordinary lengths; e.g., vendors now occupy all of both sides of a 139 foot north-south walkway just north of the National Air and Space Museum.

One comment, by a Smithsonian Institution employee, described the area now as having ''shirts hung out in the breeze'' creating ''a distracting visual clamor which totally destroyed the [Mall's] grand design.'' Another, noting sales of T-shirts inscribed with such insignia as ''Beavis and Butthead,'' asked whether it is ''the Park Service's objective to turn the National Mall into a shopping mall?'' Another protested:

> I went to enjoy the beauty of the Mall and the Museums. Instead, every where I turned I saw and heard vendors, vendors, and more vendors. Are we allowing our beautiful Capital to be turned into a gigantic outdoor flea market?

One comment, while regretting that the Boy Scouts of America itself had not been allowed by the NPS to sell its memorabilia on the Washington Monument grounds, nevertheless supported the proposed regulation, stating ''that we have come to a sad state of affairs when commercial vendors, masquerading under the guise of saving the whales are allowed to exploit our National showcase park areas.''

Former National Park Service Director James Ridenour wrote in support of the proposed regulation as necessary to control ''the carnival atmosphere that erodes the dignity of our national capital parks and memorial.'' As to the sales occurring near the Vietnam Veterans Memorial, Ridenour, a Vietnam veteran, wrote that he was:

> [O]ffended by the business that has continued to expand in that area. These shanty businesses have become big businesses. This is not some highly sacred freedom of speech issue—this is the despoiling of our nation's greatest treasures and a commercialization that goes beyond what previous administrations ever envisioned.

A number of national veterans groups, including AMVETS, Veterans of Foreign Wars of the United States, Vietnam Veterans of America, Inc. and the Vietnam Veterans Memorial Fund, wrote in support of the proposed regulation and expressed concern that sales activities have caused a commercialized condition of park land around the Vietnam Veterans Memorial. (As explained more fully in the next section, however, other groups, including the Friends of the Vietnam Veterans Memorial, the National Alliance of Families and other local veterans groups oppose the proposed regulation, complaining that it would adversely impact on sales activities by vigil groups near the Vietnam Veterans Memorial).

In summary, the commenters supporting the regulation generally concurred with the judgment of the NPS that the T-shirt displays and hawking, occurring on a daily basis near frequently visited memorials, substantially diminish and impair the park visitors' experience. In addition to the general ''flea market'' atmosphere, the NPS has observed that sites are occupying ever-larger areas of park land, mostly located near or on walkways close to frequently visited memorials. As a result, visitor circulation has been adversely impacted. Sales operations have also interfered with NPS interpretative programs. Some commenters complained that they have been unable to photograph national landmarks without also capturing demonstration/sales sites in the same picture.

The presence of money within park areas has always been a law enforcement concern of the U.S. Park Police. Sales sites have already experienced several criminal related offenses. Also, in an effort by permittees to reserve ''premium'' sales sites adjacent to popular memorials, a number of permittees have hired homeless people or have even physically assaulted one another to preserve and occupy their sales site locations.

Increasing T-shirt sales activities have also brought increasing pedestrian and vehicle congestion. This has resulted in damage to turf, trees and shrubbery. At or near T-shirt sales sites, only mud and compacted soil remain where grass once grew. Soil compaction in these areas is so severe that the NPS has found no horticultural technique which permits the restoration of plants without excluding all activity from the injured sites for a period of several months.

C. Comments in Opposition to the Proposed Rule

Of the 2,582 comments opposed to the proposed rule, all but five focused solely on the sales activities on park land around the Vietnam Veterans Memorial. 2,415 preprinted postcards were submitted opposing the proposed regulation on the ground that it would:

> [R]emove the best opportunity I have to publicly show my support for the organizations and causes represented near the Memorial. Further, the presence of these groups and the sale of *all* of their products is beneficial to the visitors * * *. (emphasis in original).

Forty-six comments voiced concern that if the proposed regulation is implemented, one demonstration vigil now under permit near the Vietnam Veterans Memorial would be forced to ''close down.'' In his comment, the Executive Director of this particular demonstration described the proposed regulation as aimed specifically against his vigil; specifically:

> [A] smoke screen designed to conceal the Park Service's real agenda[,] which is part of a long term political effort to remove the POW/MIA activists from the area near the Vietnam Veterans Memorial. It is the result of the combined efforts of career bureaucrats, who can't stand the thought of a handful of veterans, activists, and POW/MIA family members using the First Amendment to raise enough funds through the sale of POW/MIA related T-shirts to continue opposing a failed U.S. government POW/MIA policy.

The proposed rule is content neutral and is not intended to harass, much less ''close down,'' any demonstration. In proposing the regulation, the National Park Service recognizes the important function park land serves for the ''purposes of assembly, communicating thought between citizens, and discussing public questions.'' *Hague* v. *CIO*, 307 U.S. 496, 516 (1939). The rule is designed to regulate the time, place, and manner of sales activities to protect the parks and the visitor experience without seriously interfering with the achievement of those essential purposes.

This same commenter challenged the accuracy of NPS's assertion, in the preamble to the proposed rule, that one demonstrator ''had gross earnings of $1,849,683 from the sale of all T-shirts

in 1989–91.'' See 59 FR 25857. This quotation was taken directly from the Court's order in *Hart* v. *Sampley*, Civil No. 91–3068 (D.D.C. December 10, 1992).

An attorney commenting on behalf of several nonprofit organizations accused the NPS of ''deliberately seeking to create a condition on the Mall whereby it can justify a complete ban on the sale [of] message-bearing merchandise.'' The NPS rejects this characterization. It has not created the adverse consequences caused by sales activities on park land in order to justify sales restrictions. Rather, as detailed in the proposed sales regulation, it has permitted groups and individuals to sell message-bearing T-shirts, but that fact was not widely known until fairly recently. When the NPS sought public comment on the proposed sales regulations, more persons and groups became aware of the rules. The current proliferation of sales applicants is likely to be simply indicative of the actual number of persons and groups who would like to sell T-shirts on National Capital Parks land.

The NPS has attempted to fairly and even handedly process applications for demonstration/sales activities on park land in accordance with current regulations and guidelines. The applications requesting use of park land, and the permits authorizing such use, are a matter of public record and review. Persons who identify themselves as merely interested in selling T-shirts with no cause related to a demonstration have been turned away. The NPS has also attempted to fairly and even handedly monitor permittees' compliance with the terms of their permits at their demonstration/sales sites. The NPS proposed to amend its sales regulation because of the adverse consequences caused by some of the sales activities under the sales enforcement guideline.

The balance of the other comments that focused on sales activities near the Vietnam Veterans Memorial did not challenge the NPS's motivation, but opposed the proposed rule because it would adversely impact veterans groups' ability to raise money for their cause. One commenter, from a Vietnam veterans organization, wrote that:

> In seven years of experience at the [Vietnam Veterans] Memorial, the Friends have concluded that the presence of t-shirt and other sales plays a significant role in the experience for tens of thousands of visitors. Guestbooks which have been maintained near the Memorial by the FVVM show overwhelmingly that the presence of our group has been positive.

While the NPS does not question the sincerity of this commenter's assertion that its presence on park land contributes positively to the park visitor experience, only two of the 5,716 entries in the commenter's guestbooks expressed views on sales activities. One wrote of her appreciation for the opportunity to buy items near the Memorial, but the other wrote: ''This merchandise is out of place and degrades the dignity of this shrine.''

The Friends also submitted a ''Vietnam Veterans Memorial Attitudinal Study.'' The study, prepared by a marketing research consultant, consisted of interviews of 329 visitors who were ''randomly-intercepted in the area of the [Vietnam Veterans] Memorial'' over a three-day period. Contrary to the commenter's assertion that sales play a ''significant role'' in the visitor experience at the Vietnam Veterans Memorial, the study shows more than two-thirds of the respondents did not stop at any demonstration/sales location. Moreover, the study focused solely on the park land adjacent to the Vietnam Veterans Memorial, while the NPS is concerned with the negative impact of sales activities on park land throughout the National Capital Region and cannot legitimately distinguish between T-shirt sales in one area or one cause and such sales in another area or for another cause.

One demonstrator who participated in the first vigil or ''booth'' near the Vietnam Veterans Memorial in 1987 commented that he was closing down his own operation in part because he ''did not have the manpower or the money to pay someone to stay in the parking lot of the NCR building overnight so that we could be 'first in line' when the permit office opened and turn in 14 or so permits applications every day.'' He opposed the proposed rule, however, ''because the [Vietnam Veterans Memorial] Wall is unique * * * [and] vendors should stay at least until the healing of all Vietnam Veterans is complete.'' He believed that vendors help provide a ''chance to talk with a fellow veteran to let out your feelings, to rid oneself of the hurt, and to find out about other veteran related programs, organizations and problems.'' Under the new regulation, demonstrators will remain free to talk with the visiting veterans and provide oral or written information regarding veteran-related programs, organizations and problems. The only difference is that they cannot sell T-shirts at the same time.

Finally, one commenter indicated that the NPS should not be worrying about T-shirt and other sales because ''this money is certainly being used for a wonderful and well needed cause.'' The role of T-shirt sales in financing demonstration activity is considered in the next section.

D. Commenters' Objections on Constitutional Grounds

Some commenters argued that if demonstrators could not sell such merchandise they would be unable to finance their demonstration activities. The American Civil Liberties Union for the National Capital Area (ACLU), wrote that T-shirts, buttons or lapel pins worn on a person are an integral and prominent part of demonstrations because they ''are unusually cheap and convenient forms of communication that convey distinct messages because they connect the message with the speaker.''

1. T-Shirts Versus Other Forms of Communication

After careful consideration, the NPS has concluded that the basic problem of commercialization and attendant adverse impacts on park values is caused by T-shirt sales. It has also concluded that the problem cannot be abated by other than a ban on such sales on park land.

The NPS acknowledges that lines must be drawn in deciding the types of such merchandise that may be sold on park land in connection with demonstrations, to allow both demonstrators and park visitors an opportunity to use park land and still preserve the park values operative in the area. In general, the NPS wants to permit the maximum amount of communicative conduct that is consistent with the protection of the core park values in the area. It recognizes that a total ban on all sales in connection with demonstrations would arguably be most protective of the parks, and that a credible legal argument might be made for such a resolution. But the NPS desires to accommodate the sale of message-bearing materials in connection with demonstrations to the extent it does not unreasonably impinge on other park values.

By rescinding its enforcement guideline and amending 36 CFR 7.96(k) so as to permit only the sales of books, newspapers, leaflets, pamphlets, buttons and bumper stickers, the NPS believes park resources, the visitor experience, and the desirability of free expression will all be protected and enhanced.

The NPS has found that the sale of traditional written material in the form of newspapers, leaflets and pamphlets has not presented the problems that the sale of T-shirts and of other

merchandise has caused. The NPS also believes books constitute a larger and logical variant of the newspapers, leaflets and pamphlets that are currently permitted.

The NPS has also, upon reexamination since the proposed regulation was published, concluded that buttons and bumper stickers should be permitted to be sold in connection with demonstrations. The sales of these items have not caused the same problems of commercialization and negative effects on other park values as those caused by T-shirt sales. Accordingly, the NPS has decided to continue to allow the sale of buttons and bumper stickers on park land.

While the Service has decided to prohibit T-shirt sales on park land, it will of course not restrict or otherwise regulate the wearing of communicative T-shirts. More generally, persons and groups remain free to express their views on park land, in long-standing demonstration vigils as well as shorter-term demonstrations. They may continue to use park land to speak, display signs and banners, march, hold vigils, sell and distribute literature, communicative buttons and bumper stickers, and otherwise communicate their views. At the same time, non-demonstrating visitors will still be able to come to the parks to pursue communicative, inspirational, educational and recreational activities.

For these reasons, the NPS believes that compliance with the sales regulation will not place an unreasonable limitation on First Amendment activity. A wide range of permissible activities remains available to persons who wish to engage in demonstrations and associated sales activities. Ample alternative avenues of communication are preserved. Demonstrators will still be able to sell other merchandise either on property within the District of Columbia's jurisdiction or through the books, newspapers, leaflets, and pamphlets sold or distributed on park land. These areas under District of Columbia jurisdiction are convenient to park visitors and are located adjacent to Washington's Monumental Core. Constitution and Independence Avenues east of 15th Street, NW and all of the north-south streets north of Constitution Avenue and south of Independence Avenue are controlled by the District of Columbia. For many years, demonstration groups have used these areas to sell items not permitted to be sold on NPS areas. Further, the vast majority of park visitors must pass these District streets and sidewalks on their way to the NPS areas.

Finally, in this connection, the NPS is concerned that if it continues to allow sales of T-shirts, it will face ever more difficult line-drawing decisions. Even with T-shirt sales now permitted, the NPS continues to receive requests for permission to sell other types of merchandise, such as coffee mugs, sweat shirts, hats, patches, jewelry, flags, records, audio tapes, video tapes, pictures, and decals—all complete with self-described ''First Amendment messages'' affixed to each item. Some demonstrator/vendor applicants argue that a First Amendment message is implicit in the merchandise itself. For example, in the past one demonstration group, advocating the protection of endangered rain forests, requested permission to sell candy on park land and argued that the candy possessed communicative protection because its ingredients came from the ecologically sound harvesting of nuts from rain forests. Others have urged the NPS to permit the sale of audio tapes. In addition to posing the same impacts as T-shirts, NPS personnel would need recorders to determine whether the tape related to the demonstration and visitors would need a like machine to determine what message was being expressed.

Plainly, a line has to be drawn somewhere if the National Capital Parks are not to be wholly given over to merchandising with a connection to free expression. The NPS believes an appropriate line is reflected in these regulations.

2. T-Shirt Sales as Underwriting the Expenses of First Amendment Expression

The NPS acknowledges the possibility that T-shirt sales on park land improves the financial ability of some demonstrators to engage in demonstration activities. Nevertheless, the NPS does not believe that the First Amendment requires it, as a general rule, to facilitate fund raising by groups or individuals seeking to express their views. Such facilitative conduct is, rather, protected by the First Amendment ''only insofar as its restriction imposes burdens on expression itself.'' *White House Vigil for the ERA Comm.* v. *Clark*, 746 F.2d 1518, 1540 (D.C. Cir. 1984).

One commenter suggested, as a partial alternative to a sales ban, that the NPS ''require all vendors to put on public display a quarterly Statement of Accounts, as well as yearly Statement of Earnings, stating where all the money taken in goes.'' The NPS questions whether it could legally require demonstrators to publicly display how much money they receive or how it is spent. *Cf. Riley* v. *National Fed'n of the Blind*, 487 U.S. 781 (1988). In any event, such an approach does not address the impacts on the parks and the visitor experience that have given rise to this rulemaking.

3. Off-Park, Nearby Locations for T-Shirt Sales

The park land which comprises Washington's Monumental Core, and nearly all other park land in the National Capital Region, is located adjacent to other public property under the jurisdiction of the District of Columbia or the states of Maryland and Virginia. These other governments, particularly the District of Columbia, have generally allowed persons and groups to sell items on sidewalks and along streets in these areas that are prohibited from sale on park land. The NPS does not and is not proposing to regulate such sales or any other sales of merchandise on property outside its jurisdiction. As explained earlier, these areas provide an opportunity for demonstration groups to sell items in close proximity to park areas.

4. Other Alternatives

Commenters suggested several alternatives to the proposed regulation, including allowing only certain types of groups to sell items, more narrowly defining what constitutes message-related T-shirts, and restricting the placement and/or types of structures vendors could use. For example, while the ACLU agreed in its comments that ''the Constitution does not require the National Mall to be turned into a flea market,'' it contended that the NPS must first adopt restrictions regarding vendors' structures and against ''purely commercial vendors with a tenuous facade,'' before considering a sales restriction. It also stated that ''only if narrower measures are tried and do not succeed will the consideration of broader measures be appropriate.''

As explained in more detail in what follows, the NPS has strived hard to arrive at a solution that protects park values and the visitor experience while minimizing any burdens on communicative conduct. It has carefully considered, and in some cases tried, the kinds of alternatives suggested. Some of the alternatives the NPS has tried include: Discussing whether an applicant would voluntarily limit the number of sites; imposing site size restrictions; requiring that sites be attended at all times; confiscating unattended structures; imposing safety standards on site equipment; requiring sanitation measures, including placement of receptacles; rotating site

areas; and seeding and sodding of areas. These measures have fallen short of providing adequate protection to park values in the area. Its extensive experience in managing park land and its consideration of the comments on this proposed regulation have led the NPS to conclude that no alternatives exist that would adequately abate or ameliorate the problems caused by sales activities.

The basic problem is a pronounced commercialization of National Capital Park land with its unique monuments and memorials attracting millions of visitors annually. These sales activities on park land threaten to destroy that distinctive atmosphere. T-shirt sales activities, which include intense competition among permittees to get the attention and money of park visitors, have had a profoundly negative impact on the park experience. T-shirt sales have introduced a relatively constant, intrusive and intimidating air to what was previously, for the most part, a relatively peaceful, inspirational, and contemplative scene. Vibrant and spirited demonstration speech conduct sometimes found in the National Capital Parks is more episodic and has not created such a constant negative impact.

Several Justices of the Supreme Court have recognized the difference between more typical demonstration conduct and sales activities. In *United States* v. *Kokinda,* 479 U.S. 720 (1990), Justice O'Connor recently stated:

> [C]onfrontation by a person asking for money disrupts passage and is more intrusive and intimidating than an encounter with a person giving out information. One need not ponder the contents of a leaflet or pamphlet in order mechanically to take it out of someone's hand, but one must listen, comprehend, decide and act in order to respond to a solicitation. Solicitors can achieve their goal only by ''stopping [passersby] momentarily or for longer periods as money is given or exchanged for literature'' or other items.

Id., at 724 (plurality opinion)(quoting *Heffron* v. *International Soc'y for Krishna Consciousness,* 452 U.S. 640, at 653 (1981)); see also id. at 738–39 (Kennedy, J., concurring in judgment).

a. Limiting T-shirt sales to nonprofit or other particular kinds of groups. Some commenters suggested that only certain types of groups should be allowed to continue to sell message-bearing merchandise. The commenters have widely differing views, however, as to what type of groups should qualify. One comment suggested the NPS allow sales only by ''real Vietnam Veterans' organizations that have had displays at the Wall for years.'' Another comment called for the NPS to ''cull the for-profit business concessions, yet maintain the integrity of those who truly hold vigils in exercise of their 1st Amendment rights.'' The sponsors of one ethnic celebration, agreeing that only a limited range of merchandise sales should be allowed on park land ''to prevent it [sic] being destroyed by vendors,'' suggested that only organizations who hold ''large demonstration/cultural activities'' should be allowed to engage in sales. A local non-profit track and field organization, while ''sympathetic with the overall goals of preserving the non-commercial character of NPS lands,'' nevertheless asked that it be allowed to collect fees and distribute T-shirts to participants who race on park land. Another local running club asked for a similar exception.

Another commenter advocated that only tax-exempt nonprofit organizations who provide supporting documentation should be allowed to engage in sales activities. The comment, from an attorney representing several nonprofit organizations who have been permitted to sell message-bearing T-shirts, complained that ''commercial vendors were (and are) permitted to sell souvenir merchandise on the Mall. These vendors are not tax-exempt; nor do their activities have a noncommercial purpose. Rather, *their only purpose* is to make money for the proprietors * * *.'' (emphasis in original).

The NPS's decision to grant a permit to use park land does not turn on the organizational or tax status of the applicant. NPS regulations do not provide for inquiries into an applicant's tax status or how proceeds may be dispersed. Nor do such inquiries form any part of the basis in approving permits. While one commenter did cite an example of such an inquiry by the NPS in a national park in California, the NPS has determined that the California park unit had done so erroneously.

In fashioning a solution to the problems caused by T-shirt sales in the National Capital Parks, the NPS believes it cannot carve out special exceptions for any category of group. Just as it would be impermissible to preclude all but long-standing ''real Vietnam Veterans organizations,'' it would likewise be improper to preclude all but tax-exempt nonprofit groups. To allow only certain types of groups to engage in sales would disenfranchise individuals and unincorporated groups completely. Other organizations not qualified by circumstance or choice for tax-exempt status, such as for-profit corporations and labor unions, would be likewise excluded. More generally, such an approach would rest access to park land for sales upon the manner in which a group seeks to organize itself legally. Such a matter ought not be of central concern to the NPS.

The adverse impacts upon park land are the same, irrespective of the nature of the demonstrator/vendor's tax status. In short, the NPS believes it would be unreasonable to require citizens concerned about current issues to incorporate and gain tax-exempt status in order to engage in demonstration/sales activities within the parks. Such a requirement is unrelated to the protection of park resources and would unreasonably discriminate against a wide range of individuals and groups. Moreover, a large number of the demonstrator/vendors currently using park land for T-shirt sales activities are in fact tax-exempt organizations. Despite their tax status, the impact on the park is unacceptable.

b. Limiting T-shirt sales to very short-term demonstrations. The ACLU commented that ''persons applying for permits for short-term demonstrations [should] be given permission to sell demonstration-related communicative materials from portable card tables that, as in the past, will 'le[ave] with the demonstrators.' '' The NPS's experience is that this type of restriction, while conceptually attractive, is practically impossible to implement. The majority of groups and individuals selling T-shirts as a part of their activity seek to do so for long periods of time. The NPS has found, on several occasions, the same group signing up under different names and individual sponsors for successive weeks. This ''gaming'' of the permit system results in a long-term demonstration by successive short-term individuals or causes.

The NPS does not believe it may reasonably or practically limit a group or individual to demonstrations lasting only one week or day or so per year. By regulation, applications to use park land are generally limited to 21-day increments. They may be extended for additional 21-day increments, subject only to being ''bumped'' if another applicant submits an application for the same park site and the park area does not reasonably permit multiple occupancy. If the park site does not permit multiple occupancy, the NPS is obligated to propose an alternative park site for the use of the second applicant. 36 CFR 7.96(g)(4)(iii)(A).

This system is grounded in the NPS's belief that, in general, if park land is not being utilized for an ongoing activity, it is available to groups for First Amendment conduct. To turn down a group because they have exhausted their ''allotted'' days of speech would fly in

the face of that principle. Moreover, the NPS has neither the expertise nor the manpower to develop the investigative and enforcement staff to avoid the inevitable ''gaming'' that would result as groups and individuals tried to obtain access for additional days and sites.

c. Adopting standards for the message's relationship to the merchandise being sold. Some commenters suggested that the NPS impose ''merchandise standards'' to ensure, in the words of one commenter, that T-shirts being sold contain ''a religious, philosophical, political, or ideological message that is inextricably intertwined with the Permittee's nonprofit purposes and activities.'' This commenter continued:

> Many vendors sell purely commercial or souvenir T-shirts that do not contain any message whatsoever. Other vendors take an otherwise commercial or souvenir T-shirt, stamp a small logo on it, or the phrase Washington, DC, and sell that item, although the message is barely visible and/or lacks intellectual content * * *.

Except where a court order (now on appeal) has prohibited it from doing so on the Mall near the National Air and Space Museum, the NPS has for many years prohibited demonstrator/permittees from selling T-shirts that lack any message related to the permittee's cause or activity. It monitors demonstration/sales sites to ensure compliance. If warnings to violators are not immediately heeded, citation and revocation of the permit occur. Between July 6, 1994 and August 13, 1994, for example, the U.S. Park Police revoked twelve permits for violating the requirement that T-shirts have a message related to the permittee's cause. Even with this limitation, sales activities have continued to proliferate to the detriment of the parks and the visitors' experience within the parks. The limitation itself raises troublesome questions; e.g., should the NPS set standards as to how large or permanent or sophisticated the message on the T-shirt must be? How direct must be its relationship with the cause being demonstrated for? How strongly must participants hold their views?

Many T-shirts being sold on park land by permittees appear identical to the T-shirts sold by District of Columbia street vendors, except for the presence of an added message. The message often consists of something as cryptic as ''Preserve our Natural Environment'' or ''DC Statehood.'' The comment from the Smithsonian Institution notes that:

> [A] vendor of wildlife T-shirts from a folding table was the only visible 'demonstration' engaged in by an alleged environmental group. Other than the name of the group in small letters on the T-shirt depicting wild animals, the salesman knew nothing about the group or its activities and was unable and/or unwilling to discuss with a visitor whether the proceeds of the T-shirt sales were being dedicated to a non-profit purpose.

In describing demonstration/sales activities on the Mall, the Washington Post on July 6, 1994, reported:

> The guise of a demonstration at some of the new stands is pretty thin. Vendors have used a rubber stamp to mark souvenir T-shirts and sweat shirts with ''D.C Statehood'' or ''Save the Environment.''
>
> Among those selling shirts marked with an inked stamp this week was Merlyn Eda, of Fort Washington. She sat beneath a sign that advocated statehood for the District, and her permit said she was demonstrating for making the District a state, but she said she wasn't much interested in the issue.
>
> ''It's a reason to be out here,'' she said as she straightened stacks of shirts showing the Capitol. ''I'd like a better cause, and I'm thinking about one.''
>
> Susan Griffin, chairwoman of the D.C. Statehood Party, said neither the party nor the Citizens for a New Columbia have sanctioned the sale of T-shirts to promote their cause.
>
> A man who would only identify himself as Isac was selling T-shirts with pictures of the monuments and the stamped message for the environment.
>
> He said that he didn't know anything about environmental issues and he was working as a salesman on the Mall eight hours a day in exchange for free room and board.
>
> The number of vendors setting up stands in close proximity of each other has set off a price war along the walkway on the Mall where seven sellers, most with identical designs, vie for customers.
>
> Christopher Sullivan, a volunteer for Earth Friends, Inc. said his group initiated the price reductions because it is concerned not about making money but about promoting environmental awareness.
>
> ''It looks like hell around here,'' Sullivan said. ''I feel my rights as a legitimate demonstrator have been violated because of these other stands.''

As this comment suggests, many customers of T-shirt vendors may be deceived as to whether they are genuinely supporting a ''cause'' by their purchase. One permittee, purporting to ''educate the general public about the importance of environmental protection,'' has sold T-shirts which depict a cow jumping over the Capitol and which bear a ''First Amendment message,'' ink-stamped and barely discernible (and in at least one case upside down): ''PRESERVE NATIONAL PARKS Earth Friends.'' Two other permittees have sold identical cow T shirts, although with different ''First Amendment messages'': one an ink-stamped ''DC FOR STATEHOOD, WASHINGTON DC,'' another with ''PRESERVE THE NATURAL ENVIRONMENT.'' A demonstrator/vendor was overheard advising one park visitor not to be concerned with the ''message,'' because the ink stamp would ''wash out in the first washing.''

Since the Washington Post article appeared, the NPS has noticed that most, but not all, of the ''First Amendment messages'' are no longer ink-stamped, but silk-screened. Though many of these message activities lack sophistication, verve or impact, the NPS is rightly extremely uncomfortable basing its decisions regarding access to park land upon the quality or sincerity of a person's message or belief. Once the NPS has satisfied itself that there is some nexus between the cause and the message, it has felt that no further inquiry is legitimate or warranted. In the circumstances, enforcement of this requirement has not lessened the negative impacts from those sales activities significantly, if at all. In these circumstances, the NPS has concluded that the best solution is to steer clear of these delicate questions of regulating the message, by instead going at the heart of the commercialization issue, which is T-shirt sales.

d. Restricting structures and other sales facilities. Some commenters advocated restricting the structures from which permittees sell their items. One suggested that trailers and ''ostentatious booths'' be banned, that only booths which could be set up within twenty minutes be allowed, and that they be removed after 7 p.m. except for important Federal holidays. The ACLU commented that it could ''see no reason to prohibit the sale of communicative materials when it is done without the aid of stands or structures.'' It suggested that, ''since the perceived problem arises from the use of long-term, semi-permanent structures, we believe such structures are the appropriate focus of regulation,'' including ''their number, size, location, appearance, and duration of placement.''

The attorney representing nonprofit organizations likewise suggested that the NPS impose signage restrictions, with merchandise being displayed on table tops only in a neat and orderly fashion, not exceeding two feet in height. He also suggested that umbrellas, chairs, and other decorative devices employed to amplify the presentation of the permittee's message be permitted only in connection with the sale of message-bearing merchandise, that structures, such as merchandise display racks, be prohibited and that all other materials, such as inventory, storage boxes, transport devices, and the like, be

required to be stored underneath the table.

The NPS has seriously considered these suggestions. As the ACLU noted, the NPS is quite familiar with the regulation of structures. In the National Capital Region, for example, the Service has found it necessary to ban structures from Lafayette Park and the White House sidewalk in order to address security and aesthetic concerns.

Based on its years of experience in managing the Federal park land and dealing with a full range of sales activities, the NPS does not believe that size or structure restrictions adequately address the problems caused by T-shirt sales activities on park land. As explained further below, the NPS already regulates the size of sales areas permitted to each permittee. The problems of commercialization and attendant adverse impacts are caused by the T-shirt sales themselves and the sheer number of demonstration/vendors interested in engaging in such sales activities. Moreover, an outright ban on structures for sales activities would likely create a mobile and potentially even more intrusive commercialization of park land and degradation of the visitor experience. In short, seeking to control the size of structures and area to be used by each permittee would not directly address the commercialization and attendant adverse impacts.

The NPS has long required demonstration vendors to conform to restrictions on site dimensions. Near the Vietnam Veterans Memorial, the NPS has restricted vendors to sites 6 feet by 15 feet. This area permits the storage of substantial amounts of written materials on site. If additional written material is needed, it can be brought to the site as needed. Further, this size both maximizes the numbers of sites as well as allows each permittee sufficient space to present his or her message to the visiting public. In response to the dramatic increase of demonstration T-shirt sales activities on Washington's Monumental Core, the NPS has established the same size dimensions for sales sites in that area as well.

These restrictions alone have not proven adequate to address the problems sought to be ameliorated by this regulation. However, the NPS has decided that the site dimension standard is important and ought to be included in the regulation. A restriction on the size of structures within such sales sites is also adopted. Accordingly, the final regulation incorporates permissible dimensions of sales sites, stands and structures used in sales. Specifically, the final regulation limits sales sites to dimensions of 6 feet wide by 15 feet long by 6 feet high. Within a site, tables will be limited to one per site, no larger than 2½ feet by 8 feet or 4 feet by 4 feet.

The NPS reviewed the demonstration sales sites currently under permit. Demonstration/sales stands and structures generally consist of tables with dimensions of 2½ feet by 8 feet or, less frequently, dimensions of 4 feet by 4 feet. Both sizes have fully afforded permittees the ability to present their message as well as display their materials. The tables and associated sales activities were generally able to be fully accommodated within dimensions of 6 feet by 15 feet. In fact, the NPS has been imposing the particular sales site limitation since September 1994.

The NPS believes that a height restriction on tables and their appendages is also warranted. It has determined that a height restriction of 6 feet on sales sites will allow groups to display and sell printed materials while reducing the commercial atmosphere on park land.

e. Zoning the park land to set aside particular areas for sale activities. Some commenters suggested that the NPS permit T-shirt sales only in certain park areas, preferably located away from the historic monuments and memorials. One commenter suggested that the NPS should design and construct a limited number of lightweight portable booths ''in the vicinity of the Memorial, but out of the main flow of the tourist traffic.''

Its extensive experience in administering permits has convinced the NPS that it could not designate an adequate amount of park land to handle the number of applicants who have been and will likely seek to engage in T-shirt sales activities without creating the same adverse impacts now being felt. On park land adjacent to the Vietnam Veterans Memorial, for example, the NPS has been unsuccessful in limiting fixed portions of park land for demonstration/vendors. Each of the applicants, whose numbers are steadily increasing, demands access to park visitors near the Memorial. With existing sites already under permit, the NPS has been forced to permit the additional applicants to use other available park land.

Demonstration activities near the Vietnam Veterans Memorial are typically limited to issues related to the war and its casualties. The remainder of the Monumental Core, including the Mall, has been described as ''the Nation's front yard,'' and as such has traditionally been the focal point of demonstrations on a full range of issues and causes—both domestic and international. Having been unsuccessful in designating limited areas around the Vietnam Veterans Memorial for demonstration/vendor activities, the NPS does not believe it possible to designate limited areas within the Monumental Core.

The statistics bear out this conclusion. In November 1994, for example, notwithstanding cold weather and a decrease in park visitors, the NPS had to designate 260 sites in the Monumental Core, along with 23 sites near the Vietnam Veterans Memorial, to accommodate those who sought demonstration/sales permits. With the advent of better weather and an increase in park visitors, the NPS expects many more applications this spring. In fact, through March 8, 1995, the National Capital Region received 3,092 applications for demonstrations and special events. Ninety percent (90%) of these seek permission to vend T-shirts in the Monumental Core area. By way of comparison, during this same period in 1994, the Region received 2,884 demonstration and special event permit requests, an increase of over 200 applications.

The proliferation of T-shirt sales among demonstrator/vendors has led the NPS to conclude that it would be impossible to reasonably accommodate the demand for demonstration/sales of T-shirts within any limited ''sales zones.'' If a zoning system were attempted, either the NPS would have to devise some method or standards to choose among applicants or designate ever-expanding sales zones. Furthermore, the current first-come, first-served system would not likely result in a fair distribution of very scarce sites and would require a much more intensely managed system.

As noted earlier, applications for 21-day T-shirt demonstration/sales permits are now routinely being submitted a full year in advance and are ever-growing in number. If ''sales zones'' were so limited as to reduce the adverse impacts on National Capital Parks to more acceptable levels, only a very limited number of applicants would be able to engage in such sales activities. In these circumstances, the NPS believes that allowing all applicants to engage in demonstration/sales activities that do not involve T-shirt sales ultimately imposes less restriction on free expression, as well as being fairer and better for the National Capital Parks and their visitors, than to allow a small number of applicants to engage in T-shirt sales on limited amounts of designated park land.

The NPS is mindful that it has not fared well in the courts in imposing numerical restrictions on demonstrators.

In *A Quaker Action Group* v. *Morton,* 516 F.2d 717 (D.C. Cir. 1975), for example, the court struck down the NPS's attempt to limit a demonstration in the seven-acre Lafayette Park, a small fraction of the acreage of the Monumental Core, to 500 people. The court found it had a carrying capacity allowing up to 50,000 people to engage in demonstrations at any one time.

More importantly, the NPS believes that a ''sales zones'' scheme would not satisfactorily control the adverse impact on the parks. The NPS's experience at the Vietnam Veterans Memorial shows that, even when sales are confined to a designated area, unacceptable impacts on park values result.

Defining the precise location of park areas to be set aside for such activity would also be difficult. Permittees engaging in demonstration/sales activities do not congregate at any single locale, but spread out to locations adjacent to popular park features to maximize their visitor exposure. The NPS would continue to be faced with requests for designated sales zones adjacent to most, if not all, of the monuments, memorials, and museums.

Even with the creation of even a modest number of zones scattered throughout areas of the National Mall, the NPS and the nation would effectively lose those areas completely and permanently to commercial activities. The experience of the last year or so suggests that competition for those limited zones would be intense. The zones would likely be occupied 365 days a year, effectively removing them from park use. Not only would perpetual ''mini-bazaars'' be created, but the physical impact would create scars that would not heal.

For all of these reasons, based on its experience in managing the Federal park land and dealing with a full range of sales activities, the NPS does not believe that the designation of sales zones is a viable or adequate alternative.

D. T-Shirt Sales and the Activities of the Authorized Concessioner for the National Mall

The NPS's concessioner for the National Mall commented in support of the proposed regulation, stating that ''the large number of commercial vendors operating on the National Mall * * * are disrupting the historical, aesthetic, and traditional values of our National Capital parks.'' The comment also advised that the concessioner was experiencing an adverse economic impact in lost sales due to demonstrator/vendors. Some of the concessioner's employees also submitted comments expressing concern that sales by demonstrator/vendors could threaten their jobs.

While the NPS agrees with the concessioner about the adverse aesthetic impact caused by sales on Federal park land, the alleged adverse financial impact on the concessioner and its employees has played no role in the NPS's decision on the sales regulation.

Two comments opposed to the proposed rule described the activities of the NPS's concessioner on the National Mall as an ''unsightly, inappropriate, and unwelcomed [sic] commercial intrusion,'' and concluded that ''any commercialization of the Mall that has occurred is as much attributable to the NPS as to any specific First Amendment activity.'' One of these commenters stated:

> I personally observed dozens of licensed mobile ice cream and popcorn vendors on all parts of the Mall. In one particular instance, Earth Friends was ordered to move its location across from the Museum of Natural History [because] their presence at that location was purportedly causing pedestrian traffic congestion. Yet, the same location was quickly occupied by an ice cream vendor that attracts twice as many people as did Earth Friend's T-shirt sales.
>
> Additionally, I note that the Park Service maintains (or authorizes) two permanent refreshment stands on the Mall that sell a variety of products, including beer, and several souvenir booths that sell film, maps, books, and other souvenir products. In addition to the merry-go-round, I observed permanent, unsightly refreshment stands directly in front of the Air and Space Museum, the American History Museum, and the Natural History Museum. These refreshment facilities attracted far greater crowds, and pedestrian congestion, than any of the T-shirt operations that I observed.

This description is incomplete and partially incorrect. Most of the vendors mentioned are not on park land. Rather, they are located on the grounds of the Smithsonian Institution or on streets under the jurisdiction of the District of Columbia. The NPS has not licensed popcorn vendors on the Mall.

The NPS regulates concession activities on park land with a principal objective of precluding unwarranted commercialization and adverse impacts on park land. The relevant guidance from Congress, the Concessions Policy Act of 1965, 16 U.S.C. 20, is:

> [T]hat the preservation of park values requires that such public accommodations, facilities, and services as have to be provided within those areas should be provided only under carefully controlled safeguards against unregulated and indiscriminate use, so that heavy visitation will not unduly impair these values and so that development of such facilities can best be limited to locations where the least damage to park values will be caused. It is the policy of the Congress that such development shall be limited to those that are necessary and appropriate for public use and enjoyment of the national park area in which they are located and that are consistent to the highest practicable degree with the preservation and conservation of the areas.

Consistent with this mandate, the NPS maintains concession activity on the federal park land of the National Capital Region under carefully designed safeguards. Concessions are limited only to those facilities and services necessary and appropriate for the convenience of the public. They are carefully designed, sited, and otherwise controlled so as to cause the least damage to park values and the park experience.

To serve the millions of visitors to park land between the Lincoln Memorial and the east end of the National Mall, the NPS's concessioner operates nine food and five retail operations from fixed locations. During the peak visitation period, from April through September, these fixed facilities are supplemented by fourteen ice cream carts that operate on the National Mall. The temporary and fixed facilities were designed to be the minimum size and number needed to serve only the immediate needs of the park visitors already drawn to the area. They are carefully located in areas capable of withstanding the attendant impact; many are confined within buildings. The NPS regularly inspects them to maintain requisite standards of physical appearance and operations. The NPS also controls the nature, type, quality, and price of items offered for sale by the concessioner to the park visitor. It routinely evaluates the concessioner's quality of services, requires insurance and indemnification, charges a franchise fee, and annually reviews its financial records. None of these controls has ever been applied to demonstration/vendors, and the NPS believes at least some, if not all, would be inappropriate to impose on persons or groups expressing First Amendment rights.

While some commenters compared concessions accommodations with demonstration/sales booths, none suggested that the NPS impose on permittees the same conditions it has imposed on its concessioner. In any event, for the reasons expressed earlier, the NPS believes that it would be a very delicate matter at best, and more likely inappropriate, for it to try to impose such conditions on the exercise of free expression attendant to demonstration/vendors. More broadly, comparing the purpose and regulation of concessions designed to meet the needs of park visitors with sales activities associated

with demonstrations is like comparing apples and oranges.

The NPS concedes that it sometimes encounters unauthorized food and ice cream vendors on the Mall. It devotes considerable enforcement efforts against such illegal activities. It regularly monitors park land for unauthorized vendors, and when it detects them, it either warns them or cites them and orders them to leave park land immediately. Between July 6, 1994 and August 13, 1994, for example, the U.S. Park Police issued seventeen citations against unauthorized food or beverage vendors found on the Mall.

The proliferation of demonstration/vendors of T-shirts in the last few years has complicated this enforcement problem significantly. As the Smithsonian Institution comment noted:

> [M]any illegal [that is, non-permit-holding] vendors, encouraged by potential profits and perhaps hoping to get lost among the increased number of vendors on the Mall, are joining their permit holding counterparts in increasing numbers. We have seen many more illegal ice cream and food vendors, vendors of key chains, hats, umbrellas, and even a photographer who takes visitor pictures with cardboard cut-outs of celebrities on parkland.

The NPS remains committed to eliminating illegal vendors as well as addressing the unacceptable impacts by the demonstrator/vendors.

E. Other Matters Addressed in the Final Regulation

In its comments, the Smithsonian Institution expressed concern that the language of the proposed sales regulation might create some misunderstanding as to what would be allowed to be sold on park land, with or without a permit. The NPS obviously desires to prevent any such misunderstandings, and therefore reaffirms its intention that only books, newspapers, leaflets, pamphlets, buttons and bumper stickers may be sold under the revised sales regulations. Attempts to offer or sell items, whether directly or by the use of an artifice, other than books, newspapers, leaflets, pamphlets, buttons and bumper stickers on park land are prohibited. For example, restricted merchandise cannot be ''given away'' and a ''donation accepted'' or one item ''given away'' in return for the purchase of another item; such transactions amount to sales. To prevent any misunderstanding, the NPS has changed the language that appeared in the proposed sales regulation.

Finally, in the draft regulations, the NPS had proposed to make two minor numbering corrections in 36 CFR 7.96(k)(3)(vii), (ix) due to the redesignation of paragraph (k) (57 FR 4574). Pursuant to Public Law 103–279, the NPS no longer has operating responsibilities for the John F. Kennedy Center for the Performing Arts. As a result, the minor numbering corrections suggested in the proposed rule are no longer necessary. Instead, the final rule removes reference to the Center by eliminating 36 CFR 7.96(k)(3).

3. Summary/Conclusion

For all of the foregoing reasons, the NPS believes that the display and hawking of T-shirts, clothing and similar items in connection with authorized demonstrations has had an unacceptable impact on the National Capital Parks and the visitor experience. Its extensive experience in monitoring sales activities permitted under the current sales enforcement guideline has led the NPS to the firm conclusion that those activities have brought discordant and excessive commercialism to federal park land. Such sales have degraded aesthetic values, visitor circulation and contemplation, interpretive programs and historic scenes and have inhibited the conservation of park property. It also believes that no reasonable alternative is available to the action here announced. Therefore, the NPS believes it is necessary to rescind the enforcement guideline and to amend the sales regulation to limit permissible sales to books, newspapers, leaflets, pamphlets, buttons and bumper stickers.

In the considered judgment of the NPS, other measures have been found inadequate to the problem and do not provide a satisfactory level of protection for park value resources in the areas. When such sales activities have so negatively impacted park land and the park visitor, by turning the National Mall, the ''Nation's front yard,'' into a flea market, the NPS believes it is obligated to abate the problems caused by such sales activities.

The NPS believes that limiting sales activities to newspapers, leaflets, pamphlets, books, buttons and bumper stickers is a reasonable time, place, and manner restriction. The restriction is clearly content-neutral in that it applies irrespective of the nature of the message presented. It leaves open ample alternative channels for communication of the information. It also preserves the integrity of park resources and provides for the public enjoyment of our national parks while leaving park resources unimpaired for future generations. As such, it constitutes a restriction which is ''narrowly tailored to serve a significant government interest.''

Drafting Information

The following persons participated in the writing of this rule: John D. Leshy, Solicitor, Richard G. Robbins and Randolph J. Myers, Office of the Solicitor, U.S. Department of the Interior.

Compliance with Other Laws

This rule was reviewed under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 *et seq.*) because general sales are already prohibited in this area, and individuals and groups seeking to sell as a part of a demonstration or special event are free to sell prohibited merchandise on adjacent non NPS lands.

The NPS has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce incompatible uses that compromise the nature and character of the area or causing physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, and in accord with the procedural requirements of the National Environmental Policy Act (NEPA), and by Departmental guidelines in 516 DM 6 (49 FR 21438), neither an Environmental Assessment (EA) nor an Environmental Impact Statement (EIS) has been prepared.

This final rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The NPS has reviewed this final rule as directed by Executive Order 12630 and has determined that the regulation does not have taking implications.

The Department of the Interior has certified to the Office of Management and Budget that this final rule meets the applicable standards provided in section 2(a) and 2(b)(2) of Executive Order 12778.

List of Subjects in 36 CFR Part 7

National parks; Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chapter I is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. Section 7.96 is amended by revising paragraph (k)(2) to read as follows:

§ 7.96 National Capital Region Parks.

* * * * *

(k) * * *

(1) * * *

(2) No merchandise may be sold during the conduct of special events or demonstrations except for books, newspapers, leaflets, pamphlets, buttons and bumper stickers. A permit is required for the sale or distribution of permitted merchandise when done with the aid of a stand or structure. Such stand or structure may consist of one table per site, which may be no larger than 2½ feet by 8 feet or 4 feet by 4 feet. The dimensions of a sales site may not exceed 6 feet wide by 15 feet long by 6 feet high. With or without a permit, such sale or distribution is prohibited in the following areas:

* * * * *

3. Section 7.96 paragraph (k)(3) is removed.

4. Section 7.96 paragraph (k)(4) is redesignated as paragraph (k)(3).

Dated: March 14, 1995.

George T. Frampton, Jr.,

Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 95–8599 Filed 4–6–95; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[FRL–5186–1]

RIN 2050–AE27

Financial Assurance Effective Date for Owners and Operators of Municipal Solid Waste Landfill Facilities

AGENCY: Environmental Protection Agency [EPA].

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is amending the criteria for Municipal Solid Waste Landfills (MSWLFs) under subtitle D of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6921 *et seq.*, by delaying the effective date of the Financial Assurance Criteria set out at 40 CFR part 258, subpart G, until April 9, 1997. The extension applies to any size MSWLF, including remote, very small landfills as defined at 40 CFR 258.1(f)(1), and delays the compliance date for MSWLFs by two years, from April 9, 1995 until April 9, 1997 (for remote, very small landfills by 18 months, from October 9, 1995 until April 9, 1997).

EFFECTIVE DATE: The amendments in this final rule are effective March 31, 1995. The effective date of subpart G of part 258 (§§ 258.70 through 258.74) which was added at 56 FR 51016 is delayed until April 9, 1997.

ADDRESSES: The docket for this rulemaking is available for public inspection at Room M–2616, U.S. EPA, 401 M Street SW., Washington, DC 20460 from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays. The docket number is F–95–FADF-FFFFF. Call (202) 260–9327 to make an appointment with the docket clerk. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline toll free at (800) 424–9346 or in Washington, D.C. at (703) 412–9810, from 8:30 a.m. to 7:30 p.m. EST, Monday through Friday, excluding holidays; or Nancy Hunt, Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 at (703) 308–8762.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority

These amendments to Title 40, part 258, of the Code of Federal Regulations are promulgated under the authority of sections 1008(a)(3), 2002(a), 4004(a), and 4010(c) of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6907(a)(3), 6912(a), 6944(a), and 6949a(c).

II. Background

The Agency proposed revised criteria for municipal solid waste landfills (MSWLFs), including financial assurance requirements, on August 30, 1988 (see 53 FR 33314). The purpose of the financial assurance requirements is to assure that adequate funds will be readily available to cover the costs of closure, post-closure care, and corrective action associated with MSWLFs.

In the August 30, 1988 proposal, rather than proposing specific financial assurance mechanisms, the Agency proposed a financial assurance performance standard. The Agency solicited public comment on this performance standard approach and, at the same time, requested comment on whether the Agency should develop financial test mechanisms for use by local governments and corporations.

In response to comment, the Agency promulgated several specific financial mechanisms in the October 9, 1991 final rule on MSWLF criteria (56 FR 50978), in addition to the financial assurance performance standard of section 258.74, which allows approved States to use any State-approved mechanism that meets that performance standard. Commenters on the August 30, 1988 proposal also supported the development of financial tests for local governments and for corporations to demonstrate that they can satisfy the goals of financial assurance on their own, without the need to produce a third-party instrument to assure that the obligations associated with their landfill will be met. The Agency agreed with commenters and in the October 9, 1991 preamble, announced its intention to develop both a local government and corporate financial test in advance of the effective date of the financial assurance provisions.

The Agency has delayed the effective date of the financial responsibility provisions until April 9, 1995 (see 58 FR 51536) in order to provide adequate time to promulgate a financial test for local governments and another for corporations before the effective date of the financial assurance provisions. The delayed effective date also was intended to provide owners and operators sufficient time to determine whether they satisfy the applicable financial test criteria for all of the obligations associated with their facilities, and to obtain a guarantor or an alternate instrument, if necessary. The Agency also recognized that local governments, in particular, require notice of the requirements in order to plan their budgets for the upcoming year.

The Agency proposed a local government financial test and a corporate financial test on December 27, 1993 (see 58 FR 68353) and October 12,

1994 (see 59 FR 51523), respectively. The Agency expects to promulgate the local government test in the fall of 1995 and the corporate test in the spring of 1996. The Agency, therefore, proposed an additional extension on October 18, 1994 to delay the current April 9, 1995 effective date for subtitle D financial assurance requirements by one year until April 9, 1996 (see 59 FR 52498) to allow MSWLF owners and operators that qualify to demonstrate financial assurance for their closure, post-closure, and corrective action obligations through the use of a financial test. Owners and operators who meet the requirements of the financial tests will not be required to obtain a third-party financial assurance instrument [1] for these obligations.

III. Response to Comments and Analysis of Issues

This section summarizes and addresses the major comments out of a total of 139 comments received on the October 18, 1994 proposal. A discussion of, and response to, all comments can be found in the docket for this rulemaking.

A. Support for Extension

Most commenters support the proposal to extend the effective date of the financial assurance requirements. Many commenters, however, expressed concern that the proposed one-year extension until April 9, 1996 would not be enough time for MSWLF owners and operators to meet the financial assurance requirements by using the local government and corporate financial tests. Not only have the financial tests not been promulgated yet, but States will need time to incorporate the financial tests into their regulations and MSWLF owners and operators will then need time to comply with the recordkeeping and reporting requirements of the financial test (or with the requirements of an alternate financial assurance instrument).

The Agency agrees that one year may not be enough time to take advantage of a financial test and, accordingly, has decided to extend the effective date of the financial assurance requirements for MSWLF owners and operators by two years from April 9, 1995 until April 9, 1997 (for landfill owners and operators of remote, very small landfills by 18 months, from October 9, 1995 until April 9, 1997). Although the Agency would like to implement the financial assurance requirements as soon as possible, the Agency must also balance the goals of ensuring protection of human health and the environment and minimizing the costs of regulatory compliance to owners and operators of MSWLFs. The Agency believes that the potential cost savings to MSWLF owners and operators of complying with financial assurance requirements through the use of a financial test outweigh the risks of delaying their implementation. The Agency does not believe that delaying the effective date of the financial assurance requirements by a temporary extension will result in a significant threat to human health and the environment. The purpose of the financial assurance requirements is to ensure that funds will be available to cover the costs of closure and post-closure care if the owner or operator is unable to cover these costs when they occur. The delay in implementing the financial assurance requirements, however, does not in any way affect the owner or operator's existing obligation to conduct closure and post-closure care at the facility when required in a manner consistent with the Subtitle D criteria, and to pay the costs incurred in conducting those activities. Like other future business expenses, the Agency anticipates that most owners and operators have prepared or are currently preparing to meet these expenses. Thus, it is unlikely that a delay in implementing the financial responsibility requirements will result in significant numbers of unfunded closure and post-closure care activities.

The Agency believes that the two-year extension adopted in this rule can be fairly characterized as the logical outgrowth of the October 18, 1994 proposal. Although the proposed rule contemplated a one-year extension, the point was to provide notice of the need for additional time for MSWLF owners and operators to meet the financial assurance requirements through the use of a financial test. In light of the comments received, the Agency is now persuaded that a two-year, not a one-year, extension is necessary for MSWLF owners and operators to meet the financial assurance requirements through the use of a financial test.

B. Opposition to Extension

Four commenters out of a total of 139 commenters oppose extending the time for MSWLFs to comply with financial assurance requirements.

One commenter argues that MSWLF owners and operators could comply at this time using currently available financial assurance mechanisms, such as a trust fund, letter of credit or surety bond, and that an extension would only serve to delay closure of MSWLFs that could not meet financial assurance requirements. A related comment argues that repeated delays undermine the credibility of the financial assurance program; that the use of a trust fund is preferable to a financial test; and that any additional delay in implementing the financial assurance requirements for local governments should be no more than eight months after the April 1995 effective date.

Although many MSWLF owners and operators could comply with financial assurance requirements using currently available alternatives, the Agency is committed to developing a local government and corporate financial test as an alternative to third party financial mechanisms for the reasons discussed above. The Agency, therefore, believes that MSWLF owners and operators should not have to select a financial assurance mechanism until all the financial assurance alternatives are available, including the financial tests, so that MSWLF owners and operators can assess all the alternatives to determine which one will best serve their needs.

The Agency disagrees that delaying the effective date will only serve to delay closure of facilities than cannot meet the financial assurance criteria. MSWLFs are already subject to design and operating requirements that are more extensive, and significantly more expensive, than the financial assurance criteria. MSWLFs that were unable to meet Federal minimum design and operating requirements have already closed.

The State of Missouri argues that a delay in implementing Federal financial assurance requirements would place MSWLF owners and operators in States that already require financial assurance at a competitive disadvantage with MSWLF owners and operators in States that do not currently require financial assurance, as well as place States with existing or planned financial assurance programs in the position of having to spend valuable time and effort to delay their own programs.

The Agency does not believe that an additional two years to comply with Federal financial assurance requirements would create a competitive disadvantage between MSWLF owners and operators in States with different financial assurance requirements. The available evidence suggests that the costs of transporting waste—even between adjacent States—will more than offset the additional costs of disposing of waste in a State with financial assurance requirements. Further, since waste disposal contracts are generally written to cover several

[1] For a description of the third-party instruments available to MSWLF owners and operators see 56 FR 50978.

years, the Agency believes it is unlikely waste generators will shift disposal to a different MSWLF during a temporary extension period.

Furthermore, in the absence of a significant competitive disadvantage among States as a result of the delay there is, arguably, no need for States with existing or planned financial assurance programs to change their own requirements. States can adopt requirements under State law that are more stringent than the Federal requirements and, therefore, do not need to delay implementing their own financial assurance requirements. Indeed, States that adopt responsible financial assurance requirements over the next two years will be better able to cover unanticipated MSWLF closure or post-closure costs. If, however, a State chose to delay its own financial assurance requirements, the commenter has not shown that it would be prohibitively expensive or difficult to implement such an extension.

A commenter from the insurance and surety industry argues that delaying the effective date of the financial assurance requirements to allow the use of a financial test would ultimately undermine the purpose of the financial assurance requirements and force States to incur the costs of closing, and remediating releases from, MSWLFs that cannot meet financial assurance requirements. The argument is that the use of a financial test would mean that only the least financially able MSWLF owners and operators would purchase third-party financial assurance instruments, which would discourage the continued development of alternate financial assurance instruments in the insurance and surety industry, thereby, making it more expensive and more difficult to obtain third-party financial assurance instruments. Financially weaker MSWLF owners and operators would, therefore, be unable to meet financial assurance requirements and would seek to further reduce the requirements necessary to meet a financial test. Inevitably, States would be burdened with the closure and response costs of financially weak MSWLF owners and operators that are either unable to obtain third-party financial assurance instruments or that are allowed to continue to operate as a result of a devalued financial test.

This comment is more appropriately addressed to the proposed financial tests themselves, rather than to a delay in implementing the financial assurance requirements. At this time it is difficult, if not impossible, to predict how many MSWLFs will or will not be able to meet a financial test, because the local government and corporate financial tests have not yet been promulgated or otherwise finalized. Accordingly, the Agency will address this issue more fully in the financial test rulemakings. Even if, however, insurance and surety mechanisms become expensive and difficult to obtain due to underwriting considerations, owners and operators still have the option of obtaining a guarantee, a letter of credit, or of establishing a trust fund to comply with financial assurance obligations. Trust funds, in particular, are available to all owners and operators regardless of corporate affiliation or prevailing market conditions, because creating a trust fund does not present a financial risk.

In any event, the Agency does not believe that a temporary delay in implementing the Subtitle D financial assurance requirements in anticipation of the development of a financial test will cause financial services firms to abandon the market for, or otherwise limit their development of, third-party financial assurance instruments. First, it is the Agency's understanding that providers of financial assurance mechanisms make decisions regarding potential markets and the desirability of entering those markets based on evaluations of long-term market demand; arguably, a two-year delay should not have a significant effect on this long term decision-making. Second, an extensive market for financial assurance mechanisms, which is sufficient to maintain the infrastructure of the market for such mechanisms, already exists independent of the RCRA Subtitle D financial assurance requirements. For example, owners and operators of hazardous waste treatment, storage and disposal facilities (TSDFs), underground storage tanks, and PCB commercial storage facilities must meet financial assurance requirements, which include third-party mechanisms that are essentially the same as those provided for in the Subtitle D criteria.

C. Local Governments

Some commenters argue that local governments as a class should be exempt from meeting financial assurance requirements for MSWLFs, because unlike private MSWLFs owners and operators, local governments do not go out of business or otherwise disappear. Today's rule and the October 18, 1994 proposal, however, only address the issue of extending the effective date for meeting the financial assurance requirements for MSWLFs; they do not raise the issue of whether certain classes of MSWLF owners and operators, such as local governments, should be exempt from the financial assurance requirements. The Agency previously addressed this issue in the October 9, 1991 rule that revised the minimum Federal standards, including financial assurance criteria, for MSWLFs (see 56 FR 50978). At that time, the Agency determined that local governments should not be exempt from financial assurance requirements because local governments may be unable to obtain the immediate funds necessary to meet closure and/or corrective action obligations at MSWLFs so as to ensure protection of human health and the environment. Local governments, for example, often have relatively limited resources, limited flexibility in their annual budgets and a limited ability to quickly obtain traditional sources of financing or revenues, such as bond issues, taxes and intergovernmental transfers.

D. Remote/Very Small Landfills

Today's rule extends the effective date of the financial assurance requirements for all MSWLF owners and operators, including remote, very small (less than 20 tons per day) landfills as defined at 40 CFR § 258.1(f)(1), until April 9, 1997. Although the proposed rule contemplated extending the effective date of the financial assurance requirements for all MSWLFs, this was apparently unclear to several commenters who suggested that the Agency extend the deadline for the remote, very small landfills as well as for the general class of MSWLFs. Remote/very-small landfills had been subject to different deadlines for meeting the MSWLF criteria than the general class of MSWLFs; until today's rule the effective date of the financial assurance requirements for owners and operators of remote, very small landfills was October 9, 1995 (see 58 FR 51536).

E. Unfunded Mandate

A few commenters assert that the financial assurance requirements contained in the October 9, 1991 final rule on MSWLF Criteria (56 FR 50978) constitute a Federal unfunded mandate on local governments. Today's rule, however, provides regulatory relief by extending for two years the effective date by which MSWLF owners and operators (including local government owners and operators) must meet those financial assurance requirements. Moreover, the purpose of the extension provided by this rule is to allow the Agency sufficient time to promulgate a rule to give MSWLF owners and operators additional flexibility to meet the financial assurance requirements. That rule will allow owners and

operators to use a financial test instead of a more expensive third-party instrument to assure that adequate funds will be readily available to cover the costs of closure, post-closure care, and corrective action associated with MSWLFs.

IV. Effective Date

Today's rule is effective immediately. Section 3010(b) of RCRA provides that regulations respecting requirements applicable to the treatment, storage, or disposal of hazardous waste shall take effect six months after the date of promulgation. However, section 3010(b)(1) of RCRA allows the Agency to set a shorter effective date if the Agency finds that the regulated community does not need six months to come into compliance with the new regulation.

The regulated community does not need six months to come into compliance with today's rule, because the provisions of this rule delays the regulatory requirements of financial responsibility and allows the Agency time to develop additional, more flexible, methods for MSWLF owners and operators to comply with the regulations. Today's rule, therefore, is immediately effective under section 553(d) of the Administrative Procedure Act.

V. Economic and Regulatory Impacts

A. Executive Order 12866

Under Executive Order 12866, which was published in the **Federal Register** on October 4, 1993 (see 58 FR 51735), the Agency must determine whether a regulatory action is ''significant'' and, therefore, subject to OMB review 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 entitlement, grants, user fees, or loan programs or 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 Executive Order.

The Agency believes that this final rule does not meet the definition of a major regulation. Thus, the Agency is not conducting a Regulatory Impact Analysis, and today's final rule is not subject to review by the Office of Management and Budget (OMB) based upon Executive Order 12886.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act [5 U.S.C. 601 et seq.] at the time an Agency publishes a proposed or final rule, it generally must prepare a Regulatory Flexibility Analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions), unless the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities. The effect of this final rule is to provide small entities with additional time to meet the financial assurance requirements of subtitle D regarding closure and post-closure costs. Therefore, pursuant to 5 U.S.C. 605b, the Agency believes that this final rule will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Agency has determined that there are no new reporting, notification, or recordkeeping provisions associated with today's final rule.

List of Subjects in 40 CFR Part 258

Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: March 31, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40 chapter I, of the Code of Federal Regulations is amended as follows:

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

1. The authority citation for part 258 continues to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a), 6944(a), and 6949a(c); 33 U.S.C. 1345(d) and 1345(e).

2. § 258.70 is amended by revising paragraph (b) to read as follows:

§ 258.70 Applicability and effective date.

* * * * *

(b) The requirements of this section are effective April 9, 1997.

3. § 258.74 is amended by revising paragraph (a)(5) to read as follows:

§ 258.74 Allowable mechanisms.

* * * * *

(a) * * *

(5) The initial payment into the trust fund must be made before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1997), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.

* * * * *

4. § 258.74 is amended by revising the third sentence of paragraph (b)(1); by revising the second sentence of paragraph (c)(1); and by revising the second sentence of paragraph (d)(1) to read as follows:

§ 258.74 Allowable mechanisms.

* * * * *

(b) * * *

(1) * * * The bond must be effective before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1997), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.* * *

* * * * *

(c) * * *

(1) * * * The letter of credit must be effective before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1997), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.
* * *

* * * * *

(d) * * *

(1) * * * The insurance must be effective before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1997), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.* * *

* * * * *

[FR Doc. 95–8605 Filed 4–6–95; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–20

[FPMR Amendment D–93]

RIN 3090–AF50

Energy Conservation

AGENCY: Public Buildings Service, General Services Administration.

ACTION: Final rule.

SUMMARY: This rule eliminates the General Services Administration's existing operating standards and allows for the maintenance of building temperatures in a manner satisfactory to users and consistent with local commercial practices. In addition, it deletes the minimum ventilation rate and replaces it with the ventilation standards specified by the American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRAE Standard 62 Ventilation for Acceptable Indoor Air Quality).

EFFECTIVE DATE: April 7, 1995.

FOR FURTHER INFORMATION CONTACT: Jim Carelock, Office of Property Management, Washington, DC 20405, (202) 501–1430.

SUPPLEMENTARY INFORMATION: Executive Order 12862, Setting Customer Service Standards, states that in order to carry out the principles of the National Performance Review, the Federal Government must be customer-driven. GSA, in an effort to become more customer driven, seeks to improve customer satisfaction, by changing regulations that have direct effect on three areas of low customer satisfaction. GSA's customers, building tenants have indicated by their responses to customer surveys that they have very low satisfaction levels for the following: ventilation, 42 percent satisfied; indoor air quality, 44 percent satisfied; summer temperature, 53 percent satisfied; and winter temperature, 56 percent satisfied.

The two sections of the Federal Property Management Regulations (FPMR) addressed in this regulation mandate space temperatures and ventilation rates that contribute to low customer satisfaction. These changes will permit the Buildings Managers to control building temperatures and mandate adherence to the latest air ventilation guidelines. The proposed regulation was published in the **Federal Register** on September 13, 1994, for comment (59 FR 46951). No comments were received during the comment period.

Executive Order 12866

The General Services Administration (GSA) has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866.

Regulatory Flexibility Act

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

List of Subjects in 41 CFR Part 101–20

Fire prevention, Blind, Safety, Concessions, Crime, Federal buildings and facilities, Government property management, Security measures.

For the reasons set out in the preamble, 41 CFR Part 101–20 is amended as follows:

PART 101–20—MANAGEMENT OF BUILDINGS AND GROUNDS

1. The authority citation for Part 101–20 continues to read as follows:

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

Subpart 101–20.1—Building Operations, Maintenance, Protection, and Alterations

2. Section 101–20.107 is amended by revising paragraph (c)(1) and paragraph (e) to read as follows:

§ 101–20.107 Energy conservation.

* * * * *

(c) * * *

(1) Temperatures will be maintained to maximize customer satisfaction by conforming to local commercial equivalent temperature levels and operating practices. GSA will seek to minimize energy use while operating its buildings in this manner. During non-working hours, heating temperatures shall be set no higher than 55 degrees Fahrenheit and air-conditioning will not be provided except as necessary to return space temperatures to a suitable level for the beginning of working hours.

* * * * *

(e) During working hours in periods of heating and cooling, provide ventilation in accordance with ASHRAE Standard 62, *Ventilation for Acceptable Indoor Air Quality* where physically practical. Where not physically practical, provide the maximum allowable amount of ventilation during periods of heating and cooling and pursue opportunities to increase ventilation up to current standards. ASHRAE Standard 62 is available from ASHRAE Publications Sales, 1791 Tullie Circle NE, Atlanta, GA 30329–2305.

* * * * *

Dated: March 24, 1995.

Julia M. Stasch,

Acting Administrator of General Services.

[FR Doc. 95–8486 Filed 4–6–95; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 040395D]

Groundfish of the Bering Sea and Aleutian Islands Area; Trawl Yellowfin Sole Fishery in Zone 1

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for yellowfin sole by vessels using trawl gear in Bycatch Limitation Zone 1 (Zone 1) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the prohibited species catch (PSC) allowance of *C. bairdi* Tanner crab apportioned to the trawl yellowfin sole fishery category in Zone 1.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), April 4, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The 1995 PSC allowance of *C. bairdi* Tanner crab in Zone 1 for the trawl yellowfin sole fishery category, which is described at § 675.21(b)(1)(iii)(B)(*1*), was established as 225,000 crabs in Table 7 on page 8485 of the 1995 specifications (60 FR 8479, February 14, 1995).

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(1)(i), that the PSC allowance

of *C. bairdi* Tanner crab for the trawl yellowfin sole fishery in Zone 1 has been reached. Therefore, NMFS is prohibiting directed fishing for yellowfin sole by vessels using trawl gear in Zone 1 of the BSAI.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.21 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 3, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–8621 Filed 4–4–95; 4:13 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 67
Friday, April 7, 1995

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 316

RIN 3206–AG 62

Bringing Nonpermanent Excepted Positions Into the Competitive Service

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to revise its regulations governing retention of employees whose excepted positions are brought into the competitive service to permit the employees to receive term appointments if their excepted appointments had time limits longer than 1 year. This would avoid hardship to the employees, who could otherwise be retained only as temporary employees without benefits.

DATES: Comments must be received on or before June 6, 1995.

ADDRESSES: Send or deliver written comments to Leonard R. Klein, Associate Director for Employment, Office of Personnel Management, Room 6F08, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Tracy E. Spencer, (202) 606–0830, or fax (202) 606–2329.

SUPPLEMENTARY INFORMATION: Civil Service Rule III (5 CFR 3.1) authorizes OPM to prescribe conditions under which ''a person who occupies a permanent position when it is placed in the competitive service * * * or is otherwise made subject to competitive examination'' may acquire a competitive status. OPM's regulations implementing this authority are found in 5 CFR 315.701, 316.701, and 316.702. Those regulations permit nonpermanent employees whose positions are brought into the competitive service to be retained only under temporary appointments limited to 1 year or less.

When the regulations were written, almost all nonpermanent positions inside and outside the Federal Government were filled by such temporary appointments. Giving those employees temporary appointments in the competitive service permitted them to continue serving, with no change in employment conditions, until they completed the work for which they were hired. That is still generally true when positions are brought into the service from outside the Federal Government.

In the Federal excepted service, however, an increasing number of excepted positions are filled under appointments with time limits longer than 1 year (comparable to term appointments in the competitive service). Those positions may be brought into the competitive service by revocation of a statutory appointing authority or an exception under Schedule A, B, or C, or by an OPM determination that the authority no longer covers the positions.

Employees whose excepted appointments have limits longer than 1 year are eligible for within-grade increases, promotions and reassignments, and retirement and insurance benefits that are not available to temporary employees in the competitive service. The logical way to allow those employees to complete their work with no change in employment conditions would be to retain them under term appointments. The proposed regulations would add provision for such term appointments. The regulations would also make editorial changes and would remove obsolete references to the Federal Personnel Manual.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because they apply only to Federal employees.

List of Subjects in 5 CFR Part 316

Government employees.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM proposes to amend 5 CFR part 316 as follows:

PART 316—TEMPORARY AND TERM EMPLOYMENT

1. The authority citation for part 316 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302, and E.O. 10577 (3 CFR 1954–1958 Comp., p. 218); § 316.302 also issued under 5 U.S.C. 3304(c), 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585; § 316.402 also issued under 5 U.S.C. 3304(c) and 3312, 22 U.S.C. 2506 (93 Stat. 371), E.O. 12137, 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585 and E.O. 12721.

2. In § 316.701, paragraph (c) is revised to read as follows:

§ 316.701 Public or private enterprise taken over by the Government.

* * * * *

(c) An agency may retain an employee under paragraph (a) of this section in a position that it determines is noncontinuing under a temporary appointment. That appointment may be made for a period not to exceed 1 year and will be subject to the time limits set out in § 316.402.

3. In § 316.702, paragraphs (b)(1) and (c) are revised and a new paragraph (d) is added to read as follows:

§ 316.702 Excepted positions brought into the competitive service.

* * * * *

(b)(1) When an agency retains an employee under paragraph (a) of this section who was serving in an excepted position under an indefinite appointment or an appointment without time limit, the agency may convert that employee's appointment to career or career-conditional under § 315.701.

* * * * *

(c) An employee who was serving under an excepted appointment limited to 1 year or less may be retained as a temporary employee under paragraph (a) of this section until the scheduled expiration date of the employee's excepted appointment. Extension of the employee's temporary appointment beyond that date will be subject to the provisions of § 316.402.

(d) An employee who was serving under an excepted appointment with a definite time limit longer than 1 year may be retained under a term appointment. The appointment will be subject to all conditions generally applicable to term appointments and may be extended up to the maximum limit for term appointments established

under § 316.301. Service under the employee's excepted appointment counts against the maximum limit for the term appointment.

* * * * *

[FR Doc. 95–8597 Filed 4–6–95; 8:45 am]
BILLING CODE 6325–01–M

FEDERAL TRADE COMMISSION

16 CFR Part 436

Request for Comments Concerning Trade Regulation Rule on Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (the ''Commission'') is requesting public comments on its Trade Regulation Rule on Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures (''the Franchise Rule'' or ''the Rule''). The Commission is requesting comments about the overall costs and benefits of the Rule and its overall regulatory and economic impact as a part of its systematic review of all current Commission regulations and guides. The Commission also is requesting comment on whether the Rule should be modified to: Replace the Rule's disclosure requirements with those set forth in the revised Uniform Franchise Offering Circular Guidelines, approved by the Commission on December 30, 1993; modify the scope of disclosure requirements for business opportunity ventures; clarify the applicability of the Rule to trade show promoters; and require the disclosure of earnings information. All interested persons are hereby given notice of the opportunity to submit written data, views, and arguments concerning the Rule.

DATES: Written comments will be accepted on or before August 11, 1995.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, Room H–159, Sixth and Pennsylvania Ave., NW., Washington, DC 20580. Comments about the Franchise Rule should be identified as ''16 CFR Part 436—Comment.''

Notification of interest in the Public Workshop-Conference should be submitted in writing to Myra Howard, Division of Marketing Practices, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Steven Toporoff, (202) 326–3135, or Myra Howard, (202) 326–2047, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Commission has determined, as part of its oversight responsibilities, to review Rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's Rules and guides and their regulatory and economic impact. The information obtained assists the Commission in identifying Rules and guides that warrant modification or rescission.

The Commission is currently seeking comment on several issues specific to the Franchise Rule. The Commission recognizes that there have been changes in the franchise industry since the Rule was promulgated in 1978. Among these changes is the modification of the Uniform Franchise Offering Circular (''UFOC'') Guidelines by the North American Securities Administrators Association (''NASAA''). In 1986, NASAA revised Item 19 of the Guidelines to require franchisors who make earnings claims to have a reasonable basis for such claims. On April 25, 1993, NASAA revised the entire UFOC Guidelines. The Commission approved the revised UFOC Guidelines on December 30, 1993. The Commission now seeks comment on the desirability of replacing the current Rule disclosure requirements with those set forth in the revised UFOC Guidelines. The Commission also seeks comment on the desirability of modifying the scope of the Rule as it pertains to the sale of business opportunities. In addition, the Commission seeks comment on whether it should revoke the current conditional exemption for trade show promoters and whether it should modify the Rule to add specific disclosure requirements or prohibitions concerning trade show promoters. Finally, there has been considerable discussion in the franchise industry and among franchise regulators about requiring the disclosure of earnings information to prospective investors. The Commission solicits comment on the desirability of modifying the Rule to require the disclosure of earnings information, and if so, what form those disclosures should take.

A. Background

The Franchise Rule was promulgated by the Commission on December 21, 1978. 43 Fed. Reg. 59,614. The Rule makes it an unfair or deceptive act or practice for franchisors and franchise brokers to fail to disclose to prospective franchisees specific information about the franchisor, franchise business, and terms of the franchise agreement. Franchisors and franchise brokers must disclose additional information if they make any claim about actual or potential earnings to prospective franchisees or to the media. The Rule sets forth both the form and content of the required disclosures. Franchisors must provide prospective franchisees with the required disclosures before any sale is made.

B. Issues for Comment

1. The Revised UFOC

The Franchise Rule sets forth the content and form of the required disclosures. 16 CFR 436.1(a)–(e). In lieu of the Rule's format, the Commission has accepted the UFOC Guidelines originally adopted by the Midwest Securities Commissioners Association on September 5, 1975. 44 FR 49,966, 49,970, and as subsequently amended by NASAA on November 27, 1986. 52 FR 22,686. Most recently, NASAA petitioned the Commission to approve new amendments to the UFOC Guidelines, which NASAA adopted on April 25, 1993. *See* Extra Edition, Bus. Fran. Guide (CCH), Rpt. No. 161 (May 25, 1993). The Commission approved the use of the new UFOC on December 30, 1993. 58 FR 69,224. The new amendments are the product of a comprehensive revision of the UFOC Guidelines. The Commission is concerned about costs and other potential disadvantages to franchisors and franchisees that may result from a lack of uniformity between federal and state regulations. Accordingly, the Commission solicits comments on whether it is desirable to revise the Rule by replacing the current Rule disclosure requirements with those set forth in the revised UFOC Guidelines.

2. The Application of the Franchise Rule to Business Opportunities

The Franchise Rule applies to both franchises and business opportunities. The Rule currently does not provide a specific definition of the term ''business opportunity.'' Rather, the Rule's definition of the term ''franchise'' includes some forms of business opportunities. Specifically, if the following three conditions are met, a business opportunity will be deemed a franchise:

(A) A person (hereinafter ''franchisee'') offers, sells, or distributes to any person other than a ''franchisor'' (as hereinafter defined), goods, commodities, or services which are:

(1) Supplied by another person (hereinafter ''franchisor''), or

(2) Supplied by a third person (e.g., a supplier) with whom the franchisee is directly or indirectly required to do business by another person (hereinafter ''franchisor''); or

(3) Supplied by a third person (e.g., a supplier) with whom the franchisee is directly or indirectly advised to do business by another person (hereinafter ''franchisor'') where such third person is affiliated with the franchisor; and

(B) The franchisor:

(1) Secures for the franchisee retail outlets or accounts for said goods, commodities, or services; or

(2) Secures for the franchisee locations or sites for vending machines, rack displays, or any other product sales display used by the franchisee in the offering, sale, or distribution of said goods, commodities, or services; or

(3) Provides to the franchisee the services of a person able to secure the retail outlets, accounts, sites or locations * * *; and

(C) The franchisee is required as a condition of obtaining or commencing the franchise operation to make a payment or a commitment to pay [at least $500 within the first six months of operation] to the franchisor, or to a person affiliated with the franchisor.

16 CFR 436.2(a)(1)(ii)(A)–(B) and (a)(2).

Accordingly, the Commission seeks comment on the desirability of modifying the Rule to include a specific definition of the term ''business opportunity.'' The Commission also seeks comment on whether such a definition should include other business opportunity formats that are currently not covered by the Rule, such as multi-level marketing, seller assisted market plans, work-at-home plans, and certain distributorships and licenses.

The Commission is also concerned that the Rule's disclosure requirements may not be well suited to the sale of business opportunities and may impose unnecessary costs on both business opportunity sellers and buyers. Accordingly, the Commission seeks comment on whether to modify the Rule to require different disclosures for the sale of business opportunities. Specifically, the Commission seeks comment on what disclosures are most relevant to business opportunity purchasers. The Commission asks whether certain Rule disclosures should be eliminated and if any additional disclosures should be required.

3. Trade Show Promoter Liability

The Franchise Rule applies to franchisors and franchise brokers. Franchise brokers are jointly and severally liable for violations of the Franchise Rule. 16 CFR 436.1, 436.2(j). In 1981, the Commission advised trade show promoters that they would be exempt from Rule coverage as brokers if they provided trade show attendees with a specific consumer education notice. The notice advises consumers that the Commission's Franchise Rule grants them rights to receive certain information about a franchise investment prior to signing agreements. See 46 FR 52327 (October 27, 1981). The exemption requires trade show promoters to give trade show attendees the required notice upon their first entry to the show. Trade show promoters who fail to distribute the required consumer education notice may be held jointly and severally liable for all participating franchisors' Rule violations that may occur at the shows.

Since the Commission issued this conditional exemption in 1981, the sale of franchises and business opportunities at trade shows has increased significantly. In 1994, the Commission settled charges of Rule violations against two trade show promoters who allegedly failed to provide the required consumer education notices at their respective shows. The Commission solicits comments on the desirability of revoking the conditional exemption for trade show promoters. In addition, the Commission seeks comment on whether the Rule should be revised to provide separate disclosure requirements and prohibitions for trade show promoters.

4. Earnings Disclosure Requirements

Franchisors making claims about actual or potential sales, profits, or earnings must provide detailed disclosures mandated by § 436.1(b)–(e) of the Rule. Section 436.1(b) enumerates the substantiation requirements for claims based on projections or forecasts; § 436.1(c), for claims based on actual operating results; and § 436.1(e), for claims that appear in media advertising. The franchisor must have a ''reasonable basis'' for all such claims; they must be ''geographically relevant'' to the potential franchisee's market area; and, if they are based on operating results, must be prepared in accordance with generally accepted accounting principles.

The franchisor must also give a separate earnings claim disclosure document to any potential investor to whom such a claim is made. The earnings claim document must contain a cover page specified by § 436.1(d); a full statement of the basis and assumptions for the claim; prescribed cautionary language; a notice that substantiating material is available for inspection by investors; a disclosure of the number and percentage of the franchisor's outlets that have achieved the same or better results; and various additional information, depending on the type of claim made.

The Franchise Rule does not mandate the disclosure of actual or projected earnings information. The NASAA Franchise Committee and some members of its Industry Advisory Committee, however, have proposed that franchisors and promoters of business opportunities be required to disclose and provide substantiation for some form of earnings information to potential investors. They are concerned that, in the absence of required earnings disclosures, prospective investors seeking information about potential earnings may receive unsubstantiated, misleading, deceptive, and possibly false earnings information. The Commission shares this concern. Over the past five years, allegations of false and deceptive earnings claims have been the most common allegation set forth in Commission complaints filed against franchisors and business opportunity promoters. Therefore, the Commission seeks comments on the desirability of modifying the Rule to include a mandatory earnings disclosure. In particular, the Commission seeks comments on the specific benefits of such disclosures to prospective investors as well as the potential for mandated earnings disclosures to mislead prospective investors. In addition, the Commission requests comment on potential burdens and compliance costs that such Rule modification might impose on prospective franchisees and franchisors. The Commission specifically requests commentors to submit statistical information, including survey data, or other report materials, in support of their comments.

C. Request for Comment

At this time, the Commission solicits written public comments on the following questions:

(1) Is there a continuing need for the Rule?

(a) To what extent do franchisors use the Commission's Franchise Rule format?

(b) What benefits has the Rule provided to purchasers of franchises and business opportunities?

(c) Has the Rule imposed costs on purchasers? Explain.

(2) What changes, if any, should be made to the Rule to increase the benefit of the Rule to purchasers?

(a) How would these changes affect the costs the Rule imposes on firms subject to its requirements?

(3) What significant burdens or costs has the Rule imposed on firms subject to its requirements?

(a) Has the Rule provided benefits to such firms? Explain.

(4) What changes, if any, should be made to the Rule to reduce the burdens or costs imposed on firms subject to its requirements?

(a) How would these changes affect the benefits provided by the Rule?

(5) Does the Rule overlap or conflict with other Federal, state, or local laws or regulations?

(6) Since the Rule was issued, what effects, if any, have changes in relevant technology, economic conditions, and industry practices had on the Rule?

The Revised UFOC Guidelines

(7) Would it be in the public interest for the Commission to establish one national franchise disclosure standard?

(8) Should the Commission revise the Rule by replacing the Rule's required disclosures with those set forth in the revised UFOC Guidelines, approved by the Commission on December 31, 1993? Explain.

(a) What would be the costs and benefits of such a revised Rule on sellers of franchises and business opportunities?

(b) What would be the costs and benefits of such a revised Rule on purchasers of franchises and business opportunities?

The Applicability of the Rule to Business Opportunities

(9) To what extent do business opportunity sellers currently comply with the Rule?

(10) What are the costs and benefits of the Rule to business opportunity sellers subject to the Rule's disclosure requirements?

(11) What are the costs and benefits of the Rule to prospective purchasers of business opportunities?

(12) To what extent do purchasers of business opportunities obtain relevant and material information from the required disclosures? Explain.

(13) Should the Commission clarify the Rule by adding a separate definition of the term ''business opportunity?'' Explain.

(a) Should such a definition of ''business opportunity'' be expanded beyond the current definition of a ''business opportunity'' franchise? Explain.

(b) Should such a definition include the sale of other business arrangements such as multi-level marketing, seller assisted marketing plans, work-at-home plans, and certain distributorships and licenses? Explain.

(14) Should the Commission revise the Rule's disclosure requirements for sellers of business opportunities? Explain.

(a) Should the Commission require a different disclosure document for business opportunities?

(b) What information do purchasers of business opportunities need that is not currently required by the Rule?

(c) What disclosures currently required by the Rule should be eliminated?

(15) What would be the costs and benefits to firms that would be subject to such revised disclosure requirements?

(16) What would be the costs and benefits of such revised disclosure requirements to purchasers of business opportunities?

Trade Show Promoter Liability

(17) Should the Commission revoke the current conditional exemption to the Rule for trade show promoters? Explain.

(a) To what extent do consumers purchase franchises or business opportunities as a result of attending franchise trade shows?

(b) To what extent do exhibitors at trade shows violate the Rule in their presentations to consumers? What is the nature of any such violations?

(c) What would be the costs and benefits of revoking the conditional exemption to the Rule?

(18) Should the Commission revise the Rule to include separate disclosures and prohibitions for trade show promoters? Explain.

(a) What disclosures should trade show promoters be required to make to show attendees?

(b) What conduct should the Rule prohibit trade show promoters from engaging in?

(c) What would be the costs and benefits of such a revised Rule?

Earnings Information

Background

(19) To what extent do prospective franchisees want information about (a) actual earnings and (b) projected earnings?

(20) To what extent do prospective franchisees receive pre-sale written or oral earnings information?

(a) To what extent do franchisees receive historical earnings information?

(b) To what extent do franchisees receive earnings projections or other earnings claims?

(c) To what extent do franchisees receive substantiation for such earnings information or earnings projections?

(21) To what extent do franchisors currently provide earnings disclosures to prospective franchisees?

(a) To what extent do franchisors provide historical earnings information?

(b) To what extent do franchisors provide earnings projections or other earnings claims?

(c) To what extent do franchisors substantiate such earnings information or earnings projections?

(22) For those franchisors that do provide earnings information:

(a) In what industries are these franchisors engaged?

(b) What is their size (e.g., number of franchisees and gross revenues of the franchise system)?

(c) Does the franchisor use the UFOC or FTC disclosure document format?

(23) To what extent do (a) the Rule requirements and (b) the UFOC requirements inhibit franchisors from providing historical earnings information or earnings projections to prospective franchisees? Explain.

(24) In the absence of earnings disclosures under the Rule or UFOC, is earnings information available to prospective franchisees from other sources? Explain.

(a) What are the costs to prospective franchisees to obtain such information?

(b) To what extent is such information accurate and reliable?

Financial Data Currently Available to Franchisors

(25) To what extent do franchisors routinely receive financial and/or other operating performance information from franchisees?

(a) What types of information do franchisors receive?

(b) Do franchisees give the information voluntarily or by contractual requirements?

(c) How often do franchisors receive such information?

(d) How long is such information retained by franchisors?

(26) Are the financial data currently submitted by franchisees sufficient to enable franchisors to provide prospective franchisees with an accurate appraisal of the financial risks of investing in a franchise? Explain.

(a) If the data are insufficient to provide such information, what additional information would correct the deficiency?

(b) What would be the additional costs and benefits of obtaining and providing this additional information to prospective franchisees?

(27) To what extent do franchisors conduct periodic audits of franchisee financial operations? Explain.

(28) To what extent do franchisors require franchisees to use particular accounting formats? Explain.

Possible Required Earnings Disclosures

(29) Would it be in the public interest for the Commission to establish one national earnings claims disclosure requirement? Explain.

(30) What types of earnings data, or other measures of franchisee operating performance, would be most useful to prospective franchisees (e.g., revenues, royalties, net income before income taxes, break-even sales volume, time to reach a break-even point, return on investment)? Describe.

(31) Are there industries for which traditional financial measures of operating performance are either irrelevant or inadequate to provide prospective franchisees with useful earnings information?

(a) What are these industries?

(b) What supplemental information could these industry franchisors provide to ensure that prospective franchisees receive useful earnings information?

(32) Should the Rule be revised to require franchisors to disclose information about franchisee success rates? If so, which measure of success (e.g., failures, turnover, or longevity in a franchise system) would most help franchisees gauge the financial success of the system? Explain.

(a) How should a franchisee failure be defined? Explain.

(b) What type of franchisee failure data (number of failures, failure rates, or longevity of franchisees who fail) would be most useful to prospective franchisees?

(c) How should franchisee turnover be defined? Explain.

(d) What type of franchisee turnover data (number of failures, terminations, cancellations, or transfers) would be most useful to prospective franchisees?

(e) Should information about franchisee longevity in a franchise system, regardless of reasons for departure, be disclosed to prospective franchisees? Explain.

(f) What are the costs and benefits of requiring franchisors to disclose information about franchisee failures, turnover, or longevity in a franchise system?

(33) Is it possible to have a uniform earnings disclosure requirement for all franchise systems? Explain.

(34) How can an earnings disclosure requirement be configured to assure relevancy to the market location being considered? What types of earnings information would be relevant? Explain.

(35) How can an earnings disclosure requirement be configured to reflect differences in the length of franchisees' operating experience? Explain.

(36) How frequently should earnings disclosures be updated?

(37) How long should prospective franchisees be given to review required earnings disclosures before signing a contract? Is the Rule's ten-day minimum review period sufficient? Explain.

(38) If the Commission requires earnings disclosures, should franchisors be prohibited from making earnings disclosures other than those mandated by the revised Rule? Explain.

(39) In what ways might a mandatory earnings disclosure be misleading or deceptive to prospective franchisees? Explain the specific form of earnings disclosure (e.g., gross sales, profit and loss statements, average net income) and why it may be misleading or deceptive.

Possible Exemptions and Special Circumstances

(40) What kind of meaningful earnings information can new franchise systems provide to prospective franchisees? Explain.

(a) Should a new franchise system be exempt from an earnings disclosure requirement?

(b) What would be an appropriate exemption period?

(c) Should a new franchisor be required to provide a negative disclosure cautioning prospective franchisees that its franchise system has not been in business long enough to provide an accurate earnings history?

(41) What kind of meaningful earnings information can a small franchise system provide to prospective franchisees? Explain.

(a) How should the term ''small franchise system'' be defined?

(b) Would compliance with an earnings disclosure requirement impose significant burdens and costs on small franchise systems?

(c) Should a small franchise system be exempt from an earnings disclosure requirement? If so, should a qualifying small franchise system be required to provide a negative disclosure cautioning prospective franchisees that its franchise system cannot provide accurate and reliable earnings information?

(42) Should the Commission consider exemptions to an earnings disclosure requirement for other circumstances? Explain.

Additional Considerations

(43) What concerns do franchisors have about being required to provide earnings information to prospective franchise purchasers? How can the Commission address these concerns?

(44) If the Commission adopts a mandatory earnings disclosure requirement, franchisors might be compelled to collect financial data from franchisees. What concerns do franchisees have about: (a) revealing financial data to their franchisors; and (b) franchisors' use of their financial data to comply with an earnings disclosure requirement? How can the Commission address these concerns?

(45) To what extent do franchisors' contractual agreements with franchisees prevent franchisees from disclosing information about their own operating performance to prospective franchisees? How should the Commission address this concern?

D. Invitation to Comment

In reviewing the Franchise Rule, Commission staff will consider all comments submitted by August 11, 1995. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and Commission regulations, on normal business days between the hours of 8:30 a.m. and 5 p.m. at the Public Reference Section, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

E. Public Workshop Conference

The FTC staff will conduct a Public Workshop Conference to discuss written comments received in response to this Request for Comments. The purpose of the conference is to afford Commission staff and interested parties a further opportunity to openly discuss and explore issues raised during the rule review, and, in particular, to examine publicly any areas of significant controversy or divergent opinions that are raised in the written comments. Commission staff will consider the views and suggestions made during the conference, in conjunction with the written comments, in formulating its final recommendation to the Commission concerning the review of the Franchise Rule.

Commission staff will select a limited number of parties, from among those who submit written comments, to represent the significant interests affected by the Rule Review. These parties will participate in an open discussion of the issues. It is contemplated that the selected parties might ask and answer questions based on their respective comments.

In addition, the conference will be open to the general public. Members of

the general public who attend the conference may have an opportunity to make a brief oral statement presenting their views on issues raised in the Rule Review. Oral statements of views by members of the general public will be limited to a few minutes in length. The time allotted for these statements will be determined on the basis of the time allotted for discussion of the issues by the selected parties, as well as by the number of persons who wish to make statements.

Written submissions of views, or any other written or visual materials, will not be accepted during the conference. The discussion will be transcribed and the transcription placed on the public record.

The conference will be held in the early fall over the course of two consecutive days. A forthcoming announcement will provide the exact dates and location. Parties interested in participating must notify Commission staff by August 11, 1995.

List of Subjects in 16 CFR Part 436

Advertising, Business and industry, Franchising, Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–8619 Filed 4–6–95; 8:45 am]

BILLING CODE 6750–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Poison Prevention Packaging Requirements; Proposed Exemption of Certain Iron-Containing Dietary Supplement Powders

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend its regulations to exempt from child-resistant packaging requirements those dietary supplement powders that have no more than the equivalent of 0.12 percent weight-to-weight elemental iron. The Commission proposes this exemption because there are no known poisoning incidents with these products, and the dry powdered form deters children from ingesting them in harmful amounts.

DATES: Comments on the proposed rule must be received by the Commission no later than June 21, 1995.

ADDRESSES: Comments should be mailed, preferably in five (5) copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504–0470.

FOR FURTHER INFORMATION CONTACT: Jacqueline Ferrante, Ph.D., Project Manager, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0477.

SUPPLEMENTARY INFORMATION:

A. Background

Although iron is essential for good health, in large doses it can be toxic. For this reason, in 1978, the Consumer Product Safety Commission (''the Commission'') required child-resistant packaging (''CRP'') for drugs and dietary supplements that contain iron. 16 CFR 1700.14(a)(12) and (13). The Commission issued these rules under the Poison Prevention Packaging Act (''PPPA''), 15 U.S.C. 1471–1476, which authorizes the Commission to require CRP to protect children under 5 years of age from poisoning hazards posed by harmful household substances.

Specifically, CRP is required for dietary supplements ''that contain an equivalent of 250 milligrams or more of elemental iron, from any source, in a single package in concentrations of 0.025 percent or more on a weight-to-volume basis for liquids and 0.05 percent or more on a weight-to-weight basis for nonliquids.'' 16 CFR 1700.14(a)(13). This requirement does not apply if iron is present only as a colorant. *Id.*

On May 11, 1994, Nutritech, Inc., petitioned the Commission to exempt unflavored, unsweetened iron powders from CRP requirements for dietary supplements containing iron. Nutritech manufactures an unsweetened, unflavored vitamin, mineral, and amino acid powder intended to be mixed with fruit juice. The petitioner stated that CRP is unnecessary for this dietary supplement because: (i) The substance alone is unpalatable; (ii) due to the powder consistency of this substance, a child would not consume a toxic amount without gagging; and (iii) to Nutritech's knowledge, there have been no poisoning incidents involving this product in its 22 year history.(1) [1] The Commission published a notice in the **Federal Register** soliciting comments on the petition, 59 FR 39747, and has received no responses.

B. Toxicity Data

The minimum toxic and lethal doses of iron are not well defined. Generally, doses of elemental iron from 20 to 60 milligrams per kilogram of body weight (''mg/kg'') may produce mild symptoms of poisoning, 60 mg/kg is the minimal dose for serious toxicity, and approximately 180 to 250 mg/kg is considered a lethal dose. However, fatalities of young children have been reported at lower doses.(2)(3)

According to the relevant scientific and medical literature, where information on the formulation was available, the majority of pediatric poisoning incidents involved solid iron—in the form of tablets or capsules—with the remaining cases involving liquid preparations. Among the reported ingestion incidents, fatalities and serious cases of toxicity usually involve ingestion of adult preparations (such as prenatal vitamins) that contain 60 mg or more of elemental iron per tablet. The literature search did not identify a single case of pediatric poisoning involving powdered iron formulations.(2)(3)

Recently, the Food and Drug Administration (''FDA'') published proposed labeling and packaging requirements for iron-containing dietary supplements and drugs. 59 FR 51030 (October 6, 1994). Based on its review of iron poisonings involving children under 6 years of age, the FDA decided to limit its proposed rules to products in solid oral dosage forms (capsules and tablets) and not include liquid or powder products.(2)

The Commission's own 1994 study of pediatric iron poisonings and fatalities found that the majority of serious outcomes involved products in solid or capsule forms. The report showed that all 36 of the in-depth investigations of iron ingestion deaths of children under 5 years old occurring between 1986 and 1993 involved solid capsule or tablet formulations. In 1993, 57 hospital emergency room cases documented through NEISS involved ingestion of iron capsules or tablets by children under 5 years old, and one involved liquid iron. As noted, there were no known pediatric poisonings that involved powdered formulations. This study was based on data from the Commission's National Electronic Injury Surveillance System (''NEISS''), in-depth investigations, the National Center for Health Statistics (''NCHS'') and the American Association of Poison Control Centers (''AAPCC'').(2)

[1] Numbers in parentheses identify documents listed at the end of this notice.

Due to the subcategories that AAPCC uses to classify iron ingestion incidents, the data do not specifically address powdered iron-containing formulations. However, for these AAPCC cases, powdered formulations can be ruled out of all iron related fatalities involving children under 5 years old, and 98.4 percent of cases with serious symptoms, that were reported to the AAPCC between 1989 and 1992. (The remaining 1.2% of cases did not specify the physical form of the ingested product.) The formulations of the iron-containing products involved in pediatric deaths is unavailable from NCHS death certificate data.(2)

For powdered dietary supplements containing 18 mg of elemental iron per tablespoon (0.12% weight-to-weight), a 10 kg child would have to consume 11, 33, and 100 tablespoons to reach the respective minimal (20mg/kg), serious (60mg/kg), and lethal (180 mg/kg) toxicity levels. This assumes none of the product is spilled during consumption.(2)

C. Human Factors Data

Poisoning incidents involving ingestion of large amounts of any powdered substance are relatively rare. Rather, children are more likely to ingest large quantities in the form of liquids or solids, such as tablets and capsules. One reason for this distinction is the physical difficulty children have handling and swallowing powders. Eating a dry powder is difficult and time-consuming. Only small amounts can be eaten at a time to allow the powder to absorb sufficient saliva so the powder can be swallowed. Attempts to swallow too much at once or to swallow too soon will likely result in aspirating the powder and stimulate coughing, which would limit the amount ingested. Because of the time it takes to ingest a powder, it is questionable that a young child could eat a full tablespoon of powder at one time. The length of time required to successfully ingest powders may increase the opportunity for an adult to intervene.(2)(3)

Children's motivation is also a factor in poisoning incidents. Curiosity is the most common motivation among young children. Those less than 3 years old explore through manipulative and oral activity. The youngest at-risk children (less than 24 months) reportedly ingest substances like dirt or powdered detergent by grasping a handful of the substance and then opening their hands and using their palms to push the substance into their mouths. This often results in spilling much of the substance.(3)

Exploratory behavior among children 3 to 4 years old may be somewhat more controlled than for younger children. For example, in a study examining powdered aspirin, children 42 to 51 months of age had difficulty picking up the fine aspirin powder, and when asked to taste it, they did so by putting their fingers in the powder and licking their fingers or by licking the powder directly on the table. This behavior may tend to limit the amount ingested.(3)

In role-playing activities, children may use a powdered substance in imitation of adult behavior. They may mix it with a liquid and drink it or use the powder to substitute for some other food item (e.g., cake mix). However, incomplete mixing of the product will result in a grainy or lumpy mixture which may cause gagging. Repeated ingestion is unlikely following such an experience. It is unlikely that a child could effectively dissolve and ingest toxic amounts of powder with 0.12 percent weight-to-weight iron.(3)

Hunger is another potential motivation. The primary risk of poisoning from these iron-containing supplements would be to a starved, unattended child with no other available source of nutrition. However, it is unlikely that a child would have the time and perseverance to ingest a quantity of iron (11 tablespoons) that would be potentially toxic (20 mg/kg). This is especially true since these products are expensive, purchased by a select population of nutrition enthusiasts, and are probably stored near other foods that would be more appealing to children.(3)

The relative palatability of a substance may influence toxic ingestions. Although flavor plays little or no role in determining whether a product is ingested, it does influence the quantity ingested. The unpleasant taste of the petitioner's product may deter ingestion of toxic levels. Flavored products may pose a somewhat greater risk. However, the other factors discussed above would likely limit the toxic dose ingested of both flavored and unflavored powdered iron supplements.(3)

D. Economic Data

According to the Food and Drug Administration, a dietary supplement is ''a food, not in conventional form, that supplies a component to supplement the diet by increasing the total dietary intake of that component,'' Dietary Supplement Health and Education Act of 1994, Public Law 103–417. These are distinct from fortified foods, such as infant formulas and meal replacements, which are intended to serve as the sole item of a meal. The ingredients in dietary supplements and fortified foods may be similar, but the marketing emphasis and health claims are different.(4)

The petitioner markets two unsweetened, unflavored protein powder supplements that are sold in individual serving packets or in canisters. Each recommended serving of 1 tablespoon contains 18 mg of iron and is mixed with juice for consumption. The following table shows the available container sizes and the total iron content of each.

Size	Servings	Total iron content (mg)
5.29 oz.	10	180.
15.9 oz.	30	540.
2.2 lb.	66	1188.
25 packets	25	450 (18 mg per packet).

Sweetened or flavored supplements make up the major part of the powder dietary supplement market. Many are marketed as ''sports nutritionals'' for fitness enthusiasts. These products are packaged in cartons, canisters, packets, jugs, and pails in various sizes and strengths of iron. Unit and dollar sales of powdered nutritional products are not available. A spokesperson for the Council for Responsible Nutrition (''CRN''), an industry group, estimates the retail market for protein powders (including both supplements and fortified foods) at $2 billion. CRN attributes the larger market share (percent unknown) to flavored powders marketed as sports nutritionals and diet supplements.(4)

D. Action on the Petition

As discussed above, the relevant literature and data show no cases of child poisonings due to iron-containing powders. In addition, it is unlikely that young children would ingest toxic

amounts of iron-containing supplement powders which are difficult for children to handle without spilling or to swallow without gagging. A child would have to ingest approximately 11 tablespoons of petitioner's product (20 mg/kg in a 10 kg child) in order to produce a minimally toxic dose. Approximately 100 tablespoons would be required for a lethal dose. Most of the factors that make toxic ingestions of petitioner's unflavored product unlikely would also apply to flavored supplement powders.

After considering the available information, the Commission preliminarily concludes that the degree and nature of the hazard to children presented by the availability of dietary supplement powders with no more than the equivalent of 0.12 percent weight-to-weight elemental iron are such that special packaging is not required to protect children from serious personal injury or serious illness resulting from handling, or ingesting such substance. Accordingly, the Commission voted to grant the petition and proposes to amend 16 CFR 1700.14(a)(13) to exempt from requirements for child resistant packaging those dietary supplement powders with no more than the equivalent of 0.12 percent weight to-weight-elemental iron.

E. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act (Public Law 96–354, 5 U.S.C. 601 *et seq.*), when an agency issues proposed and final rules, it must examine the rules' potential impact on small businesses. The Act requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis if a proposed rule would have a significant impact on a substantial number of small businesses, small organizations, and small governmental jurisdictions.

The exemption proposed below, to exempt powdered iron-containing dietary supplements from CRP requirements, will give manufacturers of these products the option of packaging products using any packaging they choose. As far as CPSC is aware, powdered iron-containing dietary supplements are not currently packaged in CRP. The Commission's Compliance staff is exercising its enforcement discretion regarding these products pending completion of this rulemaking. Thus, the proposed exemption will bring no change in the current packaging of products subject to the exemption. Accordingly, the Commission concludes that this exemption will not have any significant economic effect on a substantial number of small entities.

F. Environmental Considerations

The Commission's regulations at 16 CFR 1021.5(c)(3) state that rules exempting products from child-resistant packaging requirements under the PPPA normally have little or no potential for affecting the human environment. The Commission does not foresee any special or unusual circumstances surrounding this proposed rule. Therefore, exempting these products from the PPPA requirements will have little or no effect on the human environment. For this reason, the Commission concludes that no environmental assessment or impact statement is required in this proceeding.

G. Effective Date

Since the proposed rule provides for an exemption, no delay in the effective date is required. 5 U.S.C. 553(d)(1). Accordingly, the rule shall become effective upon publication of the final rule in the **Federal Register**.

List of Subjects in 16 CFR Part 1700

Consumer protection, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

Conclusion

For the reasons given above, the Commission amends Title 16 of the Code of Federal Regulations to read as follows:

PART 1700—[AMENDED]

1. The authority citation for part 1700 continues to read as follows:

Authority: Pub. L. 91–601, secs. 1–9, 84 Stat. 1670, 15 U.S.C. 1471–76, Secs. 1700.1 and 1700.14 also issued under Pub. L. 92–573, sec. 30(a), 88 Stat. 1231, 15 U.S.C. 2079(a).

2. Section 1700.14(a)(13) is revised to read as follows:

§ 1700.14 Substances requiring special packaging.

(a) * * *

(13) *Dietary supplements containing iron.* Dietary supplements, as defined in § 1700.1(a)(3), that contain an equivalent of 250 mg or more of elemental iron, from any source, in a single package in concentrations of 0.025 percent or more on a weight-to-volume basis for liquids and 0.05 percent or more on a weight-to-weight basis for nonliquids (e.g., powders, granules, tablets, capsules, wafers, gels, viscous products, such as pastes and ointments, etc.) shall be packaged in accordance with the provisions of § 1700.15 (a), (b), and (c), except for the following:

(i) Preparations in which iron is present solely as a colorant; and

(ii) Powdered preparations with no more than the equivalent of 0.12 percent weight-to-weight elemental iron.

* * * * *

Dated: April 3, 1995.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Reference Documents

The following documents contain information relevant to this rulemaking proceeding and are available for inspection at the Office of the Secretary, Consumer Product Safety Commission, Washington, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814.

1. Briefing Memorandum with attached briefing package, March 14, 1995.

2. Memorandum from Sandra E. Inkster, Ph.D., HSPS, to Jacqueline N. Ferrante, Ph.D., HSPS, ''Review of Iron Toxicity: Relevance to a Petition Requesting Exemption for Powdered, Iron-Containing Dietary Supplements,'' February 15, 1995.

3. Memorandum from Catherine A. Sedney, EPHF, to Jacqueline N. Ferrante, Ph.D., HSPS, ''Petition to Exempt Iron-Containing Supplement Powders from PPPA Requirements,'' February 16, 1995.

4. Memorandum from Marcia P. Robins, EPSS, to Jacqueline N. Ferrante, Ph.D., HSPS, ''Preliminary Market Information: Petition for Exemption from Child-Resistant Packaging Requirements for Powdered Iron-Containing Dietary Supplements,'' March 10, 1995.

[FR Doc. 95–8522 Filed 4–6–95; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket Nos. RM95–8–000 and RM94–7–001]

Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities, Recovery of Stranded Costs by Public Utilities and Transmitting Utilities; Proposed Rulemaking and Supplemental Notice of Proposed Rulemaking

March 29, 1995.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking and supplemental notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to require that public utilities owning and/or controlling facilities used for the transmission of electric energy in interstate commerce have on

file tariffs providing for non-discriminatory open access transmission services. The Commission is also proposing to permit public utilities and transmitting utilities to recover legitimate and verifiable stranded costs. The Commission's goal is to encourage lower electricity rates by structuring an orderly transition to competitive bulk power markets. The Commission is seeking public comment on its proposals.

DATES: Written comments must be received by the Commission by August 7, 1995. Reply comments must be received by the Commission by October 4, 1995.

FOR FURTHER INFORMATION CONTACT:
David D. Withnell, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426, telephone: (202) 208–2063, (Docket No. RM95–8–000—legal issues).
Deborah B. Leahy, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, telephone: (202) 208–2039, (Docket No. RM94–7–001—legal issues).
Michael A. Coleman, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, telephone: (202) 208–1236, (technical issues).

ADDRESSES: Send comments to: Office of the Secretary Federal Energy Regulatory Commission 825 North Capitol Street, N.E. Washington, D.C. 20426.

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Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities

Docket No. RM95–8–000

Recovery of Stranded Costs by Public Utilities and Transmitting Utilities

Docket No. RM94–7–001

Notice of Proposed Rulemaking and Supplemental Notice of Proposed Rulemaking

March 29, 1995.

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I. Introduction

The electric power industry is today an industry in transition. In response to changes in the law, technology, and markets, competitive pressures are steadily building in the industry. Once the primary domain of large, vertically integrated utilities providing power at regulated rates, the industry now includes companies selling ''unbundled'' power at rates set by competitive markets. New generating facilities are being built at costs well below the average costs of some vertically integrated utilities. In this environment, more competition will mean lower rates for wholesale customers and, ultimately, for consumers.

The Commission's goal is to encourage lower electricity rates by structuring an orderly transition to competitive bulk power markets. Development of such markets is certain. The questions are when and how. Experience has shown that competitive pressures cannot be contained for long without serious economic distortions. Competition will, we are confident, result in lower rates. But experience has also shown that a measured transition from regulated to competitive markets is absolutely essential.

Moving to competitive generation markets will fundamentally change long-standing regulatory relationships. Utilities have invested billions of dollars in order to meet their obligations. Those investments have been made under a ''regulatory compact'' whereby utilities—and their shareholders—expect to recover prudently incurred costs. With the advent of competition, even prudent investments may become stranded. Reliance on past contractual and regulatory practices must be recognized and past investments must be protected to assure an orderly, fair transition to competition.

The focus of our proposal today is to facilitate competitive wholesale electric power markets. The key to competitive bulk power markets is opening up transmission services. Transmission is the vital link between sellers and buyers. To achieve the benefits of robust, competitive bulk power markets, all wholesale buyers and sellers must have equal access to the transmission

grid. Otherwise, efficient trades cannot take place and ratepayers will bear unnecessary costs. Thus, market power through control of transmission is the single greatest impediment to competition. Unquestionably, this market power is still being used today, or can be used, discriminatorily to block competition.

The Commission has an obligation to prevent unduly discriminatory practices in transmission access. In current circumstances, the absence of tariffs offering open access, non-discriminatory transmission services by each public utility impedes the transition to competitive markets greatly enough to be unduly discriminatory under section 206 of the Federal Power Act (FPA). Proceeding as we have in the past, case-by-case, would delay unreasonably the transition to competitive markets. A patchwork of transmission systems—some open and some not—would also lead to unfair practices and inequitable burdens.

At the same time, while fulfilling our duty under section 206 of the FPA to cure undue discrimination, we see no need now to abrogate existing contractual relationships. Rather, we propose to provide a transition to a competitive generation industry that allows for the recovery of legitimate, prudent and verifiable costs lawfully incurred to serve customers under the terms of existing contracts. In the context of today's electric industry, the goals of increased competition and lower bulk power rates are best pursued through a structured transition rather than through abrogating all existing contracts.

In short, at this crossroad for the industry, it is critical to take the regulatory steps now to facilitate the transition to competitive bulk power markets in an orderly manner. The most important of these steps are to ensure non-discriminatory access to the transmission grid for all wholesale buyers and sellers of electric energy in interstate commerce, and to address the transition costs associated with open transmission access. The Commission will take these steps in a manner consistent with maintaining the reliability of the interstate transmission grid.

In this proceeding, the Commission pursuant to its authority under sections 205 and 206:

- proposes to require all public utilities owning or controlling facilities used for transmitting electric energy in interstate commerce to file open access transmission tariffs;
- proposes to require the utilities to take transmission service (including ancillary services) for their own wholesale sales and purchases of electric energy under the open access tariffs;
- issues a supplemental proposed rule to permit the recovery of legitimate and verifiable stranded costs associated with requiring open access tariffs; and
- proposes regulations to implement the filing of the open access tariffs and the initial rates under these tariffs.

The open access tariffs—to be offered to all sellers and buyers of electric energy sold at wholesale in interstate commerce—must offer wholesale transmission services (network and point-to-point), including ancillary services, on a non-discriminatory basis to third parties.[1] In addition, the public utility must price separately all wholesale generation and transmission services (including ancillary services) and take wholesale transmission service under its own tariff, *i.e.*, ''functionally unbundle'' its wholesale generation and transmission services. The proposed rule does not mandate the corporate separation of generation, transmission, and distribution functions.

The proposed rule proposes *pro forma* tariffs for network and point-to-point services, defines non-discriminatory open access to include access to ancillary services, and requires that tariffs include a reciprocity provision requiring any user or agent of the user of the tariff that owns and/or controls transmission facilities to provide non-discriminatory access to the tariff provider.

To assure that the open access tariffs promote competition and do not operate in an unduly discriminatory manner, the proposed rule would require public utilities to provide all actual or potential transmission users the same access to information as the public utility enjoys. The Commission is proposing to develop industry-wide real-time information networks in a separate Notice of Technical Conference that is being issued concurrently with this proposed rule.[2]

Not all transmitting utilities are public utilities subject to the Commission's jurisdiction under section 206 of the FPA.[3] The Commission cannot pursuant to section 206 require non-public utilities to file open access tariffs . Therefore, the proposed rule would encourage the broad application of section 211 as an additional means of achieving the goal in the Energy Policy Act of 1992 of promoting increased wholesale competition. Without broader application of section 211, wholesale bulk power market participants could be denied access to more competitive generation sources to the detriment of consumers.

We presently do not find it necessary to use our authority under section 206 of the FPA to reform public utilities' existing requirements contracts or any other contracts to eliminate undue discrimination or attain more competitive bulk power markets. However, we seek information about existing requirements contracts, including the remaining life and notice provision in each such contract, and whether it would be in the public interest to modify any existing contracts.

The Commission believes that the open access requirement will eliminate the transmission market power of public utilities by ensuring that all participants in wholesale power markets will have non-discriminatory open access to the transmission systems of public utilities. This market power has been the Commission's primary concern in recent years in analyzing requests for market-based generation rates. We therefore seek comments on the effect of industry-wide non-discriminatory open access on the Commission's criteria for authorizing power sales at market-based rates.

The Commission's market-rate criteria also have included other aspects of market power, such as generation dominance. In particular, we note the Commission's recent *KCP&L* decision, in which we dropped the generation dominance standard for market-based sales from new capacity.[4] This rule proposes to codify that decision, and seeks comment on whether the generation dominance standard should also be dropped for market-based sales from existing capacity.

In issuing this proposed rule, we are particularly concerned with its possible effect on stranded costs. It is important

[1] Throughout this NOPR this requirement will be referred to as the ''non-discriminatory open access'' requirement.

[2] Notice of Technical Conference and Request for Comments, Docket No. RM95–9–000.

[3] Section 206 of the FPA applies to public utilities, whereas section 211 applies to transmitting utilities. A public utility is defined under section 201(e) of the FPA as ''any person who owns or operates facilities subject to the jurisdiction of the Commission under this Part (other than facilities subject to such jurisdiction solely by reason of sections 210, 211, or 212).'' A transmitting utility is defined under section 3(23) of the FPA as ''any electric utility, qualifying cogeneration facility, qualifying small power production facility, or Federal power marketing agency which owns or operates electric power transmission facilities which are used for the sale of electric energy at wholesale.'' Not all transmitting utilities are public utilities. For instance, a municipally-owned electric utility that owns transmission facilities that are used for the sale of electric energy at wholesale is a transmitting utility, but is not a public utility.

[4] See Kansas City Power & Light Company, 67 FERC ¶ 61,183 at 61,557 (1994) (*KCP&L*).

to couple our open access rule with a rule ensuring recovery of all legitimate transition costs, consistent with the guidelines established herein. Accordingly, we are making preliminary findings with respect to the Stranded Cost NOPR issued on June 29, 1994, seeking additional comments, and consolidating the Stranded Cost NOPR[5] with this proposed rule.

Because of the benefits associated with the transition to a competitive regime, it is important to have the open access tariffs in place as soon as possible. Thus, we propose a two-stage procedure to accomplish that goal. In Stage One, we would place generic open access tariffs in effect simultaneously on a date certain for every public utility that owns and/or controls transmission facilities[6] and would establish rates for each public utility based on the most current Form No. 1 data available. In Stage Two, utilities would be free to propose changes to the rates, terms, and conditions in the generic tariffs and customers and others would be free to file complaints seeking changes in the rates, terms, and conditions. However, Stage Two tariffs must contain at least the non-price tariff terms and conditions contained in the *pro forma* tariffs.

Comments of all interested persons should be filed pursuant to the procedures set out below.

II. Public Reporting Burden

A. Docket No. RM95–8–000

The proposed rule specifies filing requirements to be followed by public utilities in making non-discriminatory open access tariff filings. The information collection requirements of the proposed rule are attributable to FERC–516 ''Electric Rate Filings.'' The current total annual reporting burden for FERC–516 is 784,488 hours.

The proposed rule requires public utilities filing non-discriminatory open access tariffs to provide certain information to the Commission. The public reporting burden for the information collection requirements contained in the proposed rule is estimated to average 300 hours per response. This estimate includes time for reviewing the requirements of the Commission's regulations, searching existing data sources, gathering and maintaining the necessary data, completing and reviewing the collection of information, and filing the required information.

There are approximately 328 public utilities, including marketers and wholesale generation entities. The Commission estimates that approximately 137 of these utilities own or control facilities used for the transmission of electric energy in interstate commerce and will respond to the information collection. The respondents would be all public utilities required to file non-discriminatory open access tariffs. These are the public utilities that are also transmitting utilities and either file Form 715 or have it filed on their behalf. The information will be provided with each filing by a respondent. Accordingly, the public reporting burden is estimated to be 41,100 hours.

Send comments regarding this burden estimate or any other aspect of the Commission's collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415], and to the Office of Information and Regulatory Affairs of the Office of Management and Budget [Attention: Desk Officer for Federal Energy Regulatory Commission (202) 395–3087].

B. Docket No. RM94–7–001

The initially proposed rule would require public utilities seeking to recover stranded costs to provide certain information to the Commission. The Commission estimated that the public reporting burden for the information collection requirements contained in the initially proposed rule would be 50 hours per response. The Commission also estimated that there would be ten respondents to the information collection annually.

Under the proposed rule contained in this supplemental notice of proposed rulemaking, the information that public utilities will be required to file is not substantially different from that required by the initially proposed rule. The Commission also believes that the average filing burden and frequency of filing will be approximately the same as under the initially proposed rule. Therefore, the Commission estimates that there will be no additional public filing burden associated with the proposed rule.

Send comments regarding this burden estimate or any other aspect of the Commission's collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415], and to the Office of Information and Regulatory Affairs of the Office of Management and Budget [Attention: Desk Officer for Federal Energy Regulatory Commission (202) 395–3087].

III. Discussion

A. Summary of Authority and Findings

The primary purposes of the Federal Power Act are to curb abusive practices by public utility companies and to protect consumers from excessive rates and charges. To achieve these ends, section 205 of the FPA requires that no public utility shall ''make or grant any undue preference or advantage to any person or subject any person to any undue preference or disadvantage,'' with respect to the transmission of electric energy in interstate commerce or the sale for resale of electric energy in interstate commerce. [7] Section 206 of the FPA authorizes the Commission to investigate and remedy unduly discriminatory or preferential rules, regulations, practices or contracts affecting public utility rates for transmission in interstate commerce or for sales for resale in interstate commerce.

The significant technological, structural, statutory, and regulatory changes over the past twenty years have affected the electric utility industry such that competitive bulk power markets are now emerging. This transition has expanded what the Commission must consider to be undue discrimination in the rates, terms, and conditions offered by public utilities. We find that utilities owning or controlling transmission facilities possess substantial market power; that, as profit maximizing firms, they have and will continue to exercise that market power in order to maintain and increase market share, and will thus deny their wholesale customers access to competitively priced electric generation; and that these unduly discriminatory practices will deny consumers the substantial benefits of lower electricity prices. We propose to prevent this discrimination by requiring all public utilities owning and/or controlling transmission facilities to offer non-discriminatory open access transmission services.

At the same time, we see no need now to abrogate existing contractual relationships. Instead, contracts should

[5] See Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Notice of Proposed Rulemaking, 59 FR 35274 (July 11, 1994), IV FERC Stats. & Regs., Proposed Regulations ¶ 32,507 (Stranded Cost NOPR).

[6] Because power pools raise complex issues, we seek comments on how to implement the NOPR for power pools.

[7] 16 U.S.C. 824d(b) and 824(d).

be permitted to run their course. Additionally, we believe that recovery of legitimate stranded costs is critical to the successful transition of the electric utility industry from a tightly regulated, cost-of-service utility industry to an open access, competitively priced power industry.

The requirement of open access coupled with the recovery of legitimate stranded costs furthers the Congressional purposes embodied in the Federal Power Act and the Energy Policy Act of 1992 of protecting consumers, ensuring reasonable rates, and encouraging competition.

Below, we set out the Commission's legal authority to require non-discriminatory open access, the relevant historical developments in the electric industry, and the need for regulatory reform.[8]

B. Legal Authority

1. Undue Discrimination/ Anticompetitive Effects

The Commission has authority to remedy undue discrimination. That is clear. Some may argue that case law under the FPA limits our authority to order wheeling. We have carefully analyzed relevant cases examining our wheeling authority. We conclude that we have authority to require wheeling, or non-discriminatory open access, as a remedy for undue discrimination. Our analysis of the case law is set forth below.

In upholding the Commission's order requiring non-discriminatory open access in the natural gas industry, the court in *Associated Gas Distributors* v. *FERC* stated that the Natural Gas Act ''fairly bristles'' with concern for undue discrimination.[9] The same is true of the FPA. The Commission has a mandate under sections 205 and 206 of the FPA to ensure that, with respect to any transmission in interstate commerce or any sale of electric energy for resale in interstate commerce by a public utility, no person is subject to any undue prejudice or disadvantage. We must determine whether any rule, regulation, practice or contract affecting rates for such transmission or sale for resale is unduly discriminatory or preferential, and must prevent those contracts and practices that do not meet this standard. As discussed below, *AGD* demonstrates that our remedial power is very broad and includes the ability to order industry-wide non-discriminatory open access as a remedy for undue discrimination. Moreover, the Commission's power under the FPA ''clearly carries with it the responsibility to consider, in appropriate circumstances, the anticompetitive effects of regulated aspects of interstate utility operations pursuant to [FPA] sections 202 and 203, and under like directives contained in sections 205, 206, and 207.'' [10]

Based on the mandates of sections 205 and 206 of the FPA and the case law interpreting the Commission's authority over transmission in interstate commerce, we conclude that we have ample legal authority—indeed, a responsibility—under section 206 of the FPA to order the filing of non-discriminatory open access transmission tariffs if we find such order necessary as a remedy for undue discrimination or anticompetitive effects.[11] We discuss below the primary court decisions that touch on our wheeling authority under sections 205 and 206.

The Commission's authority to order access as a remedy for undue discrimination under the NGA was upheld and discussed in detail in *AGD.* In *AGD,* the court upheld in relevant part the Commission's Order No. 436.[12] That order found the prevailing natural gas company practices to be ''unduly discriminatory'' within the meaning of section 5 of the NGA (the parallel to section 206 of the FPA) and held that if pipelines wanted blanket certification for their transportation services, they must commit to transport gas for others on a non-discriminatory basis; in other words, they must provide non-discriminatory open access.

In upholding the Commission's authority to require open access, the court first noted that the opponents' arguments against such authority were ''uphill.'' The statute contains no language forbidding the Commission to impose common carrier status on pipelines, let alone forbidding the Commission to impose ''a specific duty that happens to be a typical or even core component of such status.'' The court found that the legislative history cited by the opponents came nowhere near overcoming this statutory silence. Rather, the legislative history supported only the proposition that Congress itself declined to impose common carrier status.[13] Emphasizing Congress' deep concern with undue discrimination, the court found that the Commission had ample authority to ''stamp out'' such discrimination:

> The issue seems to come down to this: Although Congress explicitly gave the Commission the power and the duty to achieve one of the prime goals of common carriage regulation (the eradication of undue discrimination), the Commission's attempted exercise of that power is invalid because Congress in 1906 and 1914 and 1935 and 1938 itself refrained from affixing common carrier status directly onto the pipelines and from authorizing the Commission to do so. And this proposition is said to control no matter how sound the Order may be as a response to the facts before the Commission. We think this turns statutory construction upside down, letting the failure to grant a general power prevail over the affirmative grant of a specific one.[14]

The *AGD* court found that court decisions under the FPA did not support the view that the Commission's authority to ''stamp out'' undue discrimination is hamstrung by an inability to require non-discriminatory open access as a remedy. These decisions are discussed below.

One of the earliest cases on wheeling is *Otter Tail Power Company* v. *United States (Otter Tail)*[15] That case was a civil antitrust suit against an electric utility. The Court rejected the argument that the District Court could not order wheeling because to do so would conflict with the Federal Power Commission's (FPC) purported wheeling authority.[16] It pointed out that Congress had decided not to impose a common carrier obligation on the electric power industry and noted that the Commission was not at that time granted power to order wheeling. The *Otter Tail* case, however, did not address whether the Commission can require transmission in fulfillment of its duty to remedy undue discrimination.

Richmond Power & Light Company v. *FERC* (*Richmond*)[17] also did not involve

[8] On February 16, 1995, the Coalition for a Competitive Electric Market filed a petition for a rulemaking on comparability. The Industrial Consumers and the Transmission Access Policy Study Group filed comments in support of the petition. The Commission will not separately notice the Coalition's petition, but seeks comment on that pleading, and the supporting pleadings, in this notice of proposed rulemaking.

[9] *Associated Gas Distributors* v. *FERC,* 824 F.2d 981, 998 (D.C.Cir. 1987), *cert. denied,* 485 U.S. 1006 (1988) (*AGD*).

[10] See *Gulf States Utilities Company* v. *FPC,* 411 U.S. 747, 758–59 (1973).

[11] In most situations, discrimination that precludes transmission access or gives inferior access will have at least potential anticompetitive effects because it limits access to generation markets and thereby limits competition in generation. Similarly, it is probable that any transmission provision that has anticompetitive effects would also be found to be unduly discriminatory or preferential because the anticompetitive provision would most likely favor the transmission owner *vis-a-vis* others.

[12] Order No. 436, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, III FERC Stats. & Regs., Regulations Preambles ¶ 30,665 (1985).

[13] *AGD, supra,* 824 F.2d at 997.

[14] *Id.* at 998.

[15] 410 U.S. 366 (1974).

[16] *Id.* at 375–76.

[17] 574 F.2d 610 (D.C. Cir. 1978).

requiring wheeling to remedy undue discrimination. In that case, the FPC, in reaction to the 1973 oil embargo, was attempting to reduce dependence on oil. The FPC requested that utilities with excess capacity wheel power to the New England Power Pool (NEPOOL). In response, several suppliers and transmission owners filed rate schedules with the FPC that provided for voluntary wheeling. Richmond Power & Light Company (Richmond) objected to these filings, claiming that they were unreasonable because they did not guarantee transmission access. The FPC refused to compel the utilities to wheel Richmond's power, stating that it did not have the authority to order a public utility to act as a common carrier.

The D.C. Circuit upheld the Commission. It acknowledged that Richmond's argument was persuasive in some respects, but stated that any conditions the Commission might impose could not contravene the FPA. The court examined the legislative history of the FPA and stated that ''[i]f Congress had intended that utilities could inadvertently bootstrap themselves into common-carrier status by filing rates for voluntary service, it would not have bothered to reject mandatory wheeling * * *.'' [18]

However, the D.C. Circuit in no way indicated that the Commission was foreclosed from ordering transmission as a remedy for undue discrimination. Richmond also had argued that the alleged refusal of the American Electric Power Company (AEP) and its affiliate, Indiana & Michigan Electric Company (Indiana), to wheel Richmond's excess energy was unlawful discrimination because AEP and Indiana wheeled higher-priced electricity from other AEP affiliates. The court acknowledged that Richmond's claim of unlawful discrimination was theoretically valid, but found that Richmond had failed to prove its case. It noted that if Richmond had argued that the rates were unjustifiably discriminatory, or that Indiana's failure to use its transmission capability fully or to purchase less expensive electricity for wheeling resulted in unnecessarily high rates, a different case would be before the court.[19] The case thus does not in any way limit the Commission's authority to remedy undue discrimination.

In *Central Iowa Power Cooperative* v. *FERC*,[20] the FPC [21] reviewed the terms of the Mid-Continent Area Power Pool (MAPP) Agreement under its section 205 and 206 authority. The agreement contained two membership limitations. First, the agreement established two classes of membership, with one class being entitled to more privileges than the other. Second, the agreement excluded non-generating distribution systems from pool services. The FPC found the first limitation on membership—the two-class system—to be unduly discriminatory and not reasonably related to MAPP's objectives. The FPC conditioned approval of the agreement under section 206 on the removal of the unduly discriminatory provision. The FPC found that the second limitation, the exclusion of non-generating distribution systems, was not anticompetitive and did not render the agreement inconsistent with the public interest.

On appeal, the D.C. Circuit affirmed the FPC's decision. The court found that the FPC did have authority to order changes in the scope of the MAPP agreement, *if* the agreement was unjust, unreasonable, unduly discriminatory or preferential under section 206 of the FPA. The court stated:

> The Commission had authority, * * * under section 206 of the Act, * * * to order changes in the limited scope of the Agreement, including the addition of pool services, if, in the absence of such modifications, the Agreement presented ''any rule, regulation, practice or contract [that was] unjust, unreasonable, unduly discriminatory or preferential.'' [22]

However, the court agreed with the FPC's conclusion that the limited scope of MAPP was not unjust, unreasonable, or unduly discriminatory. The court recognized that a pool was not invalid under section 206 merely because a more comprehensive arrangement was possible.

The D.C. Circuit upheld the Commission's refusal to eliminate the second limitation on membership by ordering MAPP participants to wheel to non-generating electric systems.[23] However, neither the Commission nor the court was presented with the argument that wheeling was necessary as a remedy for undue discrimination.

In *Florida Power & Light Company* v. *FERC* (*Florida*),[24] the Commission ordered Florida Power & Light Company (FP&L) to file a tariff setting forth FP&L's policy relating to the availability of transmission service.[25] FP&L objected to including such a policy statement in its tariff and argued that the filing of such a policy would convert FP&L into a common carrier by obligating it to offer service to all customers.[26] There was no finding that the action ordered was necessary to remedy undue discrimination.

The Fifth Circuit Court of Appeals agreed with FP&L that the mandatory filing of the policy statement would require FP&L to provide transmission service beyond its voluntary commitment because such a requirement would change its duties and liabilities.[27] The Commission order would impose common carrier status on FP&L, the court found.[28] The court noted that the Commission did not rely on a finding of anticompetitive behavior and therefore the court did not address the Commission's power to remedy antitrust violations.[29]

The *AGD* court explicitly rejected the claim that the above line of cases establishes that the Commission lacks authority to require non-discriminatory open access.[30] Opponents of the Commission's order argued in *AGD* that *Richmond* and *Florida, supra,* stand for the proposition that the Commission cannot indirectly do what it allegedly cannot do directly, that is, impose common carriage. The *AGD* court rejected these arguments, stating that

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[18] *Id.* at 620.

[19] *Id.* at 623, nn. 53 and 57.

[20] 606 F.2d 1156 (D.C. Cir. 1979).

[21] While *Central Iowa* was pending, certain of the functions of the FPC were transferred to the FERC under the DOE Organization Act. Accordingly, the FERC was substituted for the FPC as the respondent in the case.

[22] 606 F.2d at 1168.

[23] *Id.* at 1169; see also *Municipalities of Groton* v. *FERC*, 587 F.2d 1296 (D.C. Cir. 1978).

[24] 660 F.2d 668 (5th Cir. 1981), *cert. denied sub nom. Fort Pierce Utilities Authority* v. *FERC*, 459 U.S. 1156 (1983).

[25] FP&L provided transmission service when four conditions were met: (1) The specific potential seller and buyer were contractually identified; (2) the magnitude, time and duration of the transaction were specified prior to the commencement of the transmission; (3) it could be determined that the transmission capacity would be available for the term of the contract; and (4) the rate was sufficient to cover FP&L's costs.

[26] All utilities requesting wheeling services, subject to availability, would be entitled to receive transmission service under the filed terms. Any changes to a filed rate must be filed with the Commission. This is the so-called ''filed rate doctrine.'' See Northwestern Public Service Company v. Montana-Dakota Utilities Company, 181 F.2d 19, 22 (8th Cir. 1980), *aff'd,* 341 U.S. 246 (1951).

[27] Under the filed rate doctrine, a refusal to wheel would be unduly discriminatory under section 206 of the FPA. As the court acknowledged, a customer refused service could petition the Commission to find that FP&L's policy of availability was unduly discriminatory under section 206(a) of the FPA. The court said that in the absence of a tariff on file, a utility refused wheeling services would be unable to claim discrimination under section 206(a) of the FPA. 660 F.2d at 675 (expressing ''serious doubts that such a petition would be successful in the absence of a tariff'').

[28] *Id.* at 676.

[29] *Id.* at 678.

[30] The *AGD* court did not address *New York State Electric & Gas Corporation* v. *FERC*, 638 F.2d 388 (2d Cir. 1980), *cert. denied*, 454 U.S. 821 (1981) (*NYSEG*), presumably because that case did not concern whether the Commission could order wheeling as a remedy for undue discrimination.

the petitioners read the electric cases far too broadly:

> [n]either *Richmond* nor *Florida* comes anywhere near stating that the Commission is barred from imposing an open-access condition in all circumstances. [31]

The court noted that the *Florida* case had expressly left open the question of whether the Commission would be entitled to use an open access condition as a remedy for anticompetitive conduct, and that in *Richmond* the D.C. Circuit had said little more than that unwillingness to transmit for all could not be automatically deemed undue discrimination. The court also noted the *Central Iowa* case, *supra*, in which it had upheld a Commission order that found a power pooling agreement discriminatory on its face because the agreement gave one class of membership privileged status over another. The court stated that the *Central Iowa* case ''upholds the power of the Commission to subject approval of a set of voluntary transactions to a condition that providers open up the class of permissible users.'' [32] The court added that it refused to ''turn statutory construction upside down'' by letting Congress' failure to grant a general power of common carriage prevail over the affirmative grant of the specific power to eradicate undue discrimination.[33]

We conclude that *AGD*'s analysis of undue discrimination under sections 4 and 5 of the Natural Gas Act is equally applicable to an undue discrimination analysis under sections 205 and 206 of the FPA. The Commission and courts have long recognized that the NGA was patterned after the FPA and that the two statutes should be interpreted in the same manner.[34] Thus, we conclude that we have the authority to remedy undue discrimination and anticompetitive effects by requiring all public utilities that own and/or control transmission facilities to file non-discriminatory open access transmission tariffs.

2. Section 211 Services

In concluding that we must invoke our section 206 authority to remedy undue discrimination and anticompetitive actions in the electric industry, we have carefully considered the goals of Title VII of the Energy Policy Act, and whether section 211, by itself, is sufficient to remedy undue discrimination in public utility transmission services.[35] Title VII of the Energy Policy Act, which amended section 211 of the FPA, reflects the intent of Congress to encourage competitive wholesale electric markets. Section 211 provides a means for wholesale power sellers and buyers to obtain transmission services necessary to compete in, or to reach, competitive markets, and is a valuable tool to encourage competitive markets. However, as discussed below, reliance on section 211 alone in some circumstances can result in the perpetuation of, rather than the elimination of, undue discrimination and anticompetitive effects.

First, there are inherent delays in the procedures for obtaining service under section 211. However, for competitive reasons, many transactions must be negotiated relatively quickly. Many competitive opportunities will be lost by the time the Commission can issue a final order under section 211. While we interpret section 211 to permit a customer or group of customers to seek broad tariff-like arrangements,[36] case-by-case section 211 proceedings are not a substitute for tariffs of general applicability that permit timely, non-discriminatory access on request.

Second, discrimination is inherent in the current industry environment in which some customers and sellers are served by open access systems, and others have to rely on negotiated bilateral arrangements or the mandatory section 211 process. The end result is discrimination in the ability to obtain transmission services, as well as in the quality and prices of the services. This national patchwork of open and closed transmission systems cannot be cured effectively through section 211.

The Commission believes that its actions under sections 205 and 206 will complement the section 211 procedures in achieving the goals of creating more competitive bulk power markets and lower rates for consumers, while avoiding many years of costly and unnecessary litigation. Section 211 will be particularly important for developing non-discriminatory access by non-public utilities.

C. Background

1. Structure of the Electric Industry at Enactment of Federal Power Act

The Federal Power Act was enacted in an age of mostly self-sufficient, vertically integrated electric utilities, in which generation, transmission, and distribution facilities were owned by a single entity and sold as part of a bundled service (delivered electric energy) to wholesale and retail customers. Most electric utilities built their own power plants and transmission systems, entered into interconnection and coordination arrangements with neighboring utilities, and entered into long-term contracts to make wholesale requirements sales (bundled sales of generation and transmission) to municipal, cooperative, and other investor-owned utilities (IOUs) connected to each utility's transmission system. Each system covered limited service areas. This structure of separate systems arose naturally due primarily to the cost and technological limitations on the distance over which electricity could be transmitted.

Through much of the 1960s, utilities were able to avoid price increases, but still achieve increased profits, because of substantial increases in scale economies, technological improvements, and only moderate increases in input prices.[37] Thus, there was no pressure on regulatory commissions to use regulation to affect the structure of the industry.[38]

2. Significant Changes in the Electric Industry

In the late 1960s and throughout the 1970s, a number of significant events occurred in the electric industry that changed the perceptions of utilities and began a shift to a more competitive marketplace for wholesale power.[39] This was the beginning of periods of rapid inflation, higher nominal interest rates, and higher electricity rates.[40] During

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[31] 824 F.2d at 999.

[32] *Id.* at 999.

[33] *Id.* at 1006.

[34] *See, e.g., FPC* v. *Sierra Pacific Power Company*, 350 U.S. 348, 353 (1956); *Arkansas Louisiana Gas Company* v. *Hall*, 453 U.S. 571, 577 n.7 (1981); and *Kentucky Utilities Company* v. *FERC*, 760 F.2d 1321, 1325 n.6 (D.C. Cir. 1985). Section 206 of the FPA was recently revised and now differs from section 5 of the NGA, but not in a manner significant to our discussion here. See 16 U.S.C. 824e(b) and (c).

[35] In amending section 211 Congress left unaltered the authorities and obligations of the Commission under sections 205 and 206 (similar to our authorities and obligations under sections 4 and 5 of the Natural Gas Act) to remedy undue discrimination.

[36] See *El Paso Electric Company and Central and South West Services Inc.*, 68 FERC ¶ 61,181 at 61,916 (1994) (*CSW*), *reh'g pending.*

[37] Paul L. Joskow, Inflation and Environmental Concern: Structural Change in the Process of Public Utility Regulation, 17 J. Law & Econ. 291, 312 (1974); see also Charles F. Phillips, Jr., The Regulation of Public Utilities 11 (1988).

[38] See Joskow, *supra* note 37, at 312; see also Phillips, *supra* note 37, at 12.

[39] See Joskow, *supra* note 37, at 312; see also Phillips, *supra* note 37, at 12–13.

[40] See Joskow, *supra* note 37, at 312–13; see also Phillips, *supra* note 37, at 13. The Arab oil embargo resulted in significantly higher oil prices through the 1970s. See Richard J. Pierce, Jr., The Regulatory Treatment of Mistakes in Retrospect: Canceled Plants and Excess Capacity, 132 U. Pa. L. Rev. 497, 501 (1984).

this time, consumers became concerned about higher electricity rates and questioned any price increases filed by utilities.[41]

During this same time frame, the construction of nuclear and other capital-intensive baseload facilities—actively encouraged by federal and some state governments—contributed to the continuing cost increases and uncertainties in the industry.[42] These investments were made based on the assumptions that there would be steady increases in the demand for electricity and continued large increases in the price of oil.[43] However, due to conservation and economic downturns, the expected demand increases did not materialize. Load growth virtually disappeared in some areas, and many utilities unexpectedly found themselves with excess capacity.[44] In addition, by the 1980s, the oil cartel collapsed, with a resulting glut of low-priced oil.[45] At the same time, inflation substantially increased the costs of these large baseload generating plants.[46] Surging interest rates further increased the cost of the capital needed to finance and capitalize these projects and completion schedules were significantly extended by, in part, more stringent safety and environmental requirements.[47]

As a result, expensive large baseload plants came onto the market or were in the process of being constructed, for which there was little or no demand. Accordingly, between 1970 and 1985, average residential electricity prices more than tripled in nominal terms, and increased by 25% after adjusting for general inflation.[48] Moreover, average electricity prices for industrial customers more than quadrupled in nominal terms over the same period and increased 86% after adjusting for inflation.[49] The rapidly increasing rates for electric power during this period, together with the opportunities provided by the Public Utility Regulatory Policies Act of 1978 (PURPA) (discussed *infra*), also prompted some industrial customers to bypass utilities by constructing their own generation facilities. This further exacerbated rate increases for remaining customers—primarily residential and commercial customers.

Consumers responded to these ''rate shocks'' by exerting pressure on regulatory bodies to investigate the prudence of management decisions to build generating plants, especially when construction resulted in cost overruns, excess capacity, or both. Between 1985 and 1992, writeoffs of nuclear power plants totalled $22.4 billion.[50] These writeoffs significantly reduced the earnings of the affected utilities.[51] Delays in obtaining rate increases to reflect the effects of inflation further reduced investor returns. Thus, many utilities became reluctant to commit capital to long-term construction decisions involving large scale generating plants.[52]

In addition to economic changes in the industry, significant technological changes in both generation and transmission have occurred since 1935. Through the 1960s, bigger was cheaper in the generation sector and the industry was able to capitalize on economies of scale to produce power at lower per-unit costs from larger and larger plants.[53] As a result, large utility companies that could finance and manage construction projects of larger scale had a price advantage over smaller utility companies and customers who might otherwise have considered building their own generating units. Scale economies encouraged power generation by large vertically-integrated utility companies that also transmitted and distributed power. Beginning in the 1970s, however, additional economies of scale in generation were no longer being achieved.[54] A significant factor was that larger generation units were found to need relatively greater maintenance and experience longer downtimes.[55] The electric industry faced the situation ''where the price of each incremental unit of electric power exceeded the average cost.'' [56] Bigger was no longer better.

Further dictating against larger generation units were advances in technologies that allowed scale economies to be exploited by smaller size units, thereby allowing smaller new plants to be brought on line at costs below those of the large plants of the 1970s and earlier. Such new technologies include combined cycle units and conventional steam units that use circulating fluidized bed boilers.[57]

The combined cycle generating plants generally use natural gas as their primary fuel. This technology has been made possible by the development of more efficient gas turbines, shorter construction lead times, lower capital costs, increased reliability, and relatively minimal environmental impacts.[58] Similarly, the circulating fluidized bed combustion boilers, fueled by coal and other conventional fuels, provide a more efficient and less polluting resource.

Today, ''the optimum size [of generation plants] has shifted from [more than 500 MW] (10-year lead time) to smaller units (one-year lead time) [in the 50- to 150-MW range].'' [59]

Indeed, smaller and more efficient gas-fired combined-cycle generation facilities can produce power on the grid at a cost between 3 and 5 cents per

[41] See Joskow, *supra* note 37, at 313; see also Phillips, *supra* note 37, at 13.

[42] See generally *Jersey Central Power & Light Company* v. *FERC*, 810 F.2d 1168, 1171 (D.C. Cir. 1987).

[43] *Id.*

[44] See Pierce, *supra* note 40, at 503. By 1983, the Department of Energy had estimated that the sunk costs for canceled nuclear plants alone amounted to $10 billion. *Id.* at 498.

[45] *Id.*

[46] See Bernard S. Black & Richard J. Pierce, Jr., The Choice Between Markets and Central Planning in Regulating the U.S. Electricity Industry, 93 Col. L. Rev. 1339, 1346 (1993) (''Actual costs of nuclear power plants vastly exceeded estimates, sometimes by as much as 1000%.'').

[47] See Phillips, *supra* note 37, at 13. Fossil fuel-fired plants became subject to increased regulation as a result of the Clean Air Act of 1970, and its 1977 amendments. 42 U.S.C. 7401–7642. In 1971, nuclear plant licensing became subject to the environmental impact statement requirements of the National Environmental Policy Act of 1969. 42 U.S.C. 4332. Following the 1979 accident at the Three Mile Island nuclear plant, nuclear plants also became subject to additional safety regulations, resulting in higher costs. See Energy Information Administration, The Changing Structure of the Electric Power Industry 1970–1991 (March 1993) 35. Between 1976 and 1980, most states and many localities instituted laws governing power plant siting.

[48] Based on retail prices reported in Energy Information Administration (EIA), Monthly Energy Review, January 1995, Table 9.9 (Prices adjusted for inflation using the GDP Deflator (1987 = 100)).

[49] *Id.*

[50] See Black & Pierce, *supra* note 46, at 1346 (These writeoffs were ''about 17% of the book value of total 1992 utility investment.'').

[51] *Id.*

[52] *Id.* (''The high perceived risk of future disallowances reversed utilities' incentives to overinvest, and made utilities extremely reluctant to build new power plants.'').

[53] *See* Preston Michie, Billing Credits for Conservation, Renewable, and Other Electric Power Resources: an Alternative to Marginal-Cost-Based Power Rates in the Pacific Northwest, 13 Environmental Law 963, 964–65 (1983).

[54] *Id.* at 965.

[55] Energy Information Administration, The Changing Structure of the Electric Power Industry 1970–1991 (March 1993) 37 (''As larger units were constructed, however, utilities discovered that downtime was as much as 5 times greater for units larger than 600 megawatts than for units in the 100-megawatt range.'')

[56] *Id.*; see also George A. Perrault, Downsizing Generation: Utility Plans for the 1990s, Pub. Util. Fort. 15–16 (Sept. 27, 1990) (''The large base-load generating units that form the backbone of utility systems are almost totally absent from capacity plans for the 1990s.'').

[57] ''From 1982 through 1991, the average capacity of fluidized-bed units increased rapidly to 72 megawatts for 4 units in 1991. The average capacity for the 19 units planned to begin operating in 1992 through 1995 increases to 83 megawatts.'' Energy Information Administration, The Changing Structure of the Electric Power Industry 1970–1991 (March 1993) 38.

[58] See Charles E. Bayless, Less is More: Why Gas Turbines Will Transform Electric Utilities, Pub. Util. Fort. (Dec. 1, 1994) 21.

[59] *Id.* at 24.

kWh.[60] This is significantly less than the costs for large plants constructed and installed by utilities over the last decade, which were typically in the range of 4 to 7 cents per kWh for coal plants and 9 to 15 cents for nuclear plants.[61]

Significant changes have also occurred in the transmission sector of the industry. Technological advances in transmission have made possible the economic transmission of electric power over long distances at higher voltages.[62] This has made it technically feasible for utilities with lower cost generation sources to reach previously isolated systems where customers had been captive to higher cost generation. In addition, the nature and magnitude of coordination transactions[63] have changed dramatically since enactment of the FPA, allowing increased coordinated operations and reduced reserve margins. Substantial amounts of electricity now move between regions, as well as between utilities in the same region. Physically isolated systems have become a thing of the past.

3. The Public Utility Regulatory Policies Act and the Growth of Competition

In enacting PURPA,[64] Congress recognized that the rising costs and decreasing efficiencies of utility-owned generating facilities were increasing rates and harming the economy as a whole.[65] To lessen dependence on expensive foreign oil, avoid repetition of the 1977 natural gas shortage, and control consumer costs, Congress sought to encourage electric utilities to conserve oil and natural gas.[66] In particular, Congress sanctioned the development of alternative generation sources designated as ''qualifying facilities'' (QFs) as a means of reducing the demand for traditional fossil fuels.[67] PURPA required utilities to purchase power from QFs at a price not to exceed the utility's avoided costs and to sell backup power to QFs.[68]

PURPA specifically set forth limitations on who, and what, could qualify as QFs. In addition to technological and size criteria, PURPA set limits on who could own QFs.[69] Notwithstanding these limitations, QFs proliferated. In 1989, there were 576 QF facilities. By 1993, there were more than 1,200 such facilities.[70] For the same time period, installed QF capacity increased from 27,429 megawatts to 47,774 megawatts.[71] The rapid expansion and performance of the QF industry demonstrated that traditional, vertically integrated public utilities need not be the only sources of reliable power.

During this period, the profile of generation investment began to change, and a market for non-traditional power supply beyond the purchases required by PURPA began to emerge. QFs were limited to cogenerators and small power producers.[72] However, other non-traditional power producers who could not meet the QF criteria began to build new capacity to compete in bulk power markets, without such PURPA benefits as the mandatory purchase requirements. These producers, known as independent power producers (IPPs), were predominantly single-asset generation companies that did not own any transmission or distribution facilities. While traditional utilities were generally reluctant at that time to invest in new generating facilities under cost of service regulation, utilities increasingly became interested in participating in this new generation sector. They organized affiliated power producers (APPs), with assets not included in utility rate base, and sought to sell power in their own service territories and the territories of other utilities. At the same time, power marketers arose. These entities—owning no transmission or generation—buy and sell power.[73]

There were two major impediments to the development of IPPs and APPs. First, the ownership restrictions of the Public Utility Holding Company Act (PUHCA)[74] severely inhibited these new entities from entering the generation business.[75] Second, these entities needed transmission service in order to compete in electricity markets.

While the Commission had no authority to remove PUHCA restrictions,[76] it encouraged the development of IPPs and APPs, as well as emerging power marketers, by authorizing market-based rates for their power sales on a case-by-case basis and

[60] FERC staff calculations based in part on combined-cycle plant cost data reported in 1993 FERC Form No. 1 for a sample of units placed in service during 1990–92. Costs vary with regional fuel and construction costs, among other reasons.

[61] Coal and Nuclear plant cost data reported in 1993 FERC Form No. 1 and the EIA report, Electric Plant Cost and Power Production Expenses 1991, 1993 DOE/EIA–0455 (91), for plants placed in service during 1986–93; see also The 1994 Electric Executives' Forum, Bakke (President and CEO of the AES Corporation), Pub. Util. Fort. (June 1, 1994) 45 (''New generation can be built at about 3 cents per kilowatt-hour (U.S. average). Old generation costs about twice that * * *'').

[62] See Black & Pierce, *supra* note 46, at 1345 (In the late 1960s and 1970s, improved transmission efficiency and development of regional transmission networks ''made it possible to build power plants up to 1000 miles from power users.'').

[63] Coordination transactions are voluntary sales or exchanges of specialized electricity services that allow buyers to realize cost savings or reliability gains that are not attainable if they rely solely on their own resources. For sellers, these transactions provide opportunities to earn additional revenue, and to lower customer rates, from capacity that is temporarily excess to native load capacity requirements.

[64] Pub. L. 95–617, 92 Stat. 3117 (codified in U.S.C. sections 15, 16, 26, 30, 42, and 43).

[65] See generally *FERC* v. *Mississippi,* 456 U.S. 742, 745–46 (1982).

[66] The Power Plant and Industrial Fuel Use Act of 1978. Pub. L. 95–617, 92 Stat. 3117 (codified in U.S.C. sections 15, 16, 26, 30, 42, and 43).

[67] QFs include certain cogenerators and small power producers. PURPA also added sections 210, 211 and 212 to the FPA, providing the Commission with authority to approve applications for interconnections and, in limited circumstances, wheeling. However, under section 211, as enacted in PURPA, the Commission could approve an application for wheeling only if it found, *inter alia,* that the order ''would reasonably preserve existing competitive relationships.'' Because of this and other limitations in sections 211 and 212 as originally enacted, the provision was virtually ineffective. Only one section 211 order was ever issued pursuant to the original provision, and it was pursuant to a settlement. See Public Service Company of Oklahoma, 38 FERC ¶61,050 (1987). As discussed *infra,* section 211 was subsequently revised by the Energy Policy Act of 1992.

[68] 456 U.S. at 750. Congress recognized that encouragement was needed in part because utilities had been reluctant to purchase electric power from, and sell power to, nonutility generators. *Id.* at 750–51.

[69] For example, PURPA provided that a cogeneration facility or small power production facility could not be owned by a person primarily engaged in the generation or sale of electric power (other than from cogeneration or small power production facilities). See 16 U.S.C. 796 (17) and (18).

[70] Energy Information Administration, Electric Power Annual 1993 (December 1994) 124 (Table 77).

[71] *Id.* EIA data for 1989 through 1991 was for facilities of 5 megawatts or more and for 1992 and 1993 was for facilities of 1 megawatt or more. A comparison with Table 74 on page 121 for the years 1992 and 1993 reveals that this mixing of data bases is likely of minimal effect.

[72] Generally, the law has imposed an 80 MW cap on small power producers. A limited exception enacted in 1990 permitted small power facilities that could exceed 80 MW and still qualify as QFs under PURPA. This exception was limited to certain solar, wind, waste, and geothermal small power production facilities and only covered applications for certification of facilities as qualifying small power production facilities that were submitted no later than December 31, 1994 and for which construction commences no later than December 31, 1999. See Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990, Pub. L. 101–575, 104 Stat. 2834 (1990), *amended,* Pub. L. 102–46, 105 Stat. 249 (1991).

[73] The first power marketer in the electric industry was Citizens Energy Corporation. See Citizens Energy Corporation, 35 FERC ¶ 61,198 (1986). Power marketers take title to electric energy. Power brokers, on the other hand, do not take title and are limited to a matchmaking role.

[74] 15 U.S.C. 79 *et seq.*

[75] As discussed *infra,* Congress eventually provided a means to avoid the PUHCA restrictions by creating exempt wholesale generators (EWGs) in the Energy Policy Act.

[76] The industry was successful to some extent in developing ownership structures that permitted such investment. See, e.g., Commonwealth Atlantic Limited Partnership, 51 FERC ¶ 61,368 at 62,240 and n.20 (1990).

by encouraging more widely available transmission access. From 1989 through 1993, facilities owned by IPPs and other non-traditional generators (other than QFs) increased from 249 to 634 and their installed capacity increased from 9,216 megawatts to 13,004 megawatts.[77] Indeed, ''[i]n 1992, for the first time, generating capacity added by independent producers exceeded capacity added by utilities.'' [78]

Market-based rates helped to develop competitive bulk power markets. A generating utility allowed to sell its power at market-based rates could move more quickly to take advantage of short-term or even long-term market opportunities than those laboring under traditional cost-of-service tariffs, which entail procedural delays in achieving tariff approvals and changes.

In approving these market-based rates, the Commission required, inter alia, that the seller and any of its affiliates lack market power or mitigate any market power that they may have possessed.[79] The major concern of the Commission was whether the seller or its affiliates could limit competition and thereby drive up prices. A key inquiry became whether the seller or its affiliates owned or controlled transmission facilities in the relevant service area and therefore, by denying access or imposing discriminatory terms or conditions on transmission service, could foreclose other generators from competing.[80] As we have previously explained:

The most likely route to market power in today's electric utility industry lies through ownership or control of transmission facilities. Usually, the source of market power is dominant or exclusive ownership of the facilities. However, market power also may be gained without ownership. Contracts can confer the same rights of control. Entities with contractual control over transmission facilities can withhold supply and extract monopoly prices just as effectively as those who control facilities through ownership.[81]

As entry into wholesale power generation markets increased, the ability of customers to gain access to the transmission services necessary to reach competing suppliers became increasingly important.[82] In addition, beginning in the late 1980s, public utilities seeking Commission approval of mergers or consolidations under section 203 of the FPA or Commission authorization for blanket approval of market-based rates for generation services under section 205 of the FPA, filed ''open access'' transmission tariffs of general applicability to mitigate their market power to meet Commission conditions.[83] The Commission applied its market rate analysis to IOUs, as well as IPPs, APPs, and marketers, and allowed IOUs to sell at market-based rates only if they opened their transmission systems to competitors.[84] The Commission also approved proposed mergers on the condition that the merging companies remedy anticompetitive effects potentially caused by the merger by filing ''open access'' tariffs. These early ''open access'' tariffs required only that the companies provide point-to-point transmission services, which is a much narrower requirement than that being proposed in this rule. However, only 21 public utilities have any form of open access transmission; the vast majority of IOUs still do not provide any form of ''open access'' transmission over their transmission systems.

The economic and technological changes in the transmission and generation sectors helped give impetus to the many new entrants in the generating markets who could sell electric energy profitably with smaller scale technology at a lower price than many utilities selling from their existing generation facilities at rates reflecting cost. However, the advantages of these technological advances can be achieved only if more efficient generating plants can obtain access to the regional transmission grids. Because the traditional vertically integrated utilities still favor their own generation if and when they provide transmission access to third parties, barriers continue to exist to cheaper, more efficient generation sources.

4. The Energy Policy Act

In response to the competitive developments following PURPA, and the fact that PUHCA and lack of transmission access [85] remained major barriers to new generators, Congress enacted Title VII of the Energy Policy Act of 1992 (Energy Policy Act).[86] A goal of the Energy Policy Act was to promote greater competition in bulk power markets by encouraging new generation entrants, known as exempt wholesale generators (EWGs), and by expanding the Commission's authority under sections 211 and 212 of the FPA to approve applications for transmission services.[87]

An EWG is defined as

any person determined by the Federal Energy Regulatory Commission to be engaged directly, or indirectly through one or more affiliates as defined in [PUHCA] section 2(a)(11)(B), and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale.[88]

If the Commission, upon an application, determines that a person is an EWG, that person will be exempt from PUHCA.[89] This provision removed a significant impediment to the development of IPPs and APPs by

[77] Energy Information Administration, Electric Power Annual 1993 (December 1994) 124 (Table 77).

[78] Black & Pierce, supra note 46, at 1349 n.25. possessed.

[79] See, e.g., Ocean State Power, 44 FERC ¶ 61,261 (1988); Commonwealth Atlantic Limited Partnership, 51 FERC ¶ 61,368 (1990); Citizens Power & Light Company, 48 FERC ¶ 61,210 (1989); Orange and Rockland Utilities, Inc., 42 FERC ¶ 61,012 (1988); Doswell Limited Partnership, 50 FERC ¶ 61,251 (1990) (Doswell); and Dartmouth Power Associates Limited Partnership, 53 FERC ¶ 61,117 (1990).

[80] See, e.g., Doswell, 50 FERC at 61,757.

[81] Citizens Power & Light Corporation, 48 FERC ¶ 61,210 at 61,777 (1989) (emphasis in original); see also Utah Power & Light Company, PacifiCorp and PC/UP&L Merging Corporation, 45 FERC ¶ 61,095 at 61,287–89 (1988), *order on reh'g,* 47 FERC ¶ 61,209, *order on reh'g,* 48 FERC ¶ 61,035 (1989), *remanded in part sub nom. Environmental Action, Inc.* v. *FERC,* 939 F.2d 1057 (D.C. Cir. 1991), *order on remand,* 57 FERC ¶ 61,363 (1991).

[82] In earlier years, a few customers were able to obtain access as a result of litigation, beginning with the Supreme Court's decision in *Otter Tail,* 410 U.S. 366 (1973). Additionally, some customers gained access by virtue of Nuclear Regulatory Commission license conditions and voluntary preference power transmission arrangements associated with federal power marketing agencies. See, *e.g.,* Consumers Power Company, 6 NRC 887, 1036–44 (1977) and The Toledo Edison Company and Cleveland Electric Illuminating Company, 10 NRC 265, 327–34 (1979). See *Florida Municipal Power Agency* v. *Florida Power and Light Company,* 839 F. Supp. 1563 (M.D. Fla. 1993). See also Electricity Transmission: Realities, Theory and Policy Alternatives, The Transmission Task Force Report to the Commission, October 1989, 197.

[83] *See, e.g.,* Public Service Company of Colorado, 59 FERC ¶ 61,311 (1992), *reh'g denied,* 62 FERC ¶ 61,013 (1993); Utah Power & Light Company, *et al.,* Opinion No. 318, 45 FERC ¶ 61,095 (1988), *order on reh'g,* Opinion No. 318–A, 47 FERC ¶ 61,209 (1989), *order on reh'g,* Opinion No. 318–B, 48 FERC ¶ 61,035 (1989), *aff'd in relevant part sub nom. Environmental Action Inc.* v. *FERC,* 939 F.2d 1057 (D.C. Cir. 1991); Northeast Utilities Service Company (Public Service Company of New Hampshire), Opinion No. 364–A, 58 FERC ¶ 61,070, *reh'g denied,* Opinion No. 364–B, 59 FERC ¶ 61,042, *order granting motion to vacate and dismissing request for rehearing,* 59 FERC ¶ 61,089 (1992), *affirmed in relevant part sub nom. Northeast Utilities Service Company* v. *FERC,* 993 F.2d 937 (1st Cir. 1993).

[84] See, *e.g.,* Public Service of Indiana, Inc., 51 FERC ¶ 61,367 (1990), *reh'g denied,* 52 FERC ¶ 61,260 (1990), *appeal dismissed sub nom. Northern Indiana Public Service Company* v. *FERC,* 954 F.2d 736 (D.C.Cir. 1992).

[85] See infra sections III.D.1 and 2.

[86] Pub. L. 102–486, 106 Stat. 2776 (1992).

[87] See El Paso Electric Company and Central and South West Services Inc., 68 FERC ¶ 61,181 at 61,914 (1994); see also Paul Kemezis, FERC's Competitive Muscle: The Comparability Standard, Electrical World 45 (Jan. 1995) (''In EPAct, Congress made it clear that the electric-power industry was to move toward a fully competitive market system, but left most of the implementation to FERC.'').

[88] 15 U.S.C. 79z–5a.

[89] 15 U.S.C. 79z–5a(e).

allowing them to develop projects as EWGs free from the strictures of PUHCA or the QF PURPA limitations.

While sections 211 and 212, as enacted by PURPA, were intended to provide greater access to the transmission grid, the limitations placed on these sections made them unusable in most circumstances.[90] However, as amended by the Energy Policy Act, these sections now give the Commission broader authority to order transmitting utilities to provide wholesale transmission services, upon application, to any electric utility, Federal power marketing agency, or any other person generating electric energy for sale for resale.

The Energy Policy Act also added section 213 to the FPA. Section 213(a) requires a transmitting utility that does not agree to provide wholesale transmission service in accordance with a good faith request to provide a written explanation of its proposed rates, terms, and conditions and its analysis of any physical or other constraints.[91] Section 213(b) required the Commission to enact a rule requiring transmitting utilities to submit annual information concerning potentially available transmission capacity and known constraints.[92]

5. The Present Competitive Environment

Following the Energy Policy Act, the Commission established rules: (1) for certain generators to obtain EWG status and thus an exemption from PUHCA;[93] and (2) that required transmission information availability. The Commission also pursued a number of initiatives aimed at fostering the development of more competitive bulk power markets, including aggressive implementation of section 211, a new look at undue discrimination under the FPA, easing of market entry for sellers of generation from new facilities, and initiation of a number of industry-wide reforms. As stated by the Commission, in recognition of the Congressional goal in the Energy Policy Act of creating competitive bulk power markets:

> Our goal is to facilitate the development of competitively priced generation supply options, and to ensure that wholesale purchasers of electric energy can reach alternative power suppliers and vice versa.[94]

a. Use of Sections 211 and 212 to Obtain Transmission Access. The Commission has aggressively implemented sections 211 and 212 of the FPA, as amended by the Energy Policy Act, in order to promote competitive markets.[95] When wheeling requests under sections 211 and 212 have been made, the Commission has required wheeling in almost all of the requests it has processed. To date, the Commission has issued orders requiring wheeling in 9 of the 10 cases it has acted on, including 3 proposed orders and 6 final orders.[96]

As a general matter, section 211 has permitted some inroads to be made by customers in obtaining transmission service from public utilities that historically have declined to provide access to their systems, or have offered service only on a discriminatory basis. Under section 211, the Commission has granted requests for the broader type of service that most utilities historically have refused to provide—network service. Although transmission owners have provided limited amounts of unbundled point-to-point transmission service, third-party customers have not been able to obtain the flexibility of service that transmission owners enjoy.

In *Florida Municipal*, a section 211 case, the Commission ordered ''network,'' rather than the narrower ''point-to-point,'' service.[97] Network service permits the applicant to fully integrate load and resources on an instantaneous basis in a manner similar to the transmission owner's integration of its own load and resources. At the same time, the Commission made the generic finding that the availability of transmission service will enhance competition in the market for power supplies and lead to lower costs for consumers. The Commission explained that as long as the transmitting utility is fully and fairly compensated and there is no unreasonable impairment of reliability, transmission service is in the public interest.[98]

As discussed in more detail above, however, our preliminary conclusion is that section 211 alone is not enough to eliminate undue discrimination. The significant time delays involved in filing an individual service request for bilateral service under section 211 places the customer at a severe disadvantage compared to the transmission owner and can result in discriminatory treatment in the use of the transmission system. It is an inadequate procedural substitute for readily available service under a filed non-discriminatory open access tariff. As the Commission noted in *Hermiston Generating Company*, ''[t]he ability to spend time and resources litigating the rates, terms and conditions of transmission access is not equivalent to an enforceable voluntary offer to provide comparable service under known rates, terms and conditions.'' [99]

b. Commission's Comparability Standard. In the Spring of 1994, the Commission began to address the problem of the disparity in transmission service that utilities provided to third parties in comparison to their own uses of the transmission system. In the seminal case in this area, American Electric Power Service Corporation (*AEP*), the company voluntarily proposed a tariff of general applicability that would offer firm, point-to-point

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[90] See supra note 67.

[91] See Policy Statement Regarding Good Faith Requests for Transmission Services and Responses by Transmitting Utilities Under Sections 211(a) and 213(a) of the Federal Power Act, as Amended and Added by the Energy Policy Act of 1992, 58 FR 38964 (July 21, 1993), III FERC Stats. & Regs., Regulations Preambles ¶ 30,975 (1993) (Policy Statement Regarding Good Faith Requests for Transmission Services).

[92] See Order No. 558, New Reporting Requirements Implementing Section 213(b) of the Federal Power Act and Supporting Expanded Regulatory Responsibilities Under the Energy Policy Act of 1992, and Conforming and Other Changes to Form No. FERC–714, III FERC Stats. & Regs., Regulations Preambles ¶ 30,980, *reh'g denied*, Order No. 558–A, 65 FERC ¶ 61,324 (1993), *regulations modified*, 59 FR 15333 (April 1, 1994), III FERC Stats. & Regs., Regulations Preambles ¶ 30,993.

[93] See Order No. 550, Filing Requirements and Ministerial Procedures for Persons Seeking Exempt Wholesale Generator Status, 58 FR 8897 (February 18, 1993), III FERC Stats. & Regs., Regulations Preambles ¶ 30,964, *order on reh'g*, Order No. 550–A, 58 FR 21250 (April 20, 1993), III FERC Stats. & Regs., Regulations Preambles ¶ 30,969 (1993). As recognized by Congress and the Commission, availability of transmission information is critical in developing competitive markets. See *supra* notes 91 and 92. This opened the ''black box'' of information that previously was available only to transmission owners.

[94] See Stranded Cost NOPR at 32,866; American Electric Power Service Corporation, 67 FERC ¶ 61,168, *clarified*, 67 FERC ¶ 61,317 (1994).

[95] 16 U.S.C.A. 824j–824k (West 1985 and Supp. 1994).

[96] See, e.g., final orders issued in City of Bedford, 68 FERC ¶ 61,003 (1994), *reh'g pending; Florida Municipal Power Agency* v. *Florida Power & Light Company*, 67 FERC ¶ 61,167 (1994), *reh'g pending;* Minnesota Municipal Power Agency, 68 FERC ¶ 61,060 (1994); and Tex-La Electric Cooperative of Texas, 69 FERC ¶ 61,269 (1994); see also *supra* note 168.

[97] See *Florida Municipal Power Agency* v. *Florida Power & Light Company*, 65 FERC ¶ 61,125, *reh'g dismissed*, 65 FERC ¶ 61,372 (1993), *final order*, 67 FERC ¶ 61,167 (1994), *reh'g pending.* The Commission has ''characterized point-to-point service as involving designated points of entry into and exit from the transmitting utility's system, with a designated amount of transfer capability at each point.'' *El Paso Electric Company* v. *Southwestern Public Service Company*, 68 FERC ¶ 61,182 at 61,926 n.9 (1994) (citing Entergy Services, Inc., 58 FERC ¶ 61,234 at 61,768 (1993), *reh'g dismissed*, 68 FERC ¶ 61,399 (1994)). Network service allows more flexibility by allowing a transmission customer to use the entire transmission network to provide generation service for specified resources and specified loads without having to pay multiple charges for each resource-load pairing.

[98] *Florida Municipal*, 67 FERC at 61,477.

[99] 69 FERC ¶ 61,035 at 61,165 (1994), *reh'g pending; see also* Southwest Regional Transmission Association, 69 FERC ¶ 61,100 at 61,398 (1994) (SWRTA).

transmission service for a minimum of one month.[100] The Commission accepted the proposed transmission tariff for filing and suspended its effectiveness for one day, subject to refund.[101] Rehearing requests challenged the Commission's summary approval of the restriction of service to point-to-point as being discriminatory and anticompetitive.[102] The rehearing requests argued that the tariff should be expanded to include network services such as those used by the transmission owner. On rehearing, the Commission announced a new standard for evaluating claims of undue discrimination.

The Commission found that a voluntarily offered, new open access transmission tariff that did not provide for services comparable to those that the transmission owner provided itself was unduly discriminatory and anticompetitive.[103] In reaching that conclusion, the Commission broadened its undue discrimination analysis (which traditionally had focused on the rates, terms, and conditions faced by similarly situated third-party customers) to include a focus on the rates, terms, and conditions of a utility's own uses of the transmission system:

> [A]n open access tariff that is not unduly discriminatory or anticompetitive should offer third parties access on the same or comparable basis, and under the same or comparable terms and conditions, as the transmission provider's uses of its system.[104]

Refocusing the analysis was necessitated by the changing conditions in the electric utility industry, including the emergence of non-traditional suppliers and greater competition in bulk power markets. Because a transmission provider may use its system in different ways (*e.g.*, to integrate load and resources when serving retail native load, to make off-system sales or purchases, or to serve wholesale requirements customers), the Commission set for hearing the factual issues associated with identifying those uses, as well as any potential impediments or consequences to providing comparable services to third parties.[105]

After *AEP*, the Commission applied this comparability standard to a proposed open access transmission tariff that was filed by Kansas City Power & Light Company in support of a proposal to sell generation at market-based rates.[106] The Commission explained that, in light of *AEP*, the utility's proposed open access transmission tariff (which provided only for point-to-point service) did not adequately mitigate its transmission market power so as to justify allowing the requested market-based rates. KCP&L could charge market-based rates for sales only if it modified its proposed transmission tariff to reflect the *AEP* comparability standard.

Since then, the Commission has required comparable service in a variety of contexts, and has set for hearing the factual issues associated with comparable service. For example, the Commission found that market power can be adequately mitigated only if a merged company offers transmission services in accordance with the *AEP* comparability standard.[107] The Commission further held that, even if a merger does not result in an increase in market power, the merger would not be consistent with the public interest under section 203 of the FPA unless the merged company offers comparable transmission services, as defined in *AEP*.[108] The Commission therefore announced a transmission comparability requirement for all new mergers:

> Given the transition of the electric utility industry as a whole, we conclude that, absent other compelling public interest considerations, coordination in the public interest can best be secured only if merging utilities offer comparable transmission services.[109]

In *Heartland Energy Services, Inc.*,[110] the Commission applied its comparability standard to an affiliated electric power marketer seeking blanket authorization to sell electricity at market-based rates. The Commission explained that

> for all future cases involving blanket approval of market-based rates an offer of comparable transmission services will be required before the Commission will be able to find that transmission market power has been adequately mitigated. In the context of an affiliated power marketer, this means that all of its affiliated utilities must have a comparable transmission tariff on file.[111]

The Commission also denied a request by a company affiliated with a transmission-owning utility seeking permission to sell power at market-based rates to a particular customer. The denial was without prejudice to refiling such a request in a new section 205 proceeding, but only after the affiliated transmission-owning utility filed a comparable transmission service tariff.[112] The Commission added that it

> will require comparability in any situation in which a seller seeking market-based rates is affiliated with an owner or controller of transmission facilities.[113]

The Commission has also stated that ''it will henceforth apply the transmission comparability standard announced in the *AEP* case to all transmitting utility members of an RTG.'' [114] The Commission further declared that comparable services must be provided through ''open access'' tariffs rather than only on a contract-by-contract basis:

> [T]ariffs are essential to the provision of comparable services. Tariffs set out the services that are available and the terms and

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[100] 64 FERC ¶ 61,279 (1993), *reh'g granted*, 67 FERC ¶ 61,168, *clarified*, 67 FERC ¶ 61,317 (1994).

[101] The Commission explained that AEP could limit the service it was offering because it was ''providing the service voluntarily under a tariff of general applicability.'' 64 FERC at 62,978.

[102] *AEP*, 67 FERC at 61,489.

[103] With respect to anticompetitive effects, the Commission explained that it has ''adhered to the Supreme Court's determination that the Commission's 'important and broad regulatory power * * * carries with it the responsibility to consider, in appropriate circumstances, the anticompetitive effects of regulated aspects of interstate utility operations pursuant to sections 202 and 203, and under like directives contained in sections 205, 206 and 207.' *Gulf States Utilities Company* v. *FPC*, 411 U.S. 747, 758–59 (1972).'' *Id.* at 61,490 (footnote omitted). The Commission reaffirmed that it would examine how best to fulfill this responsibility, as well as its responsibility to prevent undue discrimination, in light of the changing conditions in the electric utility industry. *Id.*

[104] *Id.* at 61,490.

[105] *Id.* at 61,490–91.

[106] See *Kansas City Power & Light Company*, 67 FERC ¶ 61,183 (1994), *reh'g pending.*

[107] *E.g., CSW, supra* 68 FERC at 61,914.

[108] *Id.*

[109] *Id.* at 915 (footnote omitted).

[110] 68 FERC ¶ 61,223 (1994).

[111] *Id.* at 62,060. In InterCoast Power Marketing Company, 68 FERC ¶ 61,248, *clarified*, 68 FERC ¶ 61,324 (1994), the Commission rejected an affiliated marketer's proposal to sell at market rates without its affiliate utility offering comparable transmission services. The Commission stated that the only way to ensure that InterCoast does not have transmission market power is to require its affiliated public utility to offer comparable transmission services. See also LG&E Power Marketing Inc., 68 FERC ¶ 61,247 at 62,120–21 (1994). The Commission added that this is consistent with encouraging competitive bulk power markets as envisioned by the Energy Policy Act of 1992. *Id.* at 62,132.

[112] See *Hermiston Generating Company*, 69 FERC ¶ 61,035 at 61,164 (1994), *reh'g pending.* The Commission subsequently accepted the rates on a cost basis. See Letter Order dated November 10, 1994.

[113] *Id.* at 61,165.

[114] See *SWRTA*, 69 FERC at 61,397; *see also* PacifiCorp, the California Municipal Utilities Association, and the Independent Energy Producers (on behalf of Western Regional Transmission Association), 69 FERC ¶ 61,099, *order on reh'g*, 69 FERC ¶ 61,352 (1994) (*WRTA*). An RTG is a regional transmission group. It is defined as ''a voluntary organization of transmission owners, transmission users, and other entities interested in coordinating transmission planning (and expansion), operation and use on a regional (and inter-regional.'' Policy Statement Regarding Regional Transmission Groups, 58 FR 41626 (August 5, 1993), III FERC Stats. & Regs., Regulations Preambles ¶ 30,976 at 30,870 n.4 (RTG Policy Statement).

conditions under which those services will be made available * * *. [In contrast], a negotiation process creates uncertainty and imposes on customers delay and other transaction costs that the transmitting utility members of an RTG do not incur when using the transmission for their own benefit. Moreover, the ability to execute separate transmission agreements with different but similarly situated customers is the ability to unduly discriminate among them. A tariff ensures against such discrimination in the RTG.[115]

Thus, the Commission required the RTGs to amend their bylaws to commit all transmitting utility members to offer comparable transmission services to other RTG members pursuant to a transmission tariff or tariffs.

Most recently, the Commission has set for hearing whether transmission tariffs meet the *AEP* comparability standard in Commonwealth Edison Company,[116] Wisconsin Electric Power Company,[117] and Wisconsin Public Service Corporation.[118] In all three cases, the company agreed in principle to provide comparable service, but issues arose as to what constitutes such service.

c. *Lack of Market Power in New Generation.* In *KCP&L,* discussed in the prior section, the Commission continued to recognize that transmission remains a natural monopoly. However, it found that, in light of the industry and statutory changes that now allow ease of market entry, no wholesale seller of generation has market power in generation from new facilities.[119] In particular, the Commission explained that it had previously noted in *Entergy Services, Inc.* that

> there was significant evidence that non-traditional power project developers, including qualifying facilities and independent power projects, are becoming viable competitors in long-run markets. [120]

The Commission further explained that since *Entergy,* Congress had enacted the Energy Policy Act, which had lowered barriers to the entry of new suppliers by creating a new class of power suppliers—EWGs—that are exempt from the provisions of PUHCA.[121] The Commission concluded that, in considering market-based rate proposals for generation sales, it need only focus on market power in transmission, generation market power in short-run markets, and other barriers to entry.[122]

d. *Further Commission Action Addressing a More Competitive Electric Industry.* To address the fact that the electric industry is becoming more competitive, and to remove barriers that might inhibit a more competitive industry, the Commission has initiated a number of additional proceedings: (1) Stranded Cost Notice of Proposed Rulemaking,[123] (2) Transmission Pricing Policy Statement,[124] (3) Pooling Notice of Inquiry,[125] and (4) Regional Transmission Group (RTG) Policy Statement.[126]

In the Stranded Cost NOPR the Commission recognized that the trend toward greater transmission access and the transition to a fully competitive bulk power market could cause some utilities to incur stranded costs as wholesale requirements customers (or retail customers) use their supplier's transmission to purchase power elsewhere. As the Commission noted, a utility may have built facilities or entered into long-term fuel or purchased power supply contracts with the reasonable expectation that its customers would renew their contracts and would pay their share of long-term investments and other incurred costs. If the customer obtains another power supplier, the utility may have stranded costs. If the utility cannot locate an alternative buyer or somehow mitigate the stranded costs, the Commission explained that ''the costs must be recovered from either the departing customer or the remaining customers or borne by the utility's shareholders.'' [127] Accordingly, the Commission proposed to establish provisions concerning the recovery of wholesale and retail stranded costs by public utilities and transmitting utilities.[128]

In the Transmission Pricing Policy Statement, the Commission announced a new policy providing greater flexibility in the pricing of transmission services provided by public utilities and transmitting utilities. The Commission traditionally had allowed only postage-stamp, contract-path pricing.[129] Under the new policy, it will permit a variety of proposals, including distance sensitive and flow-based pricing,[130] which may be more suitable for competitive wholesale power markets. The Commission explained that this ''[g]reater pricing flexibility is appropriate in light of the significant competitive changes occurring in wholesale generation markets, and in light of our expanded wheeling authority under the Energy Policy Act of 1992.'' [131] However, the Commission explained that any new transmission pricing proposal must meet the Commission's AEP comparability standard. The Commission further explained that comparability of service applies to price as well as to terms and conditions.[132]

The Commission issued the Pooling Notice of Inquiry to receive comments on traditional power pools and on alternative power pooling institutions that are being explored in today's more competitive environment. The Commission expressed concern that

> [g]iven the ongoing changes in the competitive environment of the electric utility industry—in particular, the potential for substantially increased access to transmission—we must consider whether we

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[115] *SWRTA,* 69 FERC at 61,398.

[116] 70 FERC ¶ 61,204 (1995).

[117] 70 FERC ¶ 61,074 (1995).

[118] 70 FERC ¶ 61,075 (1995).

[119] KCP&L, 67 FERC ¶ 61,183 (1994).

[120] *Id.* at 61,557 (citing Entergy Services, Inc., 58 FERC ¶ 61,234 at 61,756 and nn.63 and 65 (*Entergy*)).

[121] *Id.* The Commission added that ''after examining generation dominance in many different cases over the years, we have yet to find an instance of generation dominance in long-run bulk power markets.'' *Id.*

[122] *Id.* In *KCP&L,* the Commission declined to dismiss the possibility of market power in generation associated with sales out of *existing* capacity. As noted, however, we here seek comments on whether, and if so under what conditions, to drop the generation dominance standard in short-run markets, *i.e.,* for sales from existing capacity.

[123] See supra note 5.

[124] See Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act, 59 FR 55031 (November 3, 1994), III FERC Stats. & Regs., Regulations Preambles ¶ 31,005 (Transmission Pricing Policy Statement).

[125] See Inquiry Concerning Alternative Power Pooling Institutions Under the Federal Power Act, 59 FR 54851 (October 26, 1994), IV FERC Stats. & Regs., Notices ¶ 35,529 (1995) (Pooling Notice of Inquiry).

[126] See Policy Statement Regarding Regional Transmission Groups, 58 FR 41626 (August 5, 1993), III FERC Stats. & Regs., Regulations Preambles ¶ 30,976 (RTG Policy Statement).

[127] Stranded Cost NOPR at 32,864.

[128] The Commission herein is making preliminary findings on stranded costs and issuing a supplemental Stranded Cost NOPR, seeking comments on the impact of our proposed open access NOPR on stranded costs.

[129] Most transmission contracts set a single price for energy flow over a utility's transmission system. This single-price policy is called ''postage stamp'' pricing because the rate does not depend on how far the power moves within a company's transmission system. If power flows through several companies, traditional industry practice is to specify that power flows along a ''contract path'' consisting of the transmission-owning utilities between the ultimate receipt and delivery points. See *infra* discussion of Indiana Michigan Power Company, 64 FERC ¶ 61,184.

[130] Unlike with postage stamp pricing, with distance-sensitive pricing the cost of moving power through a company depends on how far the power moves within the company. In contrast to contract path pricing, flow-based pricing establishes a price based on the costs of the various parallel paths actually used when the power flows. Because flow-based pricing can account for all parallel paths used by the transaction, all transmission owners with facilities on any of the parallel paths would be compensated for the transaction.

[131] Transmission Pricing Policy Statement at 31,136.

[132] *Id.* at 31,142.

are appropriately balancing our dual objectives of promoting coordination and competition.[133]

Accordingly, the Commission explained that it wished to look at alternative power pooling institutions and to re-examine the role of more traditional power pools in today's environment of increased competition. In particular the Commission expressed its intent to ensure that its policies ''are consistent with the development of a competitive bulk power market.'' [134]

In the RTG Policy Statement, the Commission announced a policy encouraging the development of RTGs. The Commission explained that a primary purpose of RTGs is to facilitate transmission access for potential users and voluntarily resolve disputes over such service. The Commission has recently conditionally approved the formation of two RTGs.[135] One of the conditions is that each RTG member must offer comparable transmission services by tariff to other RTG members.

In addition to the Commission's actions, a number of states have initiated proceedings concerning retail wheeling or proposed legislation for retail wheeling, that is, for ultimate consumers to choose their supplier of power.[136]

D. Need for Reform

The many changes discussed above have converged to create a situation in which new generating capacity can be built and operated at prices substantially lower than many utilities' embedded costs of generation. As discussed above, new generation facilities can produce power on the grid at a cost of 3 to 5 cents per kWh, yet the costs for large plants constructed and installed over the last decade were typically in the range of 4 to 7 cents per kWh for coal plants and 9 to 15 cents for nuclear plants. Non-traditional generators are taking advantage of this opportunity to compete. Indeed, the non-traditional generators' share of total U.S. electricity generation increased from 4 percent in 1985 to 10 percent in 1993.[137] Much of this increased share of generation is the result of competitive bidding for new generation resources that has occurred in 37 states. Since 1984, almost 4,000 projects, representing over 400,000 MW, have been offered in response to requests. Over 350 projects have been selected to supply 20,000 MW, and, of these, 126 are now online producing almost 7,800 MW of power.[138] In addition, the cost of utility-generated electricity differs widely across the major regions of the United States. Average utility rates range from 3 to 5 cents in the Northwest to 9 to 11 cents in California.[139] Electricity consumers are demanding access to lower cost supplies available in other regions of the United States, and access to the newer, lower cost generation resources. It is also important that the non-traditional generators of cheaper power be able to gain access to the transmission grid on a non-discriminatory open access basis.

The Commission's goal is to ensure that customers have the benefits of competitively priced generation. However, we must do so without abandoning our traditional obligation to ensure that utilities have a fair opportunity to recover prudently incurred costs and that they maintain power supply reliability. As well, the benefits of competition should not come at the expense of other customers. The Commission believes that requiring utilities to provide non-discriminatory open access transmission tariffs, while simultaneously resolving the extremely difficult issue of recovery of transition costs (discussed infra), is the key to reconciling these competing demands.

Non-discriminatory open access to transmission services is critical to the full development of competitive wholesale generation markets and the lower consumer prices achievable through such competition.[140] Transmitting utilities own the transportation system over which bulk power competition occurs and transmission service continues to be a natural monopoly. Denials of access (whether they are blatant or subtle), and the potential for future denials of access, require the Commission to revisit and reform its regulation of transmission in interstate commerce. Such action is required by the FPA's mandate that the Commission remedy undue discrimination.

1. Market Power

Unlike new generating capacity (*see* prior discussion of *KCP&L*), transmission remains and is expected to remain a natural monopoly. The Commission has addressed the natural monopoly character of transmission in the major cases summarized above and in the Commission's recent Transmission Pricing Policy Statement. The monopoly characteristic exists in part because entry into the transmission market is restricted or difficult.[141] In addition, as unit costs are less for larger lines and networks, transmission facilities still exhibit scale economies. From an economic, environmental, and aesthetic viewpoint, it is often better for a single owner (or group of owners) to build a single large transmission line rather than for many transmission owners to build smaller parallel lines on a non-coordinated basis.

Further, effective competition among owners of parallel transmission lines is unlikely, and often impossible, with existing practices and technology. For example, on an alternating current (AC) electric system, electricity flows on parallel paths based on the impedance of each path. With two electric systems providing parallel contract paths, a share of the actual power flows would occur on each system according to the physical characteristics of the system. Thus, each of the two transmission service providers would have the incentive to underbid the other because the winner would receive all of the transmission revenues, but only incur a fraction of the costs. The loser, on the other hand, would incur the remaining costs, but would receive no revenues.

In today's electric industry, which is dominated by vertically integrated utilities, an owner or controller of transmission service can exclude generation competitors from the market, thereby favoring the transmission

[133] Pooling Notice of Inquiry at 35,715.

[134] *Id.* at 35,714.

[135] *See WRTA* and *SWRTA, supra.*

[136] The Energy Information Administration recently indicated that at least nine states—California, Connecticut, Illinois, Michigan, Nevada, Ohio, Texas, Utah, and Vermont have proposals or legislation for retail wheeling. EIA, Performance Issues for a Changing Electricity Power Industry, January 1995 19–22. Most prominent among the recent state proposals are the California Public Utility Commission's ''Blue Book'' proposal (Order Instituting Rulemaking on the Commission's Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation, R. 94–04–031; Order Instituting Investigation on the Commission's Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation, I. 94–04–032) and the Michigan Public Service Commission's proposal (Interim Order on Experimental Retail Wheeling Program, Case No. U–10143/U–10176 (April 11, 1994)).

[137] Energy Information Administration, Performance Issues for a Changing Electric Power Industry (January 1995) 10 and (Figure 5).

[138] Current Competition, November 1994, Vol. 5, No. 8, at 8.

[139] See map attached as Appendix A. This Appendix will not appear in the **Federal Register**.

[140] As discussed above, only a minimal number of public utilities have any form of an ''open access'' tariff on file with the Commission and no public utility has on file a non-discriminatory open access tariff as defined by this rule.

[141] An example of this is that, except in the limited case of licensed hydroelectric projects under Part I of the FPA, there is no Federal right of eminent domain available to assist in acquiring rights of way for new transmission lines. In addition, the regulatory requirements to build a transmission line vary from state to state. In all states, siting new transmission lines is getting harder.

owner's own generation. This can occur through outright denial of transmission access, or, as is more likely, through access that is discriminatory as to rates, terms or conditions of service.[142] Thus, in the absence of non-discriminatory open access tariffs, the development of fully competitive bulk power markets cannot occur, and consumers will be deprived of the benefits that would be expected from such a competitive market.

2. Discriminatory Access

Some transmission-owning utilities have voluntarily begun to offer unbundled transmission tariff services to third-party suppliers and purchasers of wholesale power, though none have done so to the extent proposed by this proposed rule.[143] However, because utilities are naturally profit maximizers and monopoly suppliers to their native load, the vast majority of transmission-owning utilities have not agreed to give up their market power voluntarily. Transmission-owning utilities have an incentive to deny access either by not filing any open access tariff or by filing a tariff that offers services inferior to those used by the transmission owner. This is particularly true for those utilities that emerged from the recent decades of technological and legal changes as high-cost generation companies. Open access transmission places their existing generation at risk because their wholesale customers may seek alternative lower price suppliers. It is in their self-interest to maintain and use market power to retain (or expand) market share for their existing generation facilities, at least until they can get their generation costs in line with current market prices. Because generating units are usually depreciated over a 30- to 50-year physical life, many high cost companies may attempt to exercise transmission market power for decades to preserve the value of past generation investments.

Unless all public utilities are required to provide non-discriminatory open access transmission, the ability to achieve full wholesale power competition, and resulting consumer benefits, will be jeopardized. If utilities are allowed to discriminate in favor of their own generation resources at the expense of providing access to others' lower cost generation resources by not providing open access on fair terms, the transmission grid will be a patchwork of open access transmission systems, systems with bilaterally negotiated arrangements, and systems with transmission ordered under section 211. Under such a patchwork of transmission systems, sellers will not have access to transmission on an equal basis, and some sellers will benefit at the expense of others. The ultimate loser in such a regime is the consumer.

A patchwork of transmission systems will also result in inefficiencies across the Nation's transmission grids. Because of the physical properties of the transmission system, electric power moves over parallel transmission lines from generator to load, without regard to whether a line is part of a system providing open access or not.[144] However, today the industry develops transmission contracts as if power flowed along one series of lines belonging to specific owners, which is called the ''contract path.'' Thus, transmission users will search for contract paths through open access systems to take advantage of the non-discriminatory open access tariffs. Because open access transmission tariffs include an obligation to expand when necessary to accommodate third-party requirements for service, transmitting companies offering open access services across their systems could end up constructing a disproportionate share of new transmission facilities.

Expansion cannot be efficient under such a patchwork of open access transmission systems. Not only would this misallocate cost burdens to open access companies, but it is unlikely that the optimal transmission development will always be within their service territories. Expansion on closed systems, instead of open systems, may in some cases be the more efficient way to relieve constraints. Thus, a patchwork of open access systems will not result in the least cost expansion of the Nation's transmission grids. In addition, states with open access utilities may refuse to site new lines if their closed access neighbors are not doing their share.[145]

A discriminatory, patchwork system also works against pricing parallel power flows on a sensible regional basis. The formation of effective regional transmission groups, which the Commission strongly encourages, would be fostered if all utilities in a region offered non-discriminatory open access.[146] In fact, optimal cooperative regional action would involve all transmission systems in the region offering non-discriminatory open access to all wholesale customers.

A transmission-owning utility may deny access to third parties not only to avoid losing its own generation sales, but also to maintain other trading gains. For example, a company can buy low cost power for its own use from a neighbor at a low price if other buyers cannot reach that neighbor to bid up the price. Furthermore, if it does not need the energy, it can market that power by buying low and selling high.

In the past, transmission-owning utilities have discriminated against others seeking transmission access. Transmission-owning utilities have denied access by outright refusals to deal. While such actions tend to be rare, likely because transmission owners fear they may trigger antitrust action,[147] they have occurred.[148] More often, however, discrimination is likely to be manifested more subtly and indirectly.[149] One such

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[142] See, *e.g.*, David W. Penn, A Municipal Perspective on Electric Transmission Access Questions, Pub. Util. Fort. 18–19 (Feb. 6, 1986).

[143] The majority have offered only point-to-point services. However, a few utilities have sought to comply with the non-discrimination (comparability) standard announced in *AEP*. For example, Kansas City Power & Light Company (KCP&L) and Louisville Gas & Electric Company (LG&E) recently filed settlements to this effect. KCP&L, Docket No. ER94–1045 (settlement filed February 14, 1995) and *LG&E*, Docket No. ER94–1380 (settlement filed February 10, 1995).

[144] In Indiana Michigan Power Company, 64 FERC ¶ 61,184 (1993), the Commission explained loop flows and parallel power flows:

> In general, utilities transact with one another based on a contract path concept. For pricing purposes, parties assume that power flows are confined to a specified sequence of interconnected utilities that are located on a designated contract path. However, in reality power flows are rarely confined to a designated contract path. Rather, power flows over multiple parallel paths that may be owned by several utilities that are not on the contract path. The actual power flow is controlled by the laws of physics which cause power being transmitted from one utility to another to travel along multiple parallel paths and divide itself among those paths along the lines of least resistance. This parallel path flow is sometimes called ''loop flow.''

Id. at 62,545.

[145] The Commission partially addressed this concern by allowing reciprocity provisions in open access transmission tariffs. See, *e.g.*, Southwestern Electric Power Company and Public Service Company of Oklahoma, 65 FERC ¶ 61,212 at 61,981–82 (1993), *order on reh'g*, 66 FERC ¶ 61,099 (1994).

[146] While the Commission has conditioned its approval of RTGs to achieve this same result, the formation of RTGs is voluntary. By contrast, compliance with the final rules adopted in this proceeding will be required.

[147] See, *e.g.*, Penn, *supra* note 142, at 18.

[148] Otter Tail Power Company refused to wheel power for the village of Elbow Lake. The Supreme Court ultimately ruled against Otter Tail on antitrust grounds. Otter Tail Power Company, 410 U.S. 366 (1974). The Commission has also found that Utah Power & Light Company consistently refused to permit the wheeling of low-cost power across its system in order to use its strategically located bottleneck transmission system to extract monopoly prices. Utah Power & Light Company, *supra*, 45 FERC at 61,287 and n.137 (1988).

[149] See, *e.g.*, Penn, *supra* note 142, at 18–19 (discussion of methods used to deny access). Penn also noted in his 1986 article that the American Public Power Association had conducted a survey of its members in which about 25% indicated a

way would be for transmission owners to adopt a negotiating strategy that involves a sequence of informational and other requirements over a protracted period of time. By the time all of the requirements are finally satisfied, the window for the customer's trade opportunity has closed.[150] Another way of frustrating access is to substantially change the terms of negotiated agreements through protracted delay, including filings with regulatory agencies.[151]

Another way for transmission-owning utilities to frustrate access and competition is to allow access, but only on non-comparable or unsupportable terms and conditions that are inferior to the conditions under which the transmission owners themselves use or could use the transmission grid or on terms and conditions that have no operational or financial basis. Discrimination can be exercised this way in the following areas:

(1) *Network Service.* Network service allows a transmission customer to distribute a given amount of transmission usage between specified resources and specified loads without having to pay multiple charges for each resource-load pairing. Transmission owners can refuse to provide service on these terms and instead insist on charges that are a function of the number of resource load pairings.[152] This can dramatically increase the cost of such service. Such treatment does not reflect the way transmission owners' costs are allocated to their own native load customers.

(2) *Pricing.* Transmission service can be made unattractive to third-party customers by pricing such service on a basis that is different from that used by the transmission owner and that results in higher rates. One example would be charging third-party customers distance-sensitive rates, while pricing all similar transmission bundled with power services on a postage stamp basis.[153]

(3) *Service Priority.* The priority of transmission service is a critical service factor. The transmission provider could disadvantage third-party transmission customers by making firm transmission service to them subordinate to the transmission utility's native load service.[154]

(4) *Scheduling and Balancing Provisions.* A transmission owner could hold transmission customers to unnecessarily long lead times to change power schedules. In some cases, scheduling could be required as much as a month ahead of time.[155] This precludes transmission customers from using their service for short-term trading. Transmitting utilities may also insist that customers keep strict adherence to scheduling and balancing provisions by requiring them to get back on schedule quickly or face stiff penalties.[156] One example of a stiff penalty for failure to schedule sufficient power would be to assess shortfalls based on a partial requirements rate with an 11-month ratchet.[157] In contrast, transmitting utilities may have access to less costly balancing alternatives, such as substituting resources without notice or borrowing capacity from neighboring utilities and settling the imbalance by returning energy in-kind within a much longer time period than allowed to customers.[158]

(5) *Use of Firm Transmission Capacity.* Transmission owners can unnecessarily restrict the firm transmission capacity made available to transmission customers. One way to restrict service would be to prohibit the customer from reassigning such capacity when it is not needed.[159] This restricts the customer's ability to manage the risk of long-term capacity purchases and to compete as a seller in the transmission service market. Another example would be that the transmission owner could restrict a customer's use of transmission capacity by allowing sales only from the customer's generating resources that are temporarily in excess of actual load needs.[160] Transmission owners do not face these restrictions in their own use of transmission capacity.

(6) *Ancillary Services.* A transmitting utility may offer to a transmission customer ancillary services (e.g., scheduling) that are inferior to the services it provides for itself. Transmission owners may be free to choose whether to supply some of these services to themselves or contract for them if available more cheaply elsewhere.[161] Third-party transmission customers do not always have this option on a comparable basis.

(7) *Creditworthiness and Security Deposits.* Customers are sometimes required to make onerous deposits in order to obtain service.[162]

(8) *Reciprocity Double Payments.* Transmission agreements often require reciprocity. Non-transmission owners could be required to contract with, and pay, third-party transmitting utilities to provide the required reciprocal service.[163] Transmission owners do not face such obstacles in using their own systems.

Finally, an additional way for transmission-owning utilities to frustrate access and competition is by granting each other superior rights and lower rates—compared to those available to non-transmission owning customers—in pools, interconnection agreements, and other protocols.[164] For example, pool-wide transmission service can be made available to members at rates less than those that each member would separately propose under traditional rate methods. This could disadvantage non-transmission owners if pool membership is restricted or if it requires excessive or vaguely stated transmission contributions that could be difficult to meet.[165]

Section 211 is not always a sufficient remedy for this discriminatory behavior. Third parties may seek non-discriminatory transmission under section 211, but they will not be able to compete if the sale or purchase

problem in securing transmission in effecting coordination services and about an equal amount had reported being denied transmission access in the recent past. *Id.* at 18. See also Pacific Gas & Electric Company, 51 FPC 1030, 1031–32, *reh'g denied,* 51 FPC 1543 (1974) (parties alleged that public utility proposed ''a wholesale rate so high that its wholesale customers would be unable to compete with PG&E for large industrial retail loads'' and entered into restrictive and anticompetitive contracts that strengthened public utility's monopoly).

[150] Members of the Coalition for a Competitive Electricity Market alleged that they have encountered this strategy. Coalition Petition at 13, n.19.

[151] An example of this tactic is evident in the history of Pacific Gas and Electric Company's (PG&E) attempt to avoid its commitments made to the California owners of the California-Oregon Transmission Project (COTP). The owners had originally planned the COTP to have its southern terminus at the Midway station with Southern California Edison. PG&E convinced them to terminate the project instead at PG&E's Tesla station and indicated that PG&E would provide transmission service the rest of the way south to Midway. PG&E promised this service in 1989 (in what came to be known as the South of Tesla Principles). PG&E spent the next four years filing substitute provisions for what it had promised in the Principles. See Pacific Gas and Electric Company, 65 FERC ¶ 61,312 at 62,428–30 and n.22, *remanded on other grounds*, Pacific Gas & Electric Company v. FERC, No. 94–70037 (9th Cir. June 23, 1994) (unpublished opinion), *order on remand*, 69 FERC ¶ 61,006 (1994).

[152] See Pacific Gas and Electric Company, 52 FERC ¶ 61,347 at 62,375–76 (1990) (proposal to charge a base demand and a flexibility adder for an integrating transmission service). PG&E eventually withdrew the proposal. 56 FERC ¶ 61,373 at 62,429 (1991); see also Florida Municipal Power Agency v. Florida Power & Light Company, 65 FERC ¶ 61,125 (1993) (Federal Municipal Power Agency requested a section 211 order directing network service); Tex-La Electric Cooperative of Texas, 67 FERC ¶ 61,019 at 61,057 (1994) (Tex-La requested a section 211 order directing network service).

[153] See notes 129 and 130, *supra*; see also *Tex-La Electric Cooperative of Texas*, 69 FERC ¶ 61,269 at 62,034–35 (1994), in which the Commission found this practice to be unduly discriminatory.

[154] See AEP, 64 FERC at 62,971–72.

[155] Id.

[156] See Coalition Petition at 20–21.

[157] See Borough of Zelienople, 70 FERC ¶ 61,073 at 61,184 (1995) (load exceeding schedule by 1 MW would be filled at a partial requirements rate using a 60% demand ratchet for 11 months, i.e., 1 MW times 60% times $9.30 per kW times 11, for a total of $61,380).

[158] See Coalition Petition at 20–21.

[159] See, *e.g.*, Pacific Gas and Electric Company, 53 FERC ¶ 61,145 at 61,505 (1990) (utility proposed a reassignment prohibition on the use of Reserve Transmission Service available to the Sacramento Municipal Utility District under a proposed Interconnection Agreement).

[160] *Id.* at 61,504–05 (utility proposed an export restriction on the use of Reserve Transmission Service available to the Sacramento Municipal Utility District under a proposed Interconnection Agreement).

[161] See Coalition Petition at 28–29 and 32.

[162] For example, it is reported that one customer was told that a $13 million line of credit would be required to ensure creditworthiness for a request of only one MW of transmission capacity for a coordination trade. See Coalition Petition at 30.

[163] See Coalition Petition at 25; see also AES Power, Inc., 69 FERC ¶ 61,345 at 62,295 and 62,301 (1994) (*AES*).

[164] See Coalition Petition at 13–14.

[165] See Mid-Continent Area Power Pool, 69 FERC ¶ 61,347 at 62,308 (1994).

opportunity is gone before a final order can be obtained under section 211. This could be the case in many situations because of the procedural requirements of sections 211 and 212.[166] Indeed, to date, the Commission has received eighteen section 211 transmission requests,[167–168] which it has tried to process expeditiously within the procedural constraints contained in sections 211 and 212. As to the seven requests that have received a final order, the average elapsed time from date of filing to the date of a final order was 9 months. The remaining ten requests have been pending, on average, more than 6 months.

The following sets forth the status of the section 211 cases filed with the Commission:

Docket No.	Date of application	Status	Months pending
TX93–1 ..	01/19/93	Final Order-7/29/93.	6
TX93–2 ..	06/18/93	Final Order-7/1/94.	12
TX93–3 ..	06/30/93	Withdrew-9/10/93.	2
TX93–4 ..	07/02/93	Final Order-5/11/94.	10
TX94–1 ..	10/21/93	Final Order-7/6/94.	9
TX94–2 ..	11/04/93	Pending [a]	16
TX94–3 ..	11/09/93	Final Order-7/13/94.	8
TX94–4 ..	12/15/93	Final Order-12/1/94.	11
TX94–5 ..	04/15/94	Final Order-3/23/95.	11
TX94–6 ..	07/05/94	Pending	8
TX94–7 ..	07/15/94	Pending [a]	8
TX94–8 ..	08/05/94	Pending	7
TX94–9 ..	09/09/94	Pending [a]	6
TX94–10	09/16/94	Pending	6
TX95–1 ..	10/11/94	Pending	5
TX95–2 ..	10/17/94	Pending	5
TX95–3 ..	01/19/95	Pending	2
TX95–4 ..	01/24/95	Pending	2

[a] A proposed order has been issued.

As the wholesale power markets become more competitive, delayed access becomes a matter of increasing concern. Not only have long-term purchases from non-traditional generators become more important, but short-term firm and non-firm power sales and purchases create significant profit or cost-saving opportunities for utilities, marketers, and their customers. As a result, market participants are exploring various ways to reduce their costs through trading. These include poolcos, changes to existing pools, short-term trading systems, and futures contracts.[169] We do not see how such options will work unless all parties have non-discriminatory transmission access rights and hour-to-hour access without having to go through a regulatory proceeding for each trade.

In today's emerging competitive wholesale power markets, the practices of some transmission-owning utilities are unduly discriminatory and anticompetitive. These practices produce market distortions today, undermine the goal of the Energy Policy Act to create competitive bulk power markets, and will continue if this Commission does not take action. Most important, they can harm consumers by denying them the benefits of competitively priced power. We seek additional specific examples of such practices.

3. Analogies to the Natural Gas Industry

The electric industry today is analogous in many ways to the natural gas industry before the Commission issued Order Nos. 436 and 636.[170] Then, natural gas pipelines were primarily merchants offering a bundled sales service, which provided gas to customers at the city-gate from the pipelines' own system supplies. In addition, pipelines moved a relatively small amount of third-party gas under a separate transportation service. To meet their sales service obligations, pipelines purchased most of their system supply from third-party producers under long-term contracts. In the early 1980s, due to changing market conditions, the prices under many of these contracts ended up being higher than those available in the then evolving spot market. Because of the long-term contracts and the resulting higher cost gas, system supply gas tended to be more costly than gas that the customers could buy in the competitive spot market. At the same time, the transportation service bundled with a pipeline's sales service was usually superior to the transportation service third parties could obtain. Essentially, the pipeline would provide itself service that had much greater flexibility and often promised greater reliability than that available to third-party shippers. Pipelines had a considerable incentive to maintain this difference in transportation service quality to make their own, more expensive gas more attractive.

A similar situation exists today in the electric industry. Traditional public utilities deliver bundled service—generation and transmission—to most of their wholesale customers. They have monopoly control over transmission facilities and thus control access to their customers. The lack of non-discriminatory access to transmission services raises the same general concerns that were prevalent in the gas industry. Accordingly, unless similar regulatory measures are undertaken, the Commission expects the same type of discriminatory and anticompetitive behavior will continue in the electric industry as was present in the gas industry, because denying non-discriminatory access will continue to be in the economic self-interest of transmission monopolists, absent regulatory changes.[171]

In its regulation of interstate pipelines under the Natural Gas Act (NGA) the Commission initially addressed the problem of undue discrimination in Order No. 436, finding natural gas pipeline practices to be unduly

[166] For example, an applicant must make a request for transmission service to the transmitting utility at least 60 days before filing an application with the Commission for an order to provide transmission. The Commission must first issue a proposed order and allow the parties a reasonable time to negotiate agreeable terms and conditions before it can issue a final order. Moreover, a final order faces possible rehearing and a court appeal.

[167–168] One request was withdrawn.

[169] We note that NEPOOL and MAPP are currently exploring ways to modify their pool structures to accommodate competitive power markets. As noted in the Pooling Notice of Inquiry, *supra*, the poolco concept basically involves an independent entity that would control the operation of all transmission facilities and some or all generating facilities in a region. It would be open and would provide transmission service to all generators. Thus, the poolco would create a spot market for power in the region.

[170] Order No. 436, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, FERC Regulations Preambles ¶ 30,665 (1985); Order 636, Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR 13267 (April 16, 1992), III FERC Stats. & Regs., Regulations Preambles ¶ 30,939 (Order No. 636), *appeal pending.*

[171] See *AGD, supra*, 824 F.2d at 1008 (''Agencies do not need to conduct experiments in order to rely on the prediction that an unsupported stone will fall.''). The ongoing discriminatory behavior by owners or controllers of transmission in the electric industry is detailed *supra.*

discriminatory under the NGA [172] and effectuating ''open access'' transportation. The Commission in that order sought to make transportation available to third parties on a non-discriminatory basis. The Commission provided that, if a pipeline held itself out as a transporter of gas for others, it must provide that service to all shippers without discrimination. At the same time, the Commission allowed pipelines and their customers to retain the traditional bundled sales and transportation services under existing certificate authority.

As a result of Order No. 436, pipelines became primarily transporters of natural gas. However, in Order No. 636, the Commission noted that pipelines were still providing, albeit at a reduced level, a bundled, city gate, sales service in competition with third-party sales and transportation, and concluded that the competition was not occurring on an equal basis. The Commission also noted that pipelines' natural gas sales prices exceeded those of their competitors, much as electric utilities' embedded costs can exceed the cost of new generating capacity and excess generating capacity of others. In this regard, the Commission determined that the transportation service bundled with pipelines' sales service was superior to that made available to third parties and that pipelines and unregulated competitors were not selling the same product.[173] Accordingly, in Order No. 636, the Commission found this behavior anticompetitive and required pipelines to ''unbundle'' their sales services from their transportation services and to provide open access transportation service that is equal in quality for all gas supplies whether purchased from the pipeline or some other supplier.[174]

Our experience in the gas area influences our decision that, at a minimum, functional unbundling of wholesale services is necessary in order to obtain non-discriminatory open access and to avoid anticompetitive behavior in wholesale electricity markets.

[172] In this regard, sections 4 and 5 of the NGA are virtually identical to sections 205 and 206 of the FPA.

[173] Order No. 636 at 30,402. The Commission explained that pipelines were selling a regulated bundled sales and transportation service, but that their competitors were generally selling only the gas commodity. The Commission also recognized that pipelines were at a competitive disadvantage due to their certificate and contractual obligations to their firm sales customers. *Id.* at 30,403.

[174] Order No. 636 at 30,393–94.

4. Coordination Rates

In finding a need for non-discriminatory open access transmission, the Commission has considered the structure of the coordination market, *i.e.*, the market for wholesale sales to a public utility's non-requirements customers. Utilities now engage in coordination trades primarily under rates no lower than the seller's variable cost and no higher than that variable cost plus 100% contribution to the fixed costs of the production unit used to price energy and the relevant transmission facilities. This rate flexibility allows the buyer and seller to negotiate a price reflecting the market at the time of the sale, including the number of buyers and sellers, the relative incremental and decremental variable costs, and the amount of savings attainable by transacting. Thus, while the seller's ceiling rate reflects some measure of fixed and variable costs, the actual transaction price is set, to a certain extent, by the marketplace. This marketplace, however, may be skewed by the general lack of transmission access, and the resulting price may be considerably above prices in a fully competitive market.

Some utilities transact under a split-savings rate that generally sets the price halfway between the seller's incremental variable cost and the buyer's decremental variable cost. Here again, price is a function of the alternatives reachable through the transmission grid at the time of the transaction. This rate form is primarily used today to distribute the savings derived from the central dispatch of power pools on an after-the-fact basis.

The Commission believes that unless the participants in coordination markets mitigate their transmission market power, market-driven prices for coordination trades may no longer be just and reasonable. Thus, our preliminary conclusion is that current coordination pricing is no longer justified in the absence of a tariff offer of non-discriminatory open access transmission services by the seller (owning or controlling transmission) in a coordination transaction.[175] The Commission's past practice of allowing such pricing for coordination trades appears to be inconsistent with emerging competitive markets unless those who benefit from such trading offer access to other, lower-priced trading opportunities. We seek comments on this issue.

[175] As discussed *infra,* sellers must also meet the Commission's other requirements to obtain market-based rates.

E. The Proposed Regulations

The goals of the proposed regulations are two-fold: (1) To facilitate the development of competitive wholesale bulk power markets by ensuring that wholesale purchasers of electric energy and wholesale sellers of electricity can reach each other by eliminating anticompetitive practices and undue discrimination in transmission services; and (2) to address the transition costs associated with the development of competitive wholesale markets. This section addresses the elimination of undue discrimination. Transition costs are addressed below in Section F.

Non-discriminatory open access transmission is critical to the ability of sellers to compete on a fair basis and the ability of purchasers to reach the lowest priced generation options. Thus far, the Commission has developed an open access comparability requirement on a case-by-case basis. We have directed our administrative law judges, to whom the various cases have been referred, to examine the factual circumstances surrounding a utility's use of its own system *vis-a-vis* the type of service provided to third parties. Nonetheless, it has now become evident to us that it is necessary for the Commission to define the parameters of a non-discriminatory open access tariff much more precisely.

Until now, we have been applying the new standard of what constitutes undue discrimination only to new voluntary tariff filings. We now no longer believe it is appropriate to apply this standard so narrowly; therefore, we are proposing to require all public utilities to offer non-discriminatory open access services in accord with the proposed rule and the attached tariffs. This broad application is consistent with our determination that undue discrimination by jurisdictional public utilities must be prevented or remedied. It is also consistent with our desire to bring further efficiencies to the provision of electric service by encouraging competitive bulk power markets.

1. Non-discriminatory Open Access Tariff Requirement

Transmission owners can discriminate by restricting access to, or restricting expansion of, transmission facilities, or by restricting access to the ancillary services that control the generation resources on the transmission grid.[176] To ensure that all

[176] Examples of ancillary services (which include control area services) are: Scheduling service between control areas, and various services that facilitate power movements within control areas,

Continued

participants in wholesale electricity markets have non-discriminatory open access to the transmission network, transmission owners must offer non-discriminatory open access transmission and ancillary services to wholesale sellers and purchasers of electric energy in interstate commerce.[177] This will require tariffs that offer point-to-point and network transmission services, including ancillary services. All of these services must be non-discriminatory as to price as well as to non-price terms and conditions. Services must be available to any entity that could obtain transmission services under section 211.

In our *AEP* rehearing order and in several subsequent cases,[178] we set for hearing the following issues:

1. The different uses that a transmission owner makes of its transmission system and whether there are any operational differences between any particular use that the owner makes of the system and the use third parties might need, and in particular, the degree of flexibility the transmission owner accords itself in using its transmission system for different purposes.

2. Any potential impediments or consequences to providing a particular service to third-party transmission customers which is the same or comparable to service that the transmission owner provides itself.

3. The costs that the transmission owner incurs in providing transmission associated with its use of the system, and whether the costs to provide such service or comparable service to third parties would be different.

Based on what we have learned in the past year, the Commission proposes to address these issues generically. Concurrently with this order, the Commission is issuing a separate order on how a final rule would apply to pending cases.[179] We believe that the parties and the administrative law judges in the individual pending proceedings should continue their efforts, but in doing so should take into account the principles announced in this proposed rule. This will permit any fine tuning of the broader principles announced here and set forth in the *pro forma* tariffs that may be necessary to recognize the individual circumstances of particular systems.

With regard to the first issue, the Commission believes that all utilities use their own systems in two basic ways: to provide themselves point-to-point transmission service that supports coordination sales, and to provide themselves network transmission service that supports the economic dispatch of their own generation units and purchased power resources (integrating their resources to meet their internal loads).[180] This network transmission service is bundled as part of retail service and as part of wholesale requirements service, and is the fundamental support of a utility's dispatch that underlies its trading in the wholesale coordination market.[181]

The Commission has preliminarily concluded that third parties may need one or both of these basic uses in order to obtain competitively priced generation or to have the opportunity to be competitive sellers of power. The Commission therefore proposes that all public utilities must offer both firm and non-firm point-to-point transmission service and firm network transmission service on a non-discriminatory open access basis in accord with the proposed rule and the attached tariffs. The Commission believes that a utility's tariff must offer to provide any point-to-point transmission service and network transmission service that customers need, even though the utility may not provide itself the specific service requested. For example, a utility may not provide itself ''wheeling-through'' service, [182] which is a specific form of point-to-point service. However, because ''wheeling-through'' service is merely a subset of basic point-to-point service, which the utility does provide to itself, the Commission will require a utility to provide such service. [183] Similarly, a utility may contend that it does not provide non-firm point-to-point service to itself because all of its transmission investment results in firm entitlements. Nonetheless, the utility provides itself with the functional equivalent of non-firm service when it uses, subject to curtailment or interruption, capacity that is temporarily unused by other firm reservation holders. Therefore, it must offer non-firm point-to-point service.

We will not allow transmission providers to define terms or specify transmission uses to erect barriers to fair and equal competition in power markets, or to engage in undue discrimination.

On the second issue set for hearing in *AEP, et al.* (potential impediments to providing a particular service), we believe there are none, except for impediments to siting. However, any impediments to siting are the same whether the utility is providing service to itself or to a third party.

On the third issue set for hearing *AEP, et al.* (the costs of providing comparable service), we believe there is no difference in the costs incurred by a transmission provider in providing transmission to itself or to a third party. Thus, the transmission owner must charge itself and third parties the same rates for the use of its system.

All electricity trade is supported and facilitated in one way or another by ancillary services, and transmission services may be comprised of many different combinations of ancillary services. Therefore, the Commission will require that such ancillary services be offered separately through open access tariffs. These are discussed in detail *infra.*

Public utilities that are transmission-only companies or transcos, *i.e.*, companies that do not own or control generation, do not use their own transmission systems to sell their own power. However, a public utility transco would be required to offer open access transmission services as well as ancillary services. It would also have to provide a real-time information network, as discussed below. The Commission is also announcing certain quality-of-service guidelines to aid in evaluating the quality of transmission service that must be provided by public utilities. These are described *infra* and are reflected in proposed *pro forma* point-to-point and network tariffs

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e.g., dispatch service, load following service, imbalance resolution service, reactive power support, and operating reserves. We invite comment on definitions of these terms and their component parts. Regardless, the proposed rule would require that all ancillary services be offered on a non-discriminatory basis.

[177] See generally William W. Hogan, Reshaping the Electricity Industry, Prepared for the Federal Energy Bar Conference, ''Turmoil for the Utilities,'' 5 Washington, D.C. (Nov. 17, 1994):

Commercial functions must facilitate non-discriminatory, comparable open access and support market operations in the competitive sectors. The EPAct requirements and the FERC implementation emphasize the need to obtain market access under terms and conditions that support competition. Everyone should have equal access to and use of essential facilities, particularly transmission, with the rights of ownership limited to compensation consistent with opportunity costs in a competitive market.

[178] See, *e.g.*, *AEP*, 67 FERC at 61,491.

[179] Order Providing Guidance Concerning Pending and Future Proceedings involving Non-discriminatory Open Access Transmission Services, Docket Nos. ER93–540–000, *et al.*

[180] While there may be any number of specific services used by a particular customer, we have concluded, after analyzing the historical types of transmission service tariffs on file, as well as the tariffs filed in the ongoing comparability proceedings, that all transmission services generally fall within these two categories.

[181] A utility's own coordination purchases may involve hourly scheduled transfers of fixed blocks of power. These schedules are supported by the utility's own network transmission service used for its economic dispatch. Consequently, network service is covered by the proposed rule because it supports a utility's coordination purchases, regardless of whether or not the utility has any requirements customers that also would use network service.

[182] ''Wheeling through'' refers to transmittal of electric energy through a transmitting utility's grid, *i.e.*, entering at one point of interconnection and leaving at another.

[183] This would be true of other services as well.

attached to this notice of proposed rulemaking. Our preliminary conclusion is that the provisions contained in the *pro forma* tariffs are the minimum provisions necessary to meet the requirement of non-discriminatory open access. We seek comments on these tariffs.

2. Implementing Non-Discriminatory Open Access: Functional Unbundling

The Commission's preliminary view is that functional unbundling of wholesale services is necessary to implement non-discriminatory open access. Accordingly, the proposed rule requires that a public utility's uses of its own transmission system for the purpose of engaging in wholesale sales and purchases of electric energy must be separated from other activities, and that transmission services (including ancillary services) must be taken under the filed transmission tariff of general applicability. The proposed rule does not require corporate unbundling (selling off assets to a non-affiliate, or establishing a separate corporate affiliate to manage a utility's transmission assets) in any form, although some utilities may ultimately choose such a course of action. The proposed rule accommodates corporate unbundling, but does not require it.

Functional unbundling means three things. First, it means that a public utility must take transmission services (including ancillary services) for all of its new wholesale sales and purchases of energy under the same tariff of general applicability under which others take service. New wholesale sales and purchases are those under any contracts executed on or after the open access tariffs required by this proposed rule become effective. Non-discriminatory service requires that the utility charge itself the same price for these services that it charges its third-party wholesale transmission customers. We seek comment as to the appropriate means to enforce this requirement, such as a revenue crediting mechanism.

Second, functional unbundling means that a transmission owner must include in its open access tariffs separately stated rates for the transmission and ancillary service components of each transmission service it provides.[184] The rates must satisfy the Commission's Transmission Pricing Policy Statement.

Third, functional unbundling means that the public utility, in order to provide non-discriminatory open access to transmission and ancillary services information, must rely upon the same electronic network that its transmission customers rely upon to obtain transmission information about its system when buying or selling power.

For example, the proposed rule requires that a public utility unbundle its new wholesale requirements service contracts, and its new wholesale coordination purchase transactions, and take the firm network transmission component of those services under its own firm network transmission tariff. Similarly, the proposed rule requires that a public utility unbundle any new wholesale coordination sales transactions and take the point-to-point transmission component of that service under its own point-to-point transmission tariff. Finally, the proposed rule requires that a utility unbundle ancillary services and take these services under its network and point-to-point tariffs.

Public utilities also must authorize their power pool agents to offer any transmission service available under power pool arrangements to all transmission customers. In addition, public utilities that participate in a power pool that acts as a control area must authorize the power pool's control center to offer ancillary services under a filed tariff, and must take all of their control area services from that tariff.[185] A public utility must take dispatch service and other ancillary transmission services on the same terms and conditions as those offered to its transmission customers.[186]

The requirement to provide ancillary services and to take those services under a tariff is not intended to mandate any federal rules that would prescribe the actual merit order of dispatch. Rather, it is a requirement that public utilities ensure that dispatch practices and procedures applicable to them are also applied to third-party transmission customers.

The proposed requirement that a public utility take transmission service used for wholesale requirements service and wholesale coordination transactions under its own filed tariff means that all wholesale trade, both that of the public utility and its competitors, would be taken under a single wholesale transmission tariff. Our preliminary view is that such a requirement places the correct incentives on the public utility to file a fair tariff since it must live under those terms for wholesale purposes. The Commission invites comment on its approach to functional unbundling. Will it provide strong enough incentives for non-discriminatory access without some form of corporate restructuring? If utilities restructure, how will our proposed rules apply to different types of corporate structures?

While this approach to unbundling creates good incentives with respect to wholesale service, it omits retail service. In other words, it does not require the transmission owner to take unbundled transmission service under the same tariff as third parties in order to serve its retail customers. This will result in service under two separate arrangements—an explicit wholesale transmission tariff filed at the Commission and an implicit retail transmission tariff governed by a state regulatory body. It also raises the possibility that the quality of transmission service for retail purposes will be superior to the quality of transmission service offered for wholesale purposes.

We seek comment on how this bifurcated approach would affect the public utility's incentives to provide non-discriminatory open access wholesale transmission service. For example, will planning of incremental transmission facilities be comparable or will the transmission provider's retail customers retain an advantage from having expansion costs placed on third parties? What would be the benefits of an approach that required the transmission provider to take unbundled transmission service for both wholesale and retail purposes under the same tariff used by third-party transmission customers? Is such an approach necessary to ensure that all participants have the same incentives to achieve non-discriminatory open access transmission service and competitive power markets? What would be the disadvantages, if any, of such an approach?

The Commission recognizes that the unbundling of transmission for retail purposes would intrude upon matters that state commissions have traditionally regulated. One possible approach that would unify service standards for wholesale and retail

[184] This means that a customer who buys both generation and transmission services from the utility will have a separately stated rate for the generation, transmission, and ancillary services that it purchases. The rates for transmission and ancillary services would be stated in the open access tariff. The rates for the generation service would be under a separate rate schedule.

[185] Similarly, public utilities that own transmission, but get their ancillary services from another entity must authorize that entity to provide ancillary services under a filed tariff and must take their ancillary services from that tariff.

[186] The Commission recognizes that the proposal here overlaps with the pending Pooling Notice of Inquiry. However, the fundamental non-discrimination requirements of the FPA, and therefore the basic requirements of the proposed rule, must be applied to power pools in which public utilities participate. This issue is discussed further in the Implementation Section, *infra*.

service would be for each vertically integrated utility to establish a distribution function that would be responsible for obtaining transmission service on behalf of retail customers. This distribution function then could be treated just as any other wholesale customer. The distribution function of the utility would take service under the single Commission filed tariff. This could change the traditional approach of state-federal allocation of transmission costs. The Commission seeks comment on the merits of such an approach. How could the Commission cooperate with state commissions if it were to adopt such an approach?

Finally, we address a specific type of retail service that we believe to be ''bundled'' retail service in name only: a so-called ''buy-sell'' transaction in which an end user arranges for the purchase of generation from a third-party supplier and a public utility transmits that energy in interstate commerce and re-sells it as part of a ''bundled'' retail sale to the end user. We have determined that in these types of transactions the retail ''bundled'' sale is actually the functional equivalent of two unbundled retail sales: (1) A voluntary sale of unbundled transmission at retail in interstate commerce, subject to our exclusive jurisdiction; [187] and (2) a sale of unbundled generation at retail, subject to the state's jurisdiction.[188] For these types of sales, public utilities will have to provide the voluntary retail transmission component of the sale under a FERC-filed tariff consistent with the substantive requirements of this proposed rule.

We are aware that some public utilities are already contemplating initiating this type of ''buy-sell'' service. Similar services occurred in the natural gas area, but the Commission did not address the jurisdictional issue until a substantial number of transactions had been negotiated and implemented. When the Commission ultimately addressed the natural gas buy-sell programs, we concluded that we have jurisdiction over buy-sell transactions since such agreements utilize interstate transportation.[189] We were concerned then, just as we are concerned now, that interstate and intrastate programs operate together in an appropriately integrated way.[190] It is our preliminary view that the interstate transmission aspect of the buy-sell program must take place under a FERC-filed tariff.

In imposing this requirement we wish to stress that the state has jurisdiction to determine which group of retail customers may participate in such a program. We also recognize that state regulatory commissions will be called upon to determine whether they have jurisdiction under state law over retail wheeling or direct access programs and, if so, whether to authorize such programs.[191] However, the rates, terms, and conditions for the interstate transmission aspects of the program are jurisdictional to this Commission.

The Commission did not address this jurisdictional issue at an early state in the evolution of competition in the natural gas market. Consequently, when we finally acted we chose to grandfather ongoing programs so that energy supply arrangements would not be disrupted.[192] We do not want to face that difficulty again. Thus, we are addressing the issue at an early stage so that public utilities and their customers will be on notice of the jurisdictional implications of their actions, and can make plans accordingly.

3. Real-Time Information Networks

With this proposed rule, the Commission is issuing a Notice of Technical Conference and Request for Comments on a proposal to require that public utilities provide all transmission users, including the transmission owner or controller, simultaneous access to transmission and ancillary services information through real-time information networks that would operate under industry-wide standards. Based upon the lessons we have learned from our experience with gas pipeline EBBs, we believe the proposed approach is necessary and can work.

4. Non-Discriminatory Open Access Tariff Provisions

It is important that the tariffs filed to meet the non-discriminatory open access service requirement contain terms and conditions necessary to ensure a certain minimum level of service quality and to provide a level of certainty to both customers and transmission service providers as to procedures and obligations. The discussion in this section is intended to give guidance about our proposed non-discriminatory open access requirements. The terms and conditions discussed here are reflected in the *pro forma* tariffs in Appendices B and C.[193]

We note at the outset two basic principles proposed to be used when evaluating tariff terms. First, the terms and conditions governing service should be clear and specific. Vague or general tariff terms introduce uncertainty, controversy and delay. In many situations, delaying access or increasing the transaction cost of access is, for all practical purposes, denying access. Second, any restrictions or limitations on service or procedures must be limited to technical or operational needs that can be verified, and they must be the least restrictive way to meet those needs.[194]

The Commission invites comment on the terms and conditions proposed as well as whether others may be necessary.

a. *Customer eligibility.* A non-discriminatory open-access tariff must be available to any entity that can request transmission services under section 211.[195]

b. *Expansion obligation.* A public utility must offer to enlarge its transmission capacity (or expand its ancillary service facilities) if necessary to provide transmission services. This provision is necessary to mitigate the utility's transmission market power that could be exercised by restricting capacity. The customer must agree to reasonable terms, conditions and prices, including the financial responsibility for its share of the incremental expansion costs.[196]

The Commission recognizes that a utility may not be able to enlarge transmission capacity because it cannot obtain the necessary approvals or property rights under applicable

[187] As discussed *infra*, there would be a component of local distribution in such a transaction, subject to the state's jurisdiction.

[188] This determination is consistent with our findings regarding similar types of transactions in the natural gas area. See *El Paso Natural Gas Company*, 59 FERC ¶ 61,031 (1992), *dismissed sub nom. Windward Energy and Marketing Company* v. *FERC*, No. 92–1208 (D.C. Feb. 2, 1994).

[189] *Id.*

[190] 56 FERC ¶ 61,289 at 62,133 (1991).

[191] This Commission does not have authority to order retail wheeling. Section 212(h) of the Federal Power Act, as amended by the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776.

[192] 59 FERC ¶ 61,031 (1992); *reh'g denied*, 60 FERC ¶ 61,117 (1992).

[193] These Appendices will not appear in the **Federal Register**.

[194] However, as discussed *infra*, in determining the level of capacity that must be made available for new transmission service requests, we have proposed that capacity needed to meet current and reasonably forecasted native load and to meet existing contractual obligations may be excluded from capacity made available for new transmission service requests.

[195] Under section 211, any electric utility, Federal power marketing agency, or any other person generating electric energy for sale for resale may request transmission services under section 211.

[196] *See, e.g.*, Northeast Utilities Service Company, 56 FERC ¶ 61,269 at 62,022 (1991), *order on reh'g*, 58 FERC ¶ 61,070, *reh'g denied*, 59 FERC ¶ 61,042 (1992), remanded, 993 F.2d 937 (1st Cir. 1993), *order on remand*, 66 FERC ¶ 61,332 (1994) (*Northeast Utilities*) (wheeling customer must provide reasonable financial assurance before the public utility undertakes substantial investments in new facilities for that customer).

Federal, state and local laws. If the utility has failed after making and documenting a good faith effort to obtain the necessary approvals or property rights, it can request to be relieved of its expansion obligation by an appropriate filing at the Commission.[197] This will result in consistent treatment under FPA sections 205 and 206 and FPA section 211.

c. *Service obligation.* The transmission tariff must offer non-discriminatory transmission services (including related ancillary services that the utility can provide) to eligible transmission customers. For example, a tariff should make available both flexible (*i.e.*, firm and non-firm) point-to-point transmission service and network transmission service, as well as those ancillary services necessary to accomplish such transmission services.

(1) Network Transmission Service. Network transmission service allows a transmission customer to use the entire transmission network to provide generation service for specified resources and specified loads without having to pay a separate charge for each resource-load pairing. Such service allows a transmission customer to integrate, plan, commit, economically dispatch, and regulate its resources to serve its consolidated load. Network service provides the customer with the same flexible network usage needed to optimize its resources to meet its customers' needs that transmission owners have to optimize their resources to meet their customers' needs. Network service includes the ability to import power from other control areas to economically and reliably serve the customers' load. Non-discrimination requires that network service be made available in an open access tariff.

Network service would be valuable to customers such as municipals, cooperatives, and municipal joint action agencies that supply the long-term firm power needs of members with multiple loads that are wholly or partly within a single transmission system. Indeed, network service is essential for the resource integration that is needed for efficient operation. For example, a generation and transmission cooperative whose generating facilities and member cooperatives are widely dispersed may not own all of the transmission facilities needed to link the generators with the members' distribution systems. In this case, the cooperative must rely on a transmission-owning utility to provide network service. Without such service, the cooperative would have difficulty supplying reliable, efficient power to its own members.

(2) Flexible Point-to-Point Service. The second required service in a non-discriminatory open access tariff is point-to-point transmission service. Both firm and non-firm service must be available on a point-to-point basis. Under firm point-to-point service, the transmission owner would provide firm deliveries of power from designated points of receipt to designated points of delivery. Each point of receipt would be set forth in a service agreement along with a corresponding capacity reservation for that point of receipt. Each point of delivery would be set forth in the service agreement along with a corresponding capacity reservation for that point of delivery. The greater of (1) the sum of the capacity reservations at the point(s) of receipt, or (2) the sum of the capacity reservations at the point(s) of delivery would be the firm capacity reservation for which the transmission customer would be charged.

However, firm point-to-point service must have the same flexibility in use as that available to the transmission provider and obligate the transmission provider to supply non-firm transmission service, if available, over non-designated receipt and delivery points (or over designated receipt and delivery points in excess of its firm reservation at those points) without incurring any additional charges (or executing a new service agreement) so long as the customer's use does not exceed its total firm capacity reservation. Any use by a customer in excess of its firm capacity reservation at each point of receipt or point of delivery will be on an as-available basis and will be treated as non-firm service. A customer may also request non-firm point-to-point transmission service on a stand-alone basis.

Transmission customers may be willing to trade off the higher risk of interruption with non-firm service for the lower non-firm transmission rate. Customers should be able to make that choice, which will depend on their own balancing of the risk of transmission service interruption with the interruptibility of, and trade gains associated with, the power resource. It is important that the customer, not the transmission provider, make this choice. The tariff should not restrict non-firm transmission service to the transporting of only non-firm power transactions.[198]

Tariffs should offer flexible point-to-point transmission service for transactions that involve power flows into, out of, within or through the control areas. Whether or not a transmission provider actually undertakes such specific services on its own behalf, it has the flexibility to do so. Therefore, if service to third parties is to be non-discriminatory, they, too, must have such flexibility. In addition, tariff restrictions on receipt and delivery points should not preclude particular types of transactions. For example, a transmission provider should not limit receipt and delivery points to points of interconnection with other transmission systems because such a restriction may preclude transactions that originate or terminate with generation or particular loads within a transmission provider's control area.

(3) Ancillary Services. Ancillary services are those services necessary to support the transmission of electric power from seller to purchaser given the obligations of control areas and transmitting utilities within those control areas to maintain reliable operations of the interconnected transmission system. Basic transmission service without ancillary services may be of little or no value to prospective customers. A variety of ancillary services is needed in conjunction with providing basic transmission service to a customer. These services range from actions taken to effect the transaction (such as scheduling and dispatching services) to services that are necessary to maintain the integrity of the transmission system (such as load following, reactive power support, and system protection services). Other ancillary services are needed to correct for the effects associated with undertaking a transaction (such as loss compensation and energy imbalance services). Due to the nature of certain ancillary services (such as scheduling and dispatching service), the transmission provider may be uniquely positioned to provide these services. However, for other ancillary services (such as loss compensation service), the customer may wish to provide the service itself or purchase the service from a party other than the transmission owner or its agent.

If the transmission provider provides the ancillary services for its own use of the transmission system, the public utility should offer in the tariff to provide ancillary services for transmission customers. Tariffs should

[197] However, we have previously noted that a utility may bear a heavy burden in demonstrating that it cannot enlarge its transmission capacity to meet a new transmission request. See *Northeast Utilities*, 58 FERC at 61,209.

[198] See Entergy Services, Inc., 58 FERC ¶ 61,234 at 61,767, *order on reh'g*, 60 FERC ¶ 61,168 (1992), *rev'd on other grounds sub nom. Cajun Electric Power Cooperative, Inc.* v. *FERC*, 28 F.3d 173 (D.C. Cir. 1994).

commit to provide specific ancillary services at specific prices or under specific compensation methods that are clearly described.

If the transmission provider obtains ancillary services from a third party, *e.g.,* does not operate its own control area or obtains ancillary services from a pool, the transmission provider should offer in the tariff to secure ancillary services for transmission customers from that third party. Examples of such third-party arrangements may include a public utility obtaining ancillary services from a power pool or from a control area operator.

Based on our experience to date, we propose that the following ancillary services should be offered in the tariff:

1. Reactive Power/Voltage Control Service

In order to maintain transmission voltages on the transmission provider's transmission facilities within acceptable limits, transmission facilities and some or all generation facilities (in the service area where the transmission provider's transmission facilities are located) are operated to produce (or absorb) reactive power. Thus, the need for reactive power/voltage control service must be considered for each transaction on the transmission provider's transmission facilities. The amount of reactive power/voltage control service that must be supplied with respect to the transmission customer's transaction will be determined based on the reactive power support necessary to maintain transmission voltages within limits that are generally accepted in the region and consistently adhered to by the transmission provider.

The transmission provider will be responsible for providing the necessary transmission-related reactive power support. A transmission customer may elect (or arrange through a third party) to supply some or all of the necessary generation-related reactive power/voltage control support to the extent that it (or the third party) has the ability to supply such reactive power. If the transmission customer elects (or arranges through a third party) to provide reactive power/voltage control support, such service must be coordinated with the transmission provider (or the entity that is responsible for the operation of the transmission provider's transmission facilities). Alternatively, the transmission provider will supply the necessary generation-related reactive power/voltage control support.

2. Loss Compensation Service

Capacity and energy losses occur when a transmission provider delivers electricity across its transmission facilities for a transmission customer. A transmission customer may elect to (1) supply the capacity and/or energy necessary to compensate the transmission provider for such losses, (2) receive an amount of electricity at delivery points that is reduced by the amount of losses incurred by the transmission provider, or (3) have the transmission provider supply the capacity and/or energy necessary to compensate for such losses.

3. Scheduling and Dispatching Services

Scheduling is the control room procedure to establish a pre-determined (before-the-fact) use of generation resources and transmission facilities to meet anticipated load (including interchange). Dispatching is the control room operation of all generation resources and transmission facilities on a real-time basis to meet load within the transmission provider's designated service area (or other larger area of coordinated dispatch operation). Scheduling and dispatching services are to be provided by the transmission provider or other entity that performs scheduling and dispatching for the transmission provider's service territory.

In certain regions, dynamic scheduling is also allowed. Dynamic scheduling involves responding to load changes or controlling generation within one transmission provider's service territory (or other larger area of coordinated dispatch operation) through the real-time control and dispatch of another transmission provider. Under dynamic scheduling, the operator of an area of coordinated dispatch (control area) agrees to assign certain customer load or generation to another area of coordinated dispatch, and to send the associated control signals to the respective control center of that area. Dynamic scheduling is implemented through the use of special telemetry and control equipment. The transmission customer must be allowed to use dynamic scheduling when it is feasible and reliable.

4. Load Following Service

Load following service is necessary to provide for the continuous balancing of resources (generation and interchange) with load under the control of the transmission provider (or other entity that performs this function for the transmission provider). Load following service is accomplished by increasing or decreasing the output of on-line generation (predominantly through the use of automatic generating control equipment) to match moment-to-moment load changes. The obligation to maintain this balance between resources and load lies with the transmission provider (or other entity that performs this function for the transmission provider). Because of the nature of this service, the transmission provider (or other entity that performs this function for the transmission provider's facilities) may be uniquely positioned to provide load following service. Therefore, unless the transmission customer is able to obtain such service from its own generation or from third-party generation that is capable of supplying such service in accordance with conditions generally accepted in the region and consistently adhered to by the transmission provider, the transmission provider will supply load following service.

5. System Protection Service

A transmission provider must have adequate operating reserves or other system protection facilities available in order to maintain the integrity of its transmission facilities in the event of (1) unscheduled outages of a portion of its transmission facilities or facilities connected to the transmission provider's service territory or (2) unscheduled interruption of energy deliveries to the transmission provider's transmission facilities. The amount of system protection service that must be supplied with respect to the transmission customer's transaction will be determined based on operating reserve margins or other relevant criteria that are generally accepted in the region and consistently adhered to by the transmission provider.

The transmission customer may elect or arrange through a third party to provide resources that are sufficient to satisfy the system protection needs of the transmission provider. Operation and dispatch of such resources must be coordinated with the transmission provider or other entity that maintains operating reserves and other system protection facilities for the transmission provider's service territory.

6. Energy Imbalance Service

Energy Imbalance Service is provided when a difference occurs between the hourly scheduled amount and the hourly metered (actual delivered) amount associated with a transaction. Typically, an energy imbalance is eliminated during a future period by returning energy in-kind under conditions similar to those when the initial energy was delivered.

The transmission provider shall establish a deviation band (e.g., +/−1.5 percent of the scheduled transaction) to be applied hourly to any energy imbalance that occurs as a result of the transmission customer's scheduled transaction(s). Parties should attempt to eliminate energy imbalances within the limits of the deviation band within 30 days or a reasonable period of time that is generally accepted in the region and consistently adhered to by the transmission provider. If an energy imbalance is not corrected within 30 days or a reasonable period of time that is generally accepted in the region and consistently adhered to by the transmission provider, the transmission customer will compensate the transmission provider for such service. Energy imbalances outside the deviation band will be subject to charges to be specified by the transmission provider. To the extent another entity performs this service for the transmission provider, charges to the transmission customer are to reflect only a pass-through of the costs charged to the transmission provider by that entity.

We seek comment on our proposed treatment of ancillary services. Are there alternative ways to ensure the non-discriminatory provision of ancillary services? We also seek comment on the above-described ancillary services. Are they the appropriate ancillary services for the needs of entities seeking transmission service? Are the descriptions of the ancillary services appropriate? Should any of the described services not be offered, and if so, why? Are there other ancillary services that should be offered? Should all ancillary services be offered as discrete services with separate prices, or should certain ancillary services be offered as a package? Additionally, we seek comment on whether the additional complexity of obtaining ancillary service externally from the host control area with the use of dynamic scheduling is the appropriate course to follow.

d. *Service Periods.* The duration of service reservations should not be unduly limited. Non-discriminatory service requires any such limits on third-party service to be the same as those the transmission provider or controller faces. In particular, the tariff should allow firm service contracts to extend at least for the life of a customer's power plant or purchase contract. Power developers are unlikely to build new plants if they cannot secure firm transmission services for the plant's life. Integrated transmission owners plan their transmission systems to ensure capacity to deliver the output of their own planned generation units. Non-discriminatory service requires the same for transmission-only customers. Likewise, the minimum duration for service should be the same as the minimum scheduling period of the transmission owner. All minimum or maximum restrictions must be justified on a technical or operational basis.

e. *Reassignment Rights.* A tariff must explicitly permit reassignment of firm service entitlements. Capacity reassignment rights can have a number of benefits. First, reassignment rights are important in helping transmission users manage the financial risk associated with long-term commitments to take transmission service. A robust reassignment market would aid, among others, customers who can get or must take transmission capacity now but do not actually need it until some time in the future, and customers whose need for capacity they have under contract is intermittent or suddenly declines. Transmission owners have the flexibility to manage this sort of risk by offering transmission capacity to others. Non-discriminatory service demands that non-owner holders of rights to transmission capacity have the same flexibility to manage their risk as owners have.

Second, capacity reassignment, combined with assured access to firm transmission service, reduces the transmission provider's market power by enabling transmission customers to compete with the owner to some extent in the firm transmission market. To promote competition in such a secondary market, firm service rights should be defined as broadly as possible, consistent with reliable operation of the system. In particular, using firm transmission capacity to deliver non-firm power or repackaging firm transmission capacity for sale as non-firm capacity should not be unduly restricted.

Third, the ability to reassign capacity rights can also improve capacity allocation. When capacity is constrained and some market participants value capacity more than current capacity holders, the current holders may be willing to reassign their capacity rights at rates below the opportunity costs of the transmission provider, thereby lowering rates to the new customer. We note that the prices of reassignments are currently capped at the price the public utility sold the transmission.[199] The Commission invites comments on whether the current price cap on resale should be modified or eliminated.

In addition, the service agreement must state clearly the respective obligations of the original right holder and any subsequent purchaser of the right. In particular, it should state the conditions, if any, under which the original right holder can be released from its obligations under the service agreement if the right is reassigned or sold. Any reassignments must be done in a not unduly discriminatory manner. We invite comment on these reassignment issues.

Given the current specification of basic transmission services (network, flexible point-to-point, and ancillary), some services may be more reassignable than others. The ease with which rights can be reassigned depends on two factors: the ability of ensuring operational feasibility and the specificity of contract rights. Point-to-point service involves a well-specified right to transfer a given amount of power between specific points or across an interface under certain conditions. The transmission provider is operationally indifferent as to who wants to transfer the power that flows between those points. Thus, point-to-point service is well-suited to reassignment.

Network service, as currently defined, is idiosyncratic because it is unique to the transmission user receiving the service. This service is purchased to integrate a set of resources into a set of loads given specific dispatch parameters and load profiles. The transmission provider has to plan and operate its system for this specific service. It is not clear that such service could be of any value to an entity other than the original buyer. It is also not clear precisely what would be resold because network customers do not have rights to a specific amount of transmission capacity, but have rights only to a varying amount of capacity needed to integrate load with their dispersed power resources.[200] Such indeterminate rights may not be amenable to reassignment. We seek comments on reassigning network service. Can network service be structured such that

[199] See *Florida Power & Light Company,* 66 FERC ¶61,227 at 61,524 (1994), *order on reh'g,* 70 FERC ¶61,150 (1995). The Commission has required a similar cap for released pipeline capacity. See Order No. 636–A, Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol and Order Denying Rehearing in Part, Granting Rehearing in Part, and Clarifying Order No. 636, Ferc Stats. & Regs. ¶30,950 at 30,560 (1992), *appeal pending.*

[200] In *FP&L,* the Commission approved network service billing based on a load ratio method of cost allocation, instead of on contract demand.

capacity rights could be specified and reassigned?

Ancillary services also may not be suitable for reassignment. We seek comments on these reassignment issues.

e. *Reciprocity provision.* The Commission proposes to require that transmission tariffs contain a reciprocity provision.[201] The purpose of this provision is to ensure that a public utility offering transmission access to others can obtain similar service from its transmission customers. It is important that public utilities that are required to have on file tariffs be able to obtain service from transmitting utilities that are not public utilities, such as municipal power authorities or the federal power marketing administrations that receive transmission service under a public utility's tariff.

f. *Available Transmission Capacity (ATC).* ATC is capacity that must be made available for new firm transmission service requests. Basically, it is the capacity not committed to other firm uses during the scheduling interval(s) for which service is requested. The tariff must clearly specify the other uses for which capacity will be excluded from ATC. Acceptable other uses may include:

- A requirement to meet generally applicable reliability criteria.
- Meeting current and reasonably forecasted load (retail customers and network transmission customers) on the transmission provider's system. The term ''reasonably forecasted'' should be defined in terms of the utility's current planning horizon. Capacity needed to serve reasonably forecasted load must be made available until the forecasted load develops.
- Fulfilling the transmission provider's current firm power and firm transmission contracts.
- Meeting pending firm transmission service requests.

In the tariff, the utility must commit to provide an index of other holders of firm transmission entitlements and describe the method used to estimate ATC in sufficient detail to allow others to do the same analysis. The utility must make all data used in calculating the ATC publicly available. The methodology and the data used to develop the ATC must be consistent with the information submitted in the FERC Form No. 715, Annual Transmission Planning and Evaluation Report.[202]

Capacity can be withheld from ATC only if it is to be used during the scheduling period for which service is requested. For example, if a customer requests firm service for ten years and the utility needs that capacity to serve native load during years six to ten, the utility must provide service using the existing capacity for the first five years and then use expanded capacity or some other alternative arrangement for the third-party service during the remainder of the term.

Under the proposed rule, ATC information will be required to be made available in the public utility's information system. The nature of the ATC information to be made available and the manner in which it is made available will be the subject of the real-time information networks technical conference that we are concurrently initiating.

g. *Procedures for obtaining service.* This section must clearly describe all notice and response requirements, including deadlines for each step in the process, the information required in a valid request for service, the procedure for obtaining service from existing capacity and the additional steps to follow when capacity expansion is required. The discussion below highlights some particularly important aspects of procedures for obtaining service.

The tariff must specify minimum notice periods. Notice for accepting requests for short-term service is particularly important. Because market opportunities may be short-lived, the advance notice required for short-term service should be as brief as possible and should be able to be secured through the real-time information network. Similarly, the tariff also should specify the minimum time needed to accommodate customers' needs to plan and construct new generating units or to enter into long-term power supply contracts.

A tariff must specify the information that must accompany a service request. This information should generally track that specified in the Commission's Policy Statement Regarding Good Faith Requests for Transmission Services.[203] The tariff should require only information that is clearly necessary to determine whether capacity is available, the price for the service requested and other information necessary to process the service request.

A tariff may require scheduling of receipt and delivery points and amounts of energy flows but not require disclosure of power contract terms as part of the request process. While the Commission has accepted such a requirement in some tariffs, our preliminary view is that there are less intrusive and less ambiguous ways of dealing with transmission owner concerns. If the concern is the need to know intended power flows, the needed information of the anticipated transaction can be specified in a service request.

The concern may be that a customer will reserve scarce capacity and then hold it without using it (for whatever reason). While reservation holders as well as transmission providers should not be allowed to withhold capacity, there are less restrictive options for dealing with this concern. One is to allow the transmission provider to use or sell the capacity for so long as the reservation holder is not using it. Another is to have a pool that clears the short-term market. Of course, the reservation holder would be compensated. Another option is to require the customer to begin using the capacity within some period or lose its reservation rights for that capacity. Any of these alternatives can allay legitimate concerns without forcing customers to reveal unnecessary details of the transaction. The Commission requests comments on these and other approaches. Could pooling help address these issues? In particular, how would a use-it-or-lose-it rule work? How would a utility know which reservation holder to compensate with non-firm revenues if network service customers hold no reservation rights? Non-firm revenues could be shared among load-ratio customers and reservation customers on the basis of the non-use of the firm entitlements.

With respect to network service, our preliminary view is somewhat different. Because network service is billed on a load ratio basis, customers would have the incentive to specify unlimited generation resources to be integrated into their load without any commensurate financial obligation. The transmission provider would nevertheless have to plan its system to dispatch those resources. Thus, network customers, when designating their network resources, must show that they own or have contracted for those resources. We seek comment on this issue. Are there alternative ways of dealing with this problem for network service?

[201] The Commission previously accepted tariffs that contain reciprocity provisions. See, *e.g., El Paso Electric Company and Central and South West Services Inc.,* 68 FERC ¶61,181 at 61,916 (1994), *reh'g pending; Southwestern Electric Power Company and Public Service Company of Oklahoma,* 65 FERC ¶61,212 at 61,981–82 (1993), *reh'g denied,* 66 FERC ¶61,099 (1994).

[202] See Order Nos. 558 and 558–A, *supra* note 92.

[203] See *supra* note 91.

The tariff should provide that, if service can be provided using existing capacity, a service agreement will be tendered in time for the customer to execute it so that service can begin at the time requested. The tariff should clearly state the applicable rates for service from existing capacity. In addition, the tariff should contain provisions, as well as rates, for reserving capacity now for use at a later time. Also, the tariff should contain a standardized service agreement that applies to all service provided from existing capacity.

When existing capacity is not adequate to provide additional firm service, the tariff should require the transmission provider to prepare, if needed, an engineering study of options for expanding capacity, including the costs of each option, within a specified period. The customer should be required to pay the reasonable costs of performing the study. If the customer elects to take service after reviewing the engineering study and cost estimates, including supporting documentation, the transmission provider may require the customer to enter into a contract, provide a security deposit, and agree to take service at rates calculated in accordance with the pricing provisions of the tariff.[204] The tariff should allow the customer to specify the contract term.

h. *Service priority.* Service priority becomes important when capacity is constrained (*i.e.*, demand exceeds supply). This, in turn, has two aspects: when new service requests are considered and when, after service has begun, interruptions are required.

(1) *Considering new service requests.* A tariff should specify a reasonable basis upon which service requests will be considered. As long as transmission capacity is available for all requests, they can all be accommodated. When capacity is short, however, the priority of requests is important because the determination as to which requests are met from existing capacity and which require expanded facilities will affect pricing. However, firm service requests should always receive priority over non-firm service requests, and firm service requests from third-party transmission customers should have the same priority as new transmission services for the public utility's native load.

The industry currently operates under a contract rights regime whereby customers are given contract rights for a specific period at a set price. Under this regime, requests are generally processed under a first-in-time rule. Capacity is allocated in the order in which the requests were made. If available transmission capacity is exhausted, a requester may be required to pay the incremental cost of relieving the constraint. Incremental cost could be either the redispatch cost of unloading a line or the cost of expanding capacity. Thus, the position of the requester in the queue may affect price and possibly determine when service is provided. Alternatively, all requesters during a given period could be treated as making one request for a large increment of capacity and pay the same average incremental cost. We seek comments on appropriate ways to process requests.

(2) *Allocating interruptions.* After service has begun, priority is important if capacity becomes unexpectedly constrained and service must be interrupted.[205] Contracts must spell out the obligations and priorities in dealing with operating and reliability procedures. Priorities will affect the order in which services are interrupted. A tariff must specify that firm transmission service always has priority over non-firm transmission service. Non-discriminatory service requires that firm transmission customers have the same assurance of uninterrupted use of the grid, within their contractual commitments and obligations, as the transmission provider. That is, the public utility's personnel who trade wholesale power should have the same firm transmission service as does a firm transmission customer. Both have the same standing when the control area operator deals with emergencies. That is, both must recognize that the operator is authorized to interrupt scheduled power transfers as needed in order to maintain reliability. Operators must be allowed to maintain safe and reliable service on the overall system.

Generally, interruption of firm transmission service should occur only because of: (1) Emergencies or *force majeure;* or (2) the need to maintain overall reliability or to protect equipment as prescribed in industry operating guidelines. The specific reasons for interruptions will have to be determined in accordance with the characteristics of each transmission provider's system. The tariff should require the provider to notify all customers in a timely manner of any scheduled interruptions, while recognizing the right to take appropriate actions under operating procedures to deal with unscheduled emergency conditions.

i. *Security deposits and creditworthiness.* A tariff may require that a reasonable, returnable deposit accompany the request for service, and that the customer demonstrate basic creditworthiness. A creditworthiness investigation (including a security deposit requirement) must be applied on a non-discriminatory basis.

j. *Short-term and interruptible service agreements.* A copy of standard transmission service agreements for short-term and interruptible transmission services must be included in the tariff in order to expedite service and limit the possibility of undue discrimination or other abuse. The tariff must list all information needed from the customer.

k. *Dispute resolution.* The tariff must clearly set forth the steps to be followed to resolve disputes. Procedures should be designed to resolve conflicts quickly. This suggests the use of some type of alternative dispute resolution (ADR) process, such as mediation or arbitration. ADR would be especially useful when the dispute is over response times, capacity additions, a highly technical matter, or any matter that applies, but does not extend, existing Commission policy. The tariff should specify which types of disputes must go to ADR and which disputes must be taken directly to this Commission.

A tariff should provide that capacity expansion proceed while cost disputes are pending, provided the customer agrees to pay the costs actually incurred and the rate ultimately determined by the Commission. This is needed to minimize delays when the customer wants the service but disputes the cost. Such a provision would require the transmission owner to proceed with whatever steps are necessary to provide service to the customer, as long as the customer agrees to furnish a deposit and state in writing that it will take service at the rates, terms and conditions that are ultimately found just and reasonable by the Commission, or to pay all out-of-pocket costs incurred in processing the request up to the date of cancellation of the request.

l. *Pricing.* Transmission pricing must be consistent with the Commission's Transmission Pricing Policy

[204] See Energy Services, Inc., 58 FERC ¶ 61,234 at 61,766 and 61,768 (1992) (security deposit or some other form of assurance permitted; approval of provision requiring transmission customers to have ''suitable interconnection agreement'' with transmission-owning utility).

[205] Of course, the utility always may curtail if necessary to maintain the reliability of the system. For example, if a major transmission line fails, the utility may quickly have to interrupt transactions without regard to priority of service in order to stabilize the system. Once the system is stabilized, however, the utility should allocate remaining capacity on the basis of contractual priorities.

Statement.[206] We especially note that the transmission public utility must charge itself the same price for transmission services that it charges its third-party wholesale transmission customers.

5. Pro Forma Tariffs

Appendices B and C to this proposed rulemaking contain *pro forma* tariffs that contain the minimally acceptable terms and conditions of service for point-to-point and network transmission services. They contain tariff language that assures acceptable levels of service quality for non-price terms and conditions. For the most part, we have avoided specifying pricing provisions. The *pro forma* tariff provisions would of course be subject to case specific scrutiny to ensure that services are provided on a non-discriminatory open access basis. We seek comment on whether these tariffs provide a good basis for defining the minimum acceptable non-price terms and conditions of service.

6. Broader Use of Section 211

The Commission intends to exercise its authority under sections 205 and 206, as described in this proposed rule, in a complementary manner with its authority under section 211. Requiring all public utilities to file non-discriminatory open access tariffs, as set forth in this NOPR, will not alone ensure competitive bulk power markets in all regions of the United States. Many utilities providing transmission services are not public utilities subject to our full jurisdiction.[207]

Section 211, however, permits entities to seek open access to all transmission facilities, including those owned by non-public utilities. Thus, to further eliminate unduly discriminatory practices in the industry, the proposed rule encourages the broad use of section 211.

While the Commission cannot order transmission *sua sponte* under section 211, nothing in section 211 prohibits groups of qualified applicants from simultaneously or jointly filing applications for the same service. [208] Such group or joint action would permit the Commission to order tariffs of broader applicability.

Moreover, sections 211 and 212 require that applicants specify only rates, terms, and conditions of service, not specific transactions. Thus, applicants can file requests for tariffs to accommodate future, currently unspecified, short-notice transactions, similar to the type of tariff filed by many utilities seeking approval of market-based rates or mergers.[209]

Section 211 bars the Commission from ordering service that would unreasonably impair the continued reliability of electric systems affected by the order. To meet this requirement, the transmission owner and the applicant (or the Commission if necessary) can craft provisions in the general tariffs discussed above to assure that service will comply with standard industry operating practices and, thus, not have an unreasonable impact on reliability.

Finally, section 211 permits an opportunity for an evidentiary hearing.[210]

Section 211 does not preclude applicants from lodging the record from a section 205 undue discrimination case involving the same service, nor does it preclude the Commission from incorporating and relying on the record and findings in a section 205 proceeding if the section 211 applicant, the transmitting utility, and the service requested are the same. In sum, sections 211 and 212 provide the Commission and the electric industry a much broader means to attain wider transmission access than has been achieved so far. In this regard, the Commission invites comment on further avenues the Commission can pursue to facilitate and expedite 211 applications.

Section 211 also complements our section 205 and 206 authority in that it allows customers to request unique services not available in the non-discriminatory open access tariff. While our objective in this proposed rule is to implement a very broad service commitment in the non-discriminatory open access tariff, customers may have unique service needs that are not contemplated in the open access tariff.

7. Status of Existing Contracts

There are three general types of existing wholesale contracts that could be affected by the proposed rule: (1) Requirements and other firm service contracts under which customers take bundled transmission and generation services; (2) coordination contracts for purchases or sales of economy energy; and (3) transmission-only contracts. The Commission believes that it can eliminate unduly discriminatory practices and achieve more competitive bulk power markets without abrogating existing contracts. Accordingly, as discussed *supra,* we have proposed to apply the unbundling requirement only to transmission services under new requirements contracts and new coordination transactions. In addition, although the open access tariffs must be open to all entities that could request transmission service under section 211, *i.e.,* all non-sham wholesale purchasers, we are not proposing to abrogate any existing power or transmission contracts. However, there may be situations in which it would be contrary to the public interest to allow existing wholesale power or transmission contracts to remain in effect. Accordingly, we invite comment on whether it would be contrary to the public interest to allow all or some of the above types of existing contracts to remain in effect.

8. Effect of Proposed Rule on Commission's Criteria for Market-Based Rates

As stated above, one of the primary reasons for this rulemaking is to foster increased wholesale competition, in order to reduce prices for consumers. Moreover, the increased competition allowed by non-discriminatory open access may allow lighthanded regulation of wholesale sales for many more transactions and perhaps throughout many regions.

The Commission's standards for allowing market-based rates for wholesale power sales require an applicant and its affiliates to demonstrate that they lack or have mitigated market power in generation and transmission, that they cannot erect other barriers to entry,[211] and that there is no affiliate abuse or reciprocal dealing. In *KCP&L,*[212] the Commission

[206] *See supra* note 124.

[207] For example, there are approximately 56 electric utilities operating control areas in the United States that are not public utilities.

[208] This assumes, of course, that all have made the requisite request to the transmitting utility 60 days prior to filing. FMPA, for example, filed on behalf of numerous Florida municipals in the *FP&L* section 211 case. See *Florida Municipal Power Agency* v. *Florida Power & Light Company,* 65 FERC ¶ 61,125 (1993).

[209] See *CSW, supra,* 68 FERC at 61,916. Section 211 bars the Commission from ordering service that would unreasonably impair the continued reliability of electric systems affected by the order. To meet this requirement, the transmission owner and the applicant (or the Commission if necessary) can craft provisions in the general tariffs discussed above to assure that service will comply with standard industry operating practices and, thus, not have an unreasonable impact on reliability.

[210] Such a hearing is required only if there are material issues of fact in dispute. See *Citizens for Allegan County, Inc.* v. *FPC,* 414 F.2d 1125, 1128 (D.C. Cir. 1969).

[211] For applicants with transmission market power, the Commission has required the mitigation of such power through the filing of a non-discriminatory open access tariff. The Commission also has examined an applicant's control over potential barriers to entry, *e.g.,* ownership or control of sites for generation facilities, generation equipment, or pipelines for supplying fuel.

[212] 67 FERC at 61,557.

determined that it no longer needed to examine generation dominance in analyzing market-based rate proposals for sales from new generation facilities. However, the Commission has continued to evaluate generation dominance in analyzing market-based rate proposals for sales from existing generation capacity.[213]

If this rulemaking achieves the Commission's goals, and competition fueled by open access increases in the wholesale bulk power markets to the extent we expect, the increased competition may reduce or even eliminate generation-related market power in the short-term market. Increased wholesale competition could reduce the need for cost-based regulation of bulk power sales and allow broader use of market-based rates. For example, more competitive markets may allow us at some point to drop the generation dominance standard for existing capacity. We believe that the increased competition expected to result from this rulemaking may allow us to consider innovative approaches to authorizing market-based rates for generation. One suggestion in this regard has been that the Commission ought to consider filings made pursuant to section 205 seeking authorization of market-based rates for all sellers in a defined region. For example, such a region conceivably could be defined by the boundaries of an RTG, a power pool, a reliability council, or the less formal boundaries of an economic market. However, before proceeding to consider this suggestion, or any other innovative proposal for dealing with market-based rates for existing wholesale generation, the Commission must address certain threshold questions. Therefore, the Commission solicits comments on the following questions:

(1) Assuming that a final rule in this proceeding mandates that all public utilities must file generally applicable non-discriminatory open access tariffs, would wholesale sellers of generation from existing generating facilities still possess market power?

(a) Can we eliminate our generation dominance standard based on before-the-fact predictions of changes to come from our rulemaking, or must we rely on after-the-fact evidence of the changes that did occur?

(2) For purposes of assessing whether existing wholesale generators still possess market power, how ought the relevant market be defined in an open access transmission environment? To what extent do the boundaries of a regional transmission group, a power pool, or a reliability council lend themselves to being used to define the relevant market in an open access environment?

(3) Should it be determined that, notwithstanding non-discriminatory open access transmission, existing generators still possess market power, can such market power be mitigated effectively to permit market-based rates for existing generation? And, if so, what are the Commission's options? For example:

(a) Ought the Commission rely on rules of conduct, market mechanisms intended to ensure competition in wholesale power sales (such as bidding procedures) and monitoring as the means to curb such market power; or

(b) Ought the Commission rely on structural reforms as the means to curb such market power?

(4) Once the Commission has determined how to define the relevant market in an open access environment, ought the Commission entertain requests that all wholesale sellers within such a market be authorized to charge market-based rates?

9. Effect of Proposed Rule on Regional Transmission Groups

In the Commission's Policy Statement Regarding Regional Transmission Groups (RTGs) we expressed support for the development of voluntary transmission associations and encouraged their formation. We believe that RTGs can speed the development of competitive markets, increase the efficiency of the operation of transmission systems, provide a framework for coordination of regional planning of the system and reduce the administrative burden on the Commission and on members of RTGs by providing for voluntary resolution of disputes.

Since the issuance of the Policy Statement, the Commission has given conditional approval to the bylaws of two RTGs.[214] Both approvals were conditioned on the members agreeing to offer comparable transmission services at least to other members, through either individual transmission tariffs or a generic regional tariff. For public utilities, that condition would be superseded by fulfillment of the requirements of the proposed rule.

To the extent public utilities view the comparability requirement in our two RTG orders as a disincentive to joining an RTG, that disincentive would be mooted. All such utilities will be required to file tariffs. Moreover, we will continue to provide substantial latitude for innovative pricing proposals by an RTG, as indicated in the Transmission Pricing Policy Statement.

Some transmission users might conclude that the availability of comparability tariffs makes membership in an RTG less necessary. But, this conclusion would ignore the comparative benefit of a member having its needs planned for on a region-wide basis under an RTG instead of on a system-by-system basis. Coordination of planning that results in a more efficient system creates economies for both transmitting utilities and users.

Also, the reduction in administrative burden for all parties involved in an RTG would remain. RTG members can work out their own disputes without incurring the substantial costs and delays involved in litigating at the Commission or in the courts. This fact alone makes for more flexible and responsive markets and reduces costs. Moreover, the Commission has stated its willingness to give deference to decisions resolved through RTG dispute resolution procedures.

In short, RTGs are still a valuable tool in promoting wholesale competition and in achieving other Commission goals. RTGs are structures to reflect the interests of all of the grid's users, not just some. RTGs allow for consensual solutions to local or regional issues, instead of solutions imposed by FERC. RTGs can function as regional laboratories for experimentation on transmission issues. And, RTGs will provide a regional forum, a necessary predicate to regional cooperation. The potential benefits of RTGs would in no way be undermined by the rules proposed in this Open Access NOPR.

F. Stranded Costs and Other Transition Costs

1. Supplemental Notice of Proposed Rulemaking on Stranded Costs by Public Utilities and Transmitting Utilities

a. Introduction. The Commission's Open Access NOPR would impose significant new requirements on public utilities—requirements that would help us to achieve the goal of robust competitive wholesale power markets, and that would result in a new way of doing business for utilities. The Open Access NOPR would give a utility's historical wholesale customers enhanced opportunities to reach new suppliers and, therefore, would affect the way in which utilities traditionally have recovered costs. We believe it is essential to address the transition issues associated with the move toward competition responsibly. The most significant of these issues is stranded cost recovery.

The recovery of legitimate and verifiable stranded costs is critical to the successful transition of the electric utility industry from a tightly regulated, cost-of-service industry to an open

[213] See *Entergy Services Inc.*, 58 FERC ¶61,234 at 61,755 (1992).

[214] See *SWRTA* and *WRTA*, supra.

transmission access, competitively priced industry. Public utilities have invested billions of dollars in facilities built under a regulatory regime in which they have been permitted to recover all prudently incurred costs, plus the opportunity to earn a reasonable rate of return on their investment. [215] At the wholesale level (and in some instances the retail level), they are now entering a regulatory era in which they will have to compete to supply electric service. We believe that utilities should be allowed to recover the costs incurred under the old regulatory regime according to the expectations of cost recovery established under that regime.

The primary goal of the Open Access NOPR is to promote competitive wholesale markets by assuring that all wholesale sellers of generation have the opportunity to compete on a fair basis and that all wholesale purchasers can reach alternative sellers. Ultimately, this should result in lowering electricity prices for the Nation's consumers. In the meantime, however, if a wholesale customer is able to leave its existing generation supplier to shop for power elsewhere, we do not believe the existing supplier's shareholders or its remaining customers should have to bear costs that were prudently incurred under the old regulatory system to serve the departing customer.

We cannot successfully and fairly encourage the development of competitive wholesale markets as envisioned by the Open Access NOPR until we have made provision for electricity suppliers to seek recovery of existing uneconomic costs (primarily generation) which they already have incurred (*i.e.*, those that could not earn a reasonable return in a competitive market). Recovery of legitimate and verifiable transition costs will permit all sellers, including the utilities who prudently incurred these costs, to compete on a more equal footing in competitive bulk power markets. In addition, while stranded cost recovery may delay some of the benefits of competitive bulk power markets for some customers, the Commission learned from its experience in the restructuring of the natural gas industry that these types of transition costs must be addressed at an early stage if we are to fulfill our regulatory responsibilities in moving to competitive markets. [216]

The Commission believes that the approach proposed in the Stranded Cost NOPR issued on June 29, 1994 [217] should adequately cover most, if not all, costs that could be stranded in an environment where transmission access is more widely available, including the access environment that the Commission expects if the provisions of the Open Access NOPR are adopted. Some of the mechanisms proposed in the initial NOPR have been revised in this Supplemental NOPR to reflect submitted comments. In addition, there may be implementation or other issues raised by the open access requirements that were not contemplated when the Stranded Cost NOPR was originally proposed. Accordingly, we are issuing a Supplemental Notice of Proposed Rulemaking on Stranded Costs. In this Supplemental NOPR, we make preliminary determinations [218] on certain issues and seek additional comments limited to the new matters proposed in this document, including the proposed open access requirements. We also propose to permit public utilities and transmitting utilities to seek recovery through transmission rates of stranded costs associated with a discrete set of existing wholesale requirements contracts.

b. Summary of Major Preliminary Determinations. In response to the June 29 Stranded Cost NOPR, the Commission received initial and/or reply comments from 128 entities, representing a broad cross-section of parties that participate in, or are affected by, the electric utility industry.[219] The Commission has carefully reviewed all of the comments, and made several preliminary determinations. First, we have determined that recovery of legitimate and verifiable stranded costs should be allowed, and that direct assignment of stranded costs to departing customers, as proposed in the Stranded Cost NOPR, is the appropriate method for recovery.[220]

Second, with respect to stranded costs associated with new wholesale requirements contracts, [221] we reaffirm our proposal that a public utility may not seek recovery of such costs except in accordance with an exit fee or other explicit provision contained in the contract. The public utility may seek recovery in accordance with the contract. However, no public utility or transmitting utility may seek recovery of stranded costs associated with new requirements contracts through any transmission rate under section 205, 206 or 211.[222]

Third, with respect to stranded costs associated with existing wholesale requirements contracts [223] that are not renewed and that do not contain exit fees or other stranded cost provisions, if the seller can demonstrate that it had a reasonable expectation that the contract would be renewed and can meet other evidentiary criteria, we believe that stranded cost recovery should be allowed. We encourage the parties to such contracts to attempt to negotiate a mutually agreeable stranded cost amendment. We have determined, however, that the three-year negotiation period proposed in the initial Stranded Cost NOPR should be abandoned. We propose instead that: (1) A public utility or its customer under the contract may, at any time prior to the expiration of the contract, file a proposed stranded cost amendment to the contract under section 205 or section 206; or (2) a public utility may, at any time prior to the expiration of the contract, file a proposal to recover stranded costs through transmission rates for a departing customer.[224] We believe it is

[215] Many also have committed millions of dollars to purchase power under long-term power supply contracts.

[216] See AGD, supra note 9, 824 F.2d at 1021–30. However, our mechanisms for addressing stranded costs in the electric industry differ from those used in the gas industry for the reasons discussed below.

[217] See supra note 5.

[218] If we were not issuing the Open Access NOPR, we would be inclined to adopt a final rule on stranded costs at this time. However, we are concerned that the Stranded Cost NOPR might not provide appropriate mechanisms to address transition costs that could result from the open access environment envisioned by this NOPR. Accordingly, our findings here are interlocutory in nature, and rehearing does not lie.

[219] A list of commenters is attached as Appendix D.

[220] As discussed *infra*, section III.F.1.c(13), however, this does not foreclose case-specific proposals for dealing with stranded costs in the context of voluntary corporate restructuring proceedings.

[221] For recovery of wholesale stranded costs, the proposed rule distinguishes between stranded costs associated with wholesale requirements contracts executed after July 11, 1994, the date the proposed rule was published in the **Federal Register** (''new'' contracts) and stranded costs associated with wholesale requirements contracts executed on or before that date (''existing'' contracts). Stranded Cost NOPR at 32,860.

[222] As we indicated in the Stranded Cost NOPR, if the seller under a new wholesale requirements contract is a transmitting utility subject to the Commission's jurisdiction under section 211 of the FPA, but not also a public utility subject to the Commission's section 205–206 jurisdiction, there will be no Commission forum for addressing wholesale stranded costs associated with the new contract. Such utilities will not be able to seek recovery of wholesale stranded costs associated with such new contracts through rates for transmission services ordered under section 211, and the Commission does not have jurisdiction over their power sales contracts. Therefore, these utilities must address recovery of stranded costs through their new wholesale requirements contracts subject to the appropriate regulatory authority approval. Stranded Cost NOPR at 32,860–61.

[223] Existing wholesale power sales contracts are those contracts executed on or before July 11, 1994. Stranded Cost NOPR at 32,860, 32,881.

[224] If the selling utility under the existing contract is a transmitting utility that is not also a public utility, its wholesale requirements contracts are not

in the public interest to permit public utilities to seek recovery of stranded costs associated with existing contracts that do not explicitly address stranded costs, and that they be permitted to do so either through transmission rates or through amendment to the existing power sales contracts. However, for a utility to be eligible for stranded cost recovery, it must meet the evidentiary demonstration required by this rule.

In examining proposals to recover stranded costs, we propose to apply a ''reasonable expectation'' standard and a rebuttable presumption that if contracts contain notice provisions, the utility had no reasonable expectation of continuing to serve the customer beyond the term of the notice provision. We further propose to retain the requirement in the initial Stranded Cost NOPR that utilities attempt to mitigate stranded costs. In addition, we are proposing that public utilities be required to follow certain procedures specified herein that permit a customer to obtain advance notice of its maximum possible stranded cost exposure without mitigation.[225]

Fourth, with respect to costs stranded as a result of retail wheeling, or as a result of wholesale wheeling obtained by a retail-turned-wholesale customer, the Stranded Cost NOPR explored the issue of whether we should assume some responsibility for addressing such costs. The vast majority of those commenting on our proposed rule urged us not to get involved or otherwise assume responsibility for those types of stranded costs, except in certain very limited circumstances. At this juncture, we have concluded that it is appropriate to leave it to state regulatory authorities to assume the responsibility for any stranded costs occasioned by retail wheeling, except in the narrow circumstance in which the state regulatory authority does not have authority under state law, at the time retail wheeling is required, to address recovery of such costs. The Commission holds the strong expectation that states will provide procedures for, and the full recovery of, legitimate and verifiable stranded costs.

We also have determined that this Commission should be the primary forum for public utilities to seek recovery, through FERC jurisdictional transmission rates, of stranded costs resulting from wholesale wheeling for newly created wholesale customers who leave their franchised utility's supply system (e.g., through municipalization).[226]

In deciding that states are the more appropriate entities to address stranded costs resulting from retail wheeling, we are relying on assurances from our state colleagues, as evidenced, for example, in NARUC's comments on the proposed rule, that they will address and resolve this difficult issue. We continue to be of the opinion that utilities are entitled, from both a legal and policy perspective, to an opportunity to recover their past prudently incurred costs, including costs incurred to serve retail customers who obtain retail wheeling in interstate commerce. We emphasize that we will not allow states to use rates for transmission in interstate commerce as the vehicle for passing through any stranded costs resulting from retail wheeling, except in the narrow circumstance described. Thus, these costs must be recovered in rates in a manner that does not involve ''transmission of electric energy in interstate commerce'' as that phrase is used in the FPA.[227] This approach ensures that the wholesale market will not be burdened by retail costs. It also ensures that one state will not be able to place costs stranded by its ordering of retail wheeling[228] on customers in another state.

As discussed *infra*, we believe the states have a number of mechanisms to provide for recovery of retail stranded costs in retail rates. One of those mechanisms is a surcharge to state-jurisdictional rates for local distribution. Accordingly, we are proposing to define ''facilities used in local distribution'' under section 201(b) of the FPA.[229] We believe states may impose retail stranded costs on facilities or services falling under this definition.[230]

We set out our preliminary findings here for the limited purpose of reopening the comment period of the Stranded Cost NOPR as to whether the requirements proposed in the Open Access NOPR raise additional implementation or other issues pertaining to stranded cost recovery that were not addressed in the initial Stranded Cost NOPR and, if so, whether the mechanisms we propose based on our preliminary determinations are adequate to allow recovery of stranded costs. Additional issues on which we seek comment are delineated below.

c. The Proposed Regulations. (1) Justification for Allowing Recovery of Stranded Costs and Estimates of the Magnitude of Stranded Costs. (a) *Comments*

Virtually all of the investor-owned utility commenters support the NOPR's basic assumption that stranded costs can be created when a customer switches suppliers. Many commenters, including Electric Generation Association and Public Power Council, applaud the Commission for timely ''addressing the difficult and controversial stranded cost issue and for recognizing that this issue must be resolved in order for all parties to harvest fully the benefits of a competitive electric industry.'' [231] Edison Electric Institute (EEI) strongly endorses the recovery of stranded costs.

A number of commenters, primarily representing customer groups, disagree that the risk that a utility could lose customers (and thereby incur stranded costs) is a new phenomenon created by regulatory and statutory initiatives that utilities could not anticipate. These commenters argue that utilities have long been aware that they risk losing customers to competition and that utilities should have planned for this eventuality.

In support of this argument, American Forest and Paper Association (American Forest) and others argue that utilities have known for some time that wholesale customers can—and in the

subject to this Commission's jurisdiction. Nevertheless, we do encourage such a transmitting utility to attempt to negotiate a mutually agreeable stranded cost amendment with its customer. In addition, we will allow such a transmitting utility to file a request to recover stranded costs in transmission rates under FPA sections 211–212. However, such transmitting utility would be required to make the same evidentiary demonstration as that required of public utilities seeking extra-contractual stranded cost recovery.

[225] The customer's maximum possible stranded cost exposure without mitigation would be the revenues that the utility would have received from the customer had the customer continued to take service from the utility. This is the amount from which the competitive market value of the power that the customer would have purchased would be deducted to compute the amount of recoverable stranded costs (using the ''revenues lost'' approach for calculating stranded costs that this rule proposes to adopt (see section III.F.1.c(8) infra)). The utility will be required to make every effort to mitigate the amount of the stranded cost charge. See section III.F.1.c(9).

[226] Although the Commission's June 29 NOPR characterized these types of stranded costs as ''retail'' stranded costs, we believe they are more appropriately characterized as ''wholesale'' stranded costs, since it is not only state or local authority that permits the costs to be stranded, but also the availability of wholesale transmission that causes the costs to be stranded.

[227] See 16 U.S.C. § 824(c).

[228] We do not address whether states have the lawful authority to order retail wheeling in interstate commerce.

[229] 16 U.S.C. 824(b).

[230] States may also use their jurisdiction over local distribution facilities to address potential ''stranded benefits,'' *e.g.*, environmental benefits associated with conservation, load management, and other demand side management (DSM) programs. See NARUC Resolution on Competition, the Public Interest, and Potentially Stranded Benefits, November 16, 1994 (Appendix C to NARUC's comments).

[231] Electric Generation Association comments at 1.

general course of business, in fact, do—leave utilities' systems for other suppliers without being obligated to pay for stranded costs. Several commenters also argue that Congress put the industry on notice through PURPA and then EPAct that utilities are at risk of losing customers as a result of the pro-competitive provisions of these statutes. Numerous parties[232] note that the courts and the Commission have, in various cases, provided notice that, as a result of competitive forces in the industry, utilities have had no reasonable expectation that customers will remain on their systems after contract expiration. Commenters cite, among other cases, the Supreme Court's 1973 decision in *Otter Tail*[233] (in which the Court held that the refusal to wheel power could place a utility at risk of antitrust liability), the Commission's 1968 decision in *Village of Elbow Lake* v. *Otter Tail Power Company*[234] (in which utilities were alerted to the threat of municipalization), and the Commission's 1983 decision in *Kentucky Utilities Co.*[235] (in which a notice of termination provision was deemed to constitute the extent of the utility's protection of its investment incurred to support the contract service).

Some commenters[236] argue that the Stranded Cost NOPR incorrectly assumes the existence of a wholesale service obligation. These commenters argue that the NOPR improperly assumes that a utility has had an obligation to serve a wholesale requirements customer beyond the term set forth in the contract unless the contract contained a notice of termination provision or other more explicit stranded cost provisions. According to these commenters, the wholesale service obligation is purely contractual, and utilities could not reasonably have expected to continue to provide service after the expiration of a particular contract.

Some state commissions (*e.g.*, Illinois Commission) also find the NOPR's notion of wholesale stranded costs to be misplaced. These state commission commenters note that competition and notice provisions have existed for decades and that a customer leaving the system for another supplier is no different from a customer leaving due to an economic downturn (*e.g.*, a plant closing or relocation). Under the latter circumstance, they note that the costs are allocated among the remaining customers, or, in some instances, shareholders. A number of other state commissions (*e.g.*, Indiana Utility Regulatory Commission (Indiana Commission)) urge that stranded cost recovery exclude costs associated with normal business risk, such as poor planning, customer relocation, self-generation, or cogeneration.

With regard to the magnitude of the level of total industry stranded costs, while estimates vary widely, most commenters agree that the level of potential wholesale stranded costs is small relative to that of retail stranded costs. Several state commissions and customer groups (*e.g.*, Florida Public Service Commission (Florida Commission), APPA, Industrial Consumers, Illinois Commission, and SCOOP) argue that the potential level of wholesale stranded costs is largely exaggerated. For example, SCOOP claims that ''[s]eparating out only the wholesale exposure to stranded costs, and critically analyzing the extent of that exposure, will permit the Commission to recognize that wholesale stranded costs are little more than the 'flea on the tail of the dog' and not the dog itself.'' [237] Many of these commenters, including the Illinois Commission, note that wholesale stranded costs are likely to be minimal because wholesale requirements sales for major investor-owned utilities account for roughly 6 percent of their total net energy generated and received. Furthermore, these commenters contend that it is ridiculous to suggest that all of the generation assets associated with serving this wholesale load suddenly would become stranded. In fact, some commenters expect the investor-owned utilities with lower-cost generation to benefit from increased competition.

Additionally, the Environmental Action Foundation (Environmental Action) notes that some industry estimates assume a zero asset (or salvage) value for any stranded assets. Environmental Action claims that this assumption grossly overestimates the claimed industry level of stranded costs by failing to recognize that a utility with a stranded generating asset will likely lower its power prices to market levels to mitigate the total level of stranded costs. Accordingly, Environmental Action suggests that estimated levels of potential wholesale stranded costs may, in fact, be lower after accounting for costs recovered by the utility as a result of aggressively marketing any stranded generating assets.

EEI indicates that, based on an informal survey of its members, the number of cases likely to be filed at the Commission seeking to recover stranded costs from wholesale requirements customers under existing contracts will be far less than those filed during restructuring of the natural gas pipeline industry.[238] However, EEI states that, while the number of filings may be relatively small, the dollar amounts and the significance to the parties are great. EEI indicates that the magnitude of potential wholesale and retail stranded cost liability to the industry is in the upper range of the NOPR's tens of billions of dollars to $200 billion estimate.

(b) Preliminary Findings. The electric utility industry has billions of dollars invested in utility assets and contracts that, in today's markets, may become uneconomic.[239] If wholesale or retail customers leave their utilities' systems without paying a share of these costs, the costs will become stranded unless they can be recovered either from the departing customers or other customers. These are very real costs that, as previously discussed, were incurred under a regulatory system that imposed an obligation to serve on utilities (an explicit obligation at retail and arguably an implicit obligation at wholesale)[240]

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[232] *E.g.*, American Power Association (APPA), Florida Municipal Power Agency, Michigan Municipal Cooperative Group and Wolverine Power Supply Cooperative (Florida and Michigan Municipals), the Illinois Commerce Commission (Illinois Commission), Electricity Consumers Resource Council, the American Iron and Steel Institute an the Chemical Manufacturers Association (Industrial Consumers), and TDU Customers.

[233] See *Otter Tail*, *supra* note 15.

[234] *Village of Elbow Lake* v. *Otter Tail Power Company*, 40 FPC 1262 (1968).

[235] Kentucky Utilities Co., Opinion No. 169, 23 FERC § 61,317, *aff'd on reh'g in relevant part*, 25 FERC § 61.205 (1983), *reversed on other grounds*, 766 F.2d 239 (6th Cir. 1985).

[236] *E.g.*, American Forest, Industrial Consumers, the Municipal Resale Service Customers of Ohio, and the Stranded Cost Order Opponent Parties (SCOOP). SCOOP consists of Delaware Municipal Electric Corporation, Village of Freeport, New York, City of Jamestown, New York, Town of Massena, New York, Modesto Irrigation District, M–S–R Public Power Agency, City of Santa Clara, California, and Southern Maryland Electric Cooperative, Inc.

[237] SCOOP comments at 2.

[238] For example, a number of utilities (*e.g.*, Allegheny Power Service Corporation (Allegheny Power), Consumers Power Company, and Wisconsin Power & Light Company (Wisconsin Power)) indicate that their total potential wholesale exposure is minimal.

[239] As discussed in section III.C.2 *supra*, new generation facilities can produce power on the grid at a cost of 3 to 5 cents per kWh, yet the costs for large plants constructed and installed over the last decade were typically in the range of 4 to 7 cents per kWh for coal plants and 9 to 15 cents per kWh for nuclear plants.

[240] The Commission has never determined whether there is an actual obligation in the FPA to serve requirements customers. Construction Work In Progress, Order No. 474, III FERC Stats. & Regs. ¶ 30,751 at 30,718 (1987). The Commission's regulations, however, do require a rate filing to terminate a jurisdictional contract. 18 C.F.R. § 35.15 (1994). Moreover, in a few cases, the Commission has required service beyond the contract term. *E.g.*,

and also permits recovery of all prudently incurred costs. Moreover, while we recognize that there has always been some risk of a utility losing a customer, that risk has been greatly increased by significant statutory, regulatory, technological, and structural changes, including this rule, that utilities may not have reasonably foreseen at the time their investments were made.

As discussed in the introduction of this document, the wholesale bulk power segment of the electric industry is undergoing a fundamental transformation from a monopolistic industry regulated on a cost-of-service basis to an open access, competitively priced industry. The transformation will accelerate if the Commission adopts the open access transmission requirements it is proposing in Docket No. RM95–8–000. We do not believe that utilities that made large capital expenditures or long-term contractual commitments to buy power many years ago should now be held responsible for failing to foresee such fundamental changes in the industry. The Commission will not ignore the effects of regulatory and statutory changes on the past investment decisions of utilities. We believe that equity requires that utilities have an opportunity to recover legitimate and verifiable stranded costs associated with the development of competitive wholesale markets.

This belief is bolstered by our experience during the restructuring of the natural gas industry. During the 1980s and early 1990s, the Commission undertook a series of actions that eventually led to the restructuring of the gas pipeline industry. The restructuring of the industry and the introduction of competitive forces in the gas supply market left many pipelines holding uneconomic take-or-pay contracts with gas producers.[241]

In Order No. 436, the Commission declined to take direct action to alleviate the burden that the uneconomic take-or-pay contracts placed on pipelines. The Commission based its decision on a number of considerations, including its concern ''regarding the ability of private parties in the gas production industry to rely on private contracts as a tool for structuring basic economic relationships.'' [242]

However, in *AGD*, the U.S. Court of Appeals for the District of Columbia Circuit noted that the pipelines were ''caught in an unusual transition'' as a result of regulatory changes beyond the pipelines' control.[243] The court faulted the Commission for failing to take direct action to address the effect of such regulatory changes on the uneconomic take-or-pay contracts.[244]

The court's reasoning in *AGD* concerning the restructuring of the gas industry is also applicable to the current move to competitive bulk power markets in the electric industry. Once again, a regulated industry is faced with an ''unusual transition'' to a more competitive market. Once again, one result of the transition is the possibility that utilities will be left with large unrecoverable costs. In these circumstances, we believe that we must directly address the costs of the transition to a competitive industry by allowing utilities to recover their legitimate and verifiable stranded costs, and that we must do so simultaneously with any final rule we adopt concerning open access transmission.

(2) The D.C. Circuit Court of Appeals Decision in *Cajun Electric Power Cooperative, Inc.* v. *FERC.* In the *Cajun* case,[245] the D.C. Circuit found that the Commission should have held an evidentiary hearing to determine whether the recovery of stranded investment costs, as permitted in an open access transmission tariff approved by the Commission, was anticompetitive and would preclude mitigation of Entergy Corporation's (Entergy) market power. The transmission tariff under review in that case was intended to mitigate Entergy's market power by providing open access to its transmission system.[246] The open access transmission tariff provided that Entergy's subsidiaries could seek to recover their stranded investments from a departing generation customer by including in the departing customer's transmission rate the cost of Entergy's generation capacity that was stranded when the former customer switched suppliers. The court expressed concern that this provision might constitute a tying arrangement whose purpose is to ''cabin'' Entergy's market power, stating: ''If a company can charge a former customer for the fixed costs of its product whether or not the customer wants that product, and can tie this cost to the delivery of a bottleneck monopoly product that the customer must purchase, the products are as effectively tied as they would be in a traditional tying arrangement.'' [247]

The court noted that central to the Commission's approval of Entergy's open access transmission tariff was the Commission's finding that Entergy's market power would be mitigated upon the implementation of the tariff. [248] However, the court suggested that permitting a transmission monopolist such as Entergy to impose generation-related charges on competitors who only seek transmission services might serve to increase, not mitigate, Entergy's market power because ''Entergy can compete for generation sales outside its transmission grid without concern for a stranded investment charge [but] Entergy's competitors cannot compete for the customers on its transmission system on the same basis.'' [249] Thus, the court held that ''[t]he Commission must address whether the [transmission tariff's] provision of a process for recovery of stranded investment costs * * * precludes genuine open access to Entergy's transmission system. In short, the question that must be asked now is whether the [transmission tariff] allows for 'meaningful access to alternative suppliers.' '' [250] The court went on to identify other provisions of the transmission tariff (in addition to the stranded cost provision) that might lessen the mitigation of Entergy's market power, including Entergy's retention of sole discretion to determine the amount of transmission capability available for its competitors' use; the point-to-point service limitation; the failure to impose reasonable time limits on Entergy's response to requests for transmission service; and Entergy's reservation of the right to cancel service in certain instances even where a customer has

Tapoco, Inc., *et al.*, 39 FERC ¶ 61,363 (1987); Florida Power & Light Company, 8 FERC ¶ 61,121, *reh'g denied*, 9 FERC ¶ 61,015 (1979)).

[241] The costs of gas supply contracts in the gas industry can be viewed as somewhat analogous to the costs of generation resources in the electric industry.

[242] Order No. 436, *supra* note 12 at 31,492–93; see also *AGD*, *supra* note 9, 824 F.2d at 1026.

[243] 824 F.2d at 1027.

[244] *Id.* at 1021.

[245] *Cajun Electric Power Cooperative, Inc.* v. *FERC*, 28 F.3d 173 (D.C. Cir. 1994) (*Cajun*).

[246] The two other electric power tariffs under review in that case provided for the sale of wholesale power by various Entergy public utility subsidiaries at negotiated, market-based rates. As the court indicated, these tariffs, in combination with the open access transmission tariff, ''were designed to permit Entergy—a monopolist of transmission services in the relevant market—to engage in market-based pricing in the generation market, while simultaneously introducing competition to that market through the unbundling of generation sales from transmission services.'' *Id.* at 175.

[247] *Id.* at 178.

[248] The court noted that although the Commission suggested that the stranded investment provision is necessary to lure Entergy into competition and provides an equitable recovery of costs from the parties for whom the costs were incurred, this is irrelevant if the Entergy tariffs do not sufficiently mitigate Entergy's market power. *Id.* at 180.

[249] *Id.*

[250] *Id.* at 179 (emphasis in original).

paid for transmission system modifications.[251]

The court concluded that the transmission tariff as a whole ''seems to provide Entergy with the means to stifle the very competition it purports to create.'' [252] The court determined that the Commission erred in approving Entergy's tariffs without conducting hearings on whether, notwithstanding the purpose of the transmission tariff to mitigate market power, Entergy might retain market power. Significantly, however, the court did not hold that stranded cost recovery could not be justified; its objection was to the Commission's procedures in that particular case and lack of explanation for its substantive decision to approve the stranded cost provision.

(a) Comments. Most customer groups and many state representatives (e.g., APPA, Blue Ridge,[253] National Association of Regulatory Utility Commissioners (NARUC) and the Vermont Department of Public Service (Vermont Department)) contend that the *Cajun* decision either prevents the Commission from allowing the recovery of stranded costs through transmission charges, or, at best, raises questions concerning the scope of the Commission's legal authority to do so. In light of *Cajun,* some commenters, such as the National Rural Electric Cooperative Association (NRECA), urge the Commission to terminate the NOPR.

Environmental Action contends that a transmission adder does not by itself constitute tying or leveraging. It submits that if the transmission adder consists of costs that a customer is obligated to pay in any event, the adder merely holds the customer to its existing bargain. Environmental Action argues that in *Cajun,* however, the transmission adder was not being used to recover costs for which the transmission customer was already obligated, but had the effect of penalizing the customer for entering into a new obligation. According to Environmental Action, the NOPR ''makes the same error'' to the extent that the costs proposed to be recovered in the transmission adder are not part of the contractual quid pro quo.[254]

All of the investor-owned utility commenters, except Wisconsin Power & Light Company (Wisconsin Power), argue that the *Cajun* decision is not a bar to recovery of stranded costs through transmission rates.[255] These commenters (e.g., EEI and Duke) argue that the *Cajun* decision was based on procedural grounds and merely stands for the proposition that the Commission should have held an evidentiary hearing in that case to resolve anticompetitive concerns. These commenters also argue that the portion of the *Cajun* decision relied on by the customer commenters is only *dictum.*

Some commenters further contend that allowing the recovery of stranded costs through a transmission surcharge does not constitute an unlawful tying arrangement. EEI notes, as an initial matter, that the courts no longer view every bundling of products or services as a tying arrangement that is *per se* unlawful under the antitrust laws. Moreover, EEI submits that in a tie-in, a seller of one product requires its purchasers to buy the tied product by bundling the products together to promote sales in related markets that it could not achieve under competitive circumstances, effectively foreclosing the purchaser from obtaining the second product from competitors even if it could do so at a lower cost. EEI argues that a stranded cost surcharge, in contrast, would include only part of the former price of the power (the mark-up above its marginal cost included in the price approved by regulators), and would thereby allow the purchaser to obtain bulk power from competitive suppliers with the lowest marginal costs.

With regard to the potential anticompetitive effects of allowing stranded cost recovery, some commenters contend that stranded cost recovery would inhibit the movement toward competition, distort price signals, result in inefficient decisionmaking, and unfairly reward the least efficient utilities.

For example, APPA argues that charges for stranded costs are anticompetitive and hinder the development of a competitive market by, among other things: (1) Distorting transmission prices and erecting artificial barriers to new suppliers; (2) giving the host utility a paid-off asset with which to compete unfairly; and (3) slowing the introduction of new technology. APPA argues that the disallowance of stranded costs would encourage all utilities to strive for greater efficiencies and to compete for sales on the basis of price and service.

The Ad Hoc Coalition on Environmental and Consumer Protection (Ad Hoc Coalition) argues that stranded cost recovery will amount to a government-ordered subsidy for electric generation from older, less efficient units that will further environmental degradation and stifle the move toward greater competition. It claims that the stranded costs that utilities primarily will be seeking to recover are uneconomical nuclear generation assets, and that the NOPR thus offers a new subsidy for nuclear power by shifting cost responsibility for nuclear assets from shareholders to ratepayers. The Ad Hoc Coalition believes that such a subsidy could affect investment decisions for the next generation of nuclear power plants if investors believe that they will be allowed to recover their costs as long as a ''reasonable expectation'' existed at the time the decision to build was made. Thus, the Ad Hoc Coalition argues that the NOPR will send an improper signal to utility managers and investors that generation investments remain safe investments, even when they do not pass the tests of a competitive market. According to the Ad Hoc Coalition, such a policy perpetuates the continued reliance on older, less efficient generating units that harm the environment.

American Forest asserts that blanket assurances of stranded cost recovery are anticompetitive and create no incentive for utilities to lower their operating costs and mitigate any uneconomic costs. According to American Forest, stranded costs create enormous uncertainty that may make financing of competitors' plants impossible at any cost, thus killing the very competitive market the Commission seeks to foster.

The Illinois Commission believes that stranded cost recovery produces an incorrect competitive result because such action effectively ''props up'' the least efficient (high-cost and high-price) utilities. The Illinois Commission argues that stranded cost recovery mechanisms effectively punish the more efficient suppliers that have paid attention to changing realities and have assumed a more competitive market-sensitive posture.

In sharp contrast to the commenters that argue stranded cost recovery would hinder competition, commenters such as EEI, the United States Department of Energy (DOE), the Coalition for Economic Competition,[256] and the

[251] *Id.* at 179–80.

[252] *Id.* at 180.

[253] Blue Ridge consists of Blue Ridge Power Agency, Northeast Texas Electric Cooperative, Sam Rayburn G & T Electric Cooperative and Tex-La Electric Cooperative.

[254] Environmental Action comments at 79.

[255] Wisconsin Power argues that stranded costs should be recovered, but not through transmission rates.

[256] The Coalition for Economic Competition consists of the following New York investor-owned utilities: Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk

Conservation Law Foundation (CLF)[257] contend that stranded cost recovery can promote a quicker transition to competition and can be used to enhance efficiency. Some commenters (*e.g.,* DOE, Industrial Consumers, Enron Power Marketing, Inc. (Enron), CLF, and the Competitive Electric Market Working Group (Competitive Working Group)[258]) suggest linking the recovery of stranded costs to utility actions that will further wholesale competition, such as the filing of an open access transmission tariff or membership in a regional transmission group (RTG).

Commenters representing the financial community (e.g., Utility Investors and Analysts, American Society of Utility Investors, United Utility Shareholders Association of America) strongly support recovery of stranded costs so that the financial stability of the electric utility industry will be protected. These commenters argue that the amount of potential stranded costs exceeds the amount of equity investment in electric utilities. According to these commenters, investors have not made their current investment decisions with the rigors of competition in mind, nor have rate of return hearings included testimony concerning competitive risk. Without full recovery of stranded costs, financial community commenters argue, financial integrity will deteriorate, and utilities will be unable to attract capital. Due to the capital-intensive nature of the electric utility industry, these commenters note that lack of access to capital markets at reasonable rates will prevent utilities from keeping costs down.

(b) Preliminary Findings. We do not interpret the *Cajun* court decision as barring the recovery of stranded costs. Rather, the *Cajun* court remanded the case because the Commission failed to hold an evidentiary hearing concerning whether the inclusion of a stranded cost recovery provision in Entergy's transmission tariff precluded the mitigation of Entergy's market power. As previously discussed, the court also found the Commission's substantive decision flawed because the Commission failed to explain adequately its approval of the stranded cost provision, among others. In this consolidated proceeding (*i.e.*, the Stranded Cost NOPR, the Supplemental Stranded Cost NOPR, and the Open Access NOPR), we are providing the evidentiary record for addressing all of the court's concerns on a generic basis, and the opportunity for all participants in the electric industry to present evidence and arguments. We are also providing a full explanation of why the recovery of legitimate stranded costs is critical to the successful transition of the electric utility industry from a tightly regulated, cost-of-service industry to an open transmission access, competitive industry that will drive down the prices of electricity to consumers.

The court in *Cajun* was concerned about whether Entergy's tariff allowed ''meaningful'' access to alternative suppliers. In this regard, the court stated that the Commission must address not only whether the stranded cost provision allowed for meaningful access, but also whether other provisions in the tariff might lessen the utility's market power. In the Open Access NOPR, the Commission is attempting to mitigate the core of market power not only for Entergy, but for all traditional public utilities: control over transmission access. The Commission is generically addressing all aspects of transmission market power, including those specifically identified by the *Cajun* court (*e.g.,* point-to-point service limitations). Indeed, a fundamental purpose of the Open Access NOPR is to ensure the meaningful access to alternative suppliers that was identified by the *Cajun* court.[259] The Open Access NOPR includes the specific terms and conditions of access (contained in the pro-forma tariffs) that we believe are the minimum necessary to mitigate transmission market power.[260] Of utmost importance in mitigating market power is the Commission's non-discrimination (comparability) requirement, a requirement that had not been articulated at the time of the Commission's order under review in *Cajun,* and that is proposed to be codified in the Open Access NOPR proceeding.

With regard to the *Cajun* court's concern about stranded cost provisions, the Commission in *Entergy* failed to articulate the transition that the industry is experiencing, the fundamental fact that full competition is not yet a reality, and that stranded costs are a temporary but serious phenomenon that must be addressed if we are to successfully move from one regulatory regime to another, thereby creating fully competitive bulk power markets. In this regard, the Open Access NOPR provides a detailed explanation of the fundamental industry and regulatory changes that have given rise to the potential for stranded costs. In addition, in the Stranded Cost NOPR and the Supplemental Stranded Cost NOPR, we have gathered (and are continuing to gather) information concerning the magnitude of potential stranded costs; we have provided an explanation of the transitional nature of stranded costs; and we have explained the critical need to deal with these costs in order to reach competitive wholesale markets. We have also explained existing disparities in electricity rates and the consumer benefits that can accrue if we achieve fully competitive markets.[261]

Failure to deal with the stranded cost problem would likely delay and would certainly complicate the transition to fully competitive bulk power markets. For example, stranded costs would then be borne by the utilities' shareholders, which could threaten the stability of the industry and the service it provides, or be reallocated to remaining customers, raising the price to such customers. An additional consideration is the fact that the *AGD* court instructed the Commission that it must consider the transition costs borne by regulated utilities when the Commission changes the regulatory rules of the game.

We conclude that stranded cost recovery as proposed in this rulemaking is not a tying arrangement, as discussed by the *Cajun* court, and that the proposed cost recovery procedure will not ''cabin'' market power.[262] Rather, the stranded cost recovery procedure is

Power Corporation, and Rochester Gas & Electric Company.

[257] CLF is a non-profit environmental law organization that represents approximately 10,000 members in the six New England states.

[258] The Competitive Working Group consists of Electric Clearinghouse, Inc., Enron Power Marketing, Inc., and Destec Power Services, Inc.

[259] See *Cajun,* 28 F.3d at 179.

[260] In seeking comment in the Open Access NOPR on the adequacy of these terms and conditions, we seek specific comment on the terms and conditions that were of concern to the *Cajun* court. See discussion *supra* Section III.E.4. For example, the *Cajun* court expressed concern that the point-to-point service limitation in Entergy's transmission tariff might restrain competition. However, under the Open Access NOPR, service will not be limited to point-to-point. Instead, customers will be allowed to choose between point-to-point and network service.

[261] There is a wide disparity in consumer electricity prices across the United States. Some consumers pay more than 10 cents per kilowatt-hour on average, while others pay about one-third as much. While some of this price disparity is due to regional cost differentials, some of it may also be due to ineffective access to new power supplies. We believe that all consumers will benefit from changes that allow their suppliers greater access to lower-cost power supplies. This greater access can best be achieved by ensuring that non-discriminatory open access transmission service is available to all potential users of the transmission grid. The result will be greater trading opportunities among suppliers, and also more investment opportunities for new entrants in generating markets. All of this should serve the interests of consumers by lowering electricity prices.

[262] *Cajun,* 28 F.3d at 177–78.

being prescribed to enable utilities, during a transitional period, to recover costs prudently incurred under a different regulatory regime.

Finally, the financial community argues strongly and plausibly that recovery of legitimate and verifiable stranded costs at this critical stage in the industry's move toward competition is needed to protect the financial stability of the electric industry. They confirm that the prospect of not recovering stranded costs could erode a utility's ability to attract capital, which, in turn, could impede the long-term goal of achieving competitive wholesale markets.

(3) Responsibility for Wholesale Stranded Costs (Whether to Adopt Direct Assignment to Departing Customers). In the initial NOPR, the Commission proposed to allow utilities to seek to assign stranded costs associated with the departure of a given wholesale customer directly to that departing wholesale customer.[263] We noted, however, that an alternative might be to assign stranded costs more broadly by, for example, requiring all transmission customers (including native load which takes bundled service) to pay a higher rate for use of the transmission system. We invited comments on the direct assignment and alternative methods of stranded cost recovery.[264]

(a) Comments. Many parties (representing all constituencies) support the direct assignment of stranded costs to the departing customer as proposed in the initial NOPR. Most commenters contend that the cost causation principle supports this approach. These parties argue that utilities undertake obligations on a customer's behalf and that, by leaving the system, the departing customer avoids paying for its fair share of these obligations. They further argue that general fairness requires that customers remaining on the system should not have to pay for a departing customer's obligations; they allege that this could lead to more customers leaving the system and the eventual bankruptcy of the utility.

Nevertheless, other commenters suggest a framework for stranded cost recovery that is different from the direct assignment method suggested in the NOPR. According to some commenters (*e.g.,* South Carolina Electric & Gas Company), stranded costs should be allocated to all customers and shareholders because everyone will benefit from the transition to competitive generation markets. In this manner, they contend that the overall burden would be reduced, because stranded costs would be spread among a greater number of parties. Commenters that support spreading the costs to all customers argue that requiring the departing customer to shoulder all stranded costs will result in few customers going off-system due to the economic inefficiency of paying two suppliers. Several commenters (*e.g.,* Indiana Commission, Rhode Island Division of Public Utilities and Carriers, Department of Water and Power of the City of Los Angeles, and Fuel Managers Association) suggest that some shareholder liability for stranded cost recovery should be required, arguing that it would provide utilities with a greater incentive to mitigate stranded costs.

Some commenters support the recovery of stranded costs through a transmission surcharge applicable to all transmission customers.[265]

Other commenters oppose a general surcharge on all transmission customers, arguing that existing transmission customers, including native load, should not be allocated any stranded costs because they did not cause any costs to be stranded in the first place. Washington Water Power Company and Wisconsin Electric Power Company oppose a transmission surcharge on the basis that it makes an otherwise competitive supplier less marketable due to higher wheeling rates. Others allege that a transmission surcharge is inconsistent with the unbundling of transmission service and would slow the restructuring (disaggregation) of vertically-integrated utilities. Thus, according to some commenters, the use of a transmission surcharge would slow the move to competitive markets because the surcharge sends the wrong price signal, involves cross-subsidization by native load, penalizes competitive alternatives, and awards monopoly rents to the utility. Some commenters also note that, where the departing customer does not take transmission service from its former supplier, the departing customer escapes all responsibility for the stranded costs.

Some commenters contend that the *Cajun* decision prohibits the use of a transmission surcharge. Still others argue that generation costs should not be assigned to transmission users because utilities would then have an incentive to shift costs to transmission in order to make their generation more competitive. SCOOP argues that the shifting of generation costs to transmission rates violates the Commission's policy prohibiting costs unrelated to the transmission function from being included in transmission charges.[266]

The Public Utility Commission of Texas (Texas Commission) proposes a hybrid approach whereby a portion of stranded costs would be directly assigned to the departing customer and the remainder allocated through a general surcharge to all wholesale market participants. However, if a general surcharge on transmission customers is adopted, the Texas Commission supports the pooling of all stranded costs and the creation of an industry-wide surcharge. The Texas Commission does not explain how such a pool would be administered.[267]

Commenters that represent shareholder interests (American Society of Utility Investors, United Utility Shareholders Association of America, and Utility Investors and Analysts) argue against allocation of any stranded costs to shareholders because the rates of return granted to utilities in the past have not included any compensation for the risk of competition. They submit that fairness dictates that those placed at risk by a sudden change in the rules not be penalized. Tennessee Valley Authority (TVA), which as a Federal corporation has no shareholders to absorb stranded costs, shares this view.

(b) Preliminary Findings. After careful consideration of the various comments, we believe that direct assignment of stranded costs to the departing wholesale customer, as proposed in the initial NOPR, is the appropriate method for recovery of such costs.[268] This method is consistent with the cost

[263] Methods of direct assignment include a lump sum payable when the customer leaves the system. Such an exit fee could also be recovered over time in monthly installments. Presumably the utility would charge interest on the unamortized balance if the customer selected a delayed payment approach.

[264] Stranded Cost NOPR at 32,867–68.

[265] Some commenters (*e.g.,* Allegheny Power) distinguish between transmission surcharges imposed on transmission-only customers as opposed to all customers. In the former case, only those customers taking transmission-only service from the utility would be assessed stranded costs; customers taking bundled service would not be assessed such costs. Allegheny Power indicates that it would support such an approach only if the Commission decides not to fully assign stranded costs to departing customers.

[266] SCOOP comments at 38 (citing Northern States Power Company, Opinion No. 383, 64 FERC ¶ 61,324 at 63,377 (1993)).

[267] Trigen Energy Corporation advocates that Congress impose a ''sunset'' energy tax on all electricity used in order to pay off stranded costs.

[268] Because we are also proposing to entertain requests for recovery of stranded costs attributable to retail-turned-wholesale wheeling customers, or to retail wheeling customers in certain limited circumstances, our determinations and rationale regarding direct assignment also apply to those situations.

causation principle.[269] As discussed in greater detail below, as part of the evidentiary demonstration necessary for stranded cost recovery associated with certain departing wholesale requirements customers,[270] retail-turned-wholesale transmission customers, or unbundled retail transmission customers, a utility must show that the costs are not more than the customer would have contributed to the utility had the customer continued to take generation service from that utility. We believe it only appropriate that the departing customer, and not the remaining customers (or shareholders), bear its fair share of the legitimate and prudent obligations that the utility undertook on that customer's behalf.

The Commission recognizes that the direct assignment approach for addressing stranded costs for the electric industry differs from the approach eventually taken for the natural gas industry. In Order No. 636, which involved the restructuring of the gas industry, the Commission determined that it was appropriate to spread the majority of the remaining transition costs associated with take-or-pay and other contracts to all customers (existing and new) using the interstate natural gas transportation system.[271] However, unlike the situation facing the electric utility industry today, by the time the Commission issued Order No. 636, changes in the natural gas industry had progressed to such a point that it was not possible for the Commission to use a strict cost causation approach. Many natural gas customers had already left their historical pipeline suppliers' systems. Others had converted from sales and transportation customers to transportation-only customers. Others were in a transition stage having had opportunities to lower their contract demands or otherwise become partial service customers. Significant take-or-pay and other costs had accumulated. In contrast, in the electric area, the Commission (and the states) will be better able to address the transition cost issue up front, and to address stranded cost recovery *before* customers leave their suppliers' systems. This, in effect, will prevent the accumulation of unrecovered costs and will comport with our past policy of assigning costs to customers who caused the costs to be incurred.

In addition, allowing direct assignment of stranded costs will ensure that there are no stranded costs left to be borne by the remaining customer base or by the shareholders. This, in turn, will ensure that the financial health of the industry is not placed in jeopardy. If some customers are permitted to leave their suppliers without paying for costs incurred to serve them, this may cause an excessive burden on the remaining customers (such as residentials) who cannot leave and therefore may have to bear those costs. Moreover, the prospect or lack thereof for recovering such costs from ratepayers could erode a utility's access to capital markets or significantly increase the utility's cost of capital. This higher cost of capital could precipitate other customers leaving the system which, in turn, could cause others to leave. Such a spiral could be difficult to stop once begun.

The alternatives to direct assignment of stranded costs are to do nothing or to assess stranded costs more broadly through some type of general surcharge on all customers. As discussed above, to do nothing would mean that the Commission would have to reallocate stranded costs to shareholders or to remaining customers. Those customers that caused the costs to be stranded would not have to pay. This would violate the cost causation principle which has been fundamental to the Commission's regulation since 1935. The other alternative, to assess costs more broadly, also violates this principle. Moreover, there appears to be no strong countervailing reason to assess costs broadly in the electric utility industry.

(4) Recovery of Stranded Costs Associated With New Wholesale Power Sales Contracts. The NOPR proposed that public utilities and transmitting utilities would not be permitted to seek extra-contractual recovery of stranded costs associated with ''new'' contracts, *i.e.*, contracts executed after July 11, 1994, through transmission rates for section 205 or 211 transmission services. For new contracts, the NOPR proposed that stranded cost recovery would be allowed only if explicit stranded cost provisions are contained in the contract accepted by the Commission.[272] We also stated our preliminary view that it is not appropriate in this new regime to impose on wholesale requirements suppliers any regulatory obligation to continue to serve their existing requirements customers beyond the end of the contract term. However, we invited comment on the extent to which there should be such an obligation. We also sought comment concerning whether section 35.15 of the Commission's regulations, concerning notice of termination, should be deleted.

(a) Comments. Some of the commenters dispute the Commission's belief that there should not be a future regulatory obligation to continue to serve wholesale requirements customers beyond the end of the contract. SCOOP argues that the FPA imposes an obligation on a public utility to continue wholesale service beyond the term of the contract when such service is required by the public interest, and that the Commission does not have the power to abrogate this authority. Sunflower Electric Power Corporation (Sunflower) submits that, for stability reasons, a utility's obligation to serve requirements customers should run beyond the end of the contract term.

Some commenters (*e.g.*, SCOOP, Sunflower, Illinois Commission) generally support Commission retention of its section 35.15 notice of termination filing requirement, arguing that such filing requirement is reasonable and/or necessary to ensure that any termination in service is not contrary to the public interest.

Other commenters support the Commission's position that there should not be a future regulatory obligation to continue to serve wholesale requirements customers beyond the end of the contract and support modification or elimination of section 35.15. These

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[269] Contrary to arguments made by SCOOP, the shifting of generation costs to transmission rates does not violate Commission policy. The *Northern States* case cited by SCOOP deals with the Commission's bright line functionalization policy, pursuant to which the Commission, largely as a matter of administrative convenience, has attempted to maintain a boundary between generation and transmission functions. In that case, we found that refunctionalization is not *per se* improper or contrary to Commission policy, and we suggested that strict application of the traditional bright line approach may need to be reexamined in light of changes taking place in the electric industry. 64 FERC at 63,379. Significantly, we stated that the ''*fundamental* theory of Commission ratemaking is that costs should be recovered in the rates of those customers who utilize the facilities and thus cause the costs to be incurred.'' *Id.* (emphasis in original).

This is exactly what we propose to do in the Stranded Cost NOPR and the Supplemental Stranded Cost NOPR. The customer that caused the costs to be incurred and stranded will continue to pay the costs. The only difference is that in some instances the customer will pay the costs through an adder to its transmission rate instead of through a generation rate.

[270] *I.e.*, departing wholesale requirements customers under contracts entered into on or before July 11, 1994, who will use the utility's transmission system to reach other suppliers and whose contracts do not explicitly address stranded costs.

[271] Order No. 636 at 30,457–62.

[272] Under the proposed regulations, a public utility may seek recovery of such costs in accordance with the contract. However, if wholesale stranded costs are associated with a new wholesale requirements contract and the seller under the contract is a transmitting utility but not also a public utility, the transmitting utility may not seek an order from the Commission allowing recovery of such costs. See Stranded Cost NOPR at 32,882.

commenters argue that if contracts are to govern future requirements relationships in the electric industry, the Commission should allow the contracts to terminate on their own terms, without the need for a filing and Commission approval. New England Power Company submits that continuation of such a filing requirement would add uncertainty to the parties' mutually agreed upon termination date and, in turn, promote inequitable and asymmetrical risk/benefit allocations and ineffective resource planning. EEI asks the Commission to make a finding that it is in the public interest to end the regulation of the termination of bulk power contracts. EEI suggests that the Commission could (1) grant a blanket waiver of the regulations requiring notice of termination for new contracts; (2) amend section 35.15 to pre-grant waiver of notice of termination; or (3) amend the regulations to pre-grant waiver of notice of termination in all bulk power contracts signed after the Commission makes its public interest finding to end the regulation of contract terminations.

(b) Preliminary Findings. The Commission believes that future wholesale contracts should explicitly address the mutual obligations of the seller and buyer, including the seller's obligation to continue to serve the buyer, if any, and the buyer's obligation, if any, if it changes suppliers. Now that utilities have been placed on explicit notice that the risk of losing customers through increased wholesale competition must be addressed through contractual means only, they must address stranded cost issues when negotiating new contracts or be held strictly accountable for the failure to do so. Accordingly, public utilities and transmitting utilities will be allowed stranded cost recovery associated with new contracts (executed after July 11, 1994) only if explicit stranded cost provisions are contained in the contract. Recovery of wholesale stranded costs associated with any new requirements contract (executed after July 11, 1994) will not be allowed unless such recovery is provided for in the contract.

Further, to ensure that the rights and obligations of sellers and buyers are symmetrical in the new competitive era, we do not believe that it is appropriate to impose on wholesale requirements suppliers a regulatory obligation to continue to serve their existing requirements customers beyond the end of the contract term. A requirements customer thus will be responsible for planning to meet its power needs beyond the end of the contract term. In this regard, it may sign a new contract with its existing supplier, or it may contract with new suppliers in conjunction with obtaining transmission service under its existing supplier's open access transmission tariff.

We believe that the section 35.15 filing requirement should be retained for all contracts required to be filed under sections 205 and 206 of the FPA that were executed prior to the effective date of the generic tariffs that we discuss herein.[273] With regard to any power sale contract executed on or after that date,[274] we propose to no longer require prior notice of termination pursuant to the provisions of section 35.15. However, for administrative reasons, we will require written notification of the termination of such contract within 30 days after the date termination takes place.

(5) Recovery of Stranded Costs Associated With Existing Wholesale Power Sales Contracts. In the initial Stranded Cost NOPR (and again in this Supplemental NOPR) we stated that stranded costs are a transitional problem and that neglecting their recovery could delay the realization of fully competitive bulk power markets. We stated that it is thus important to set a date beyond which the Commission will no longer permit extra-contractual recovery of stranded costs that result from existing requirements contracts. To that end, we proposed a three-year transition period during which public utilities must attempt and non-public utilities are encouraged to attempt to renegotiate certain existing wholesale requirements contracts (*i.e.*, those that do not explicitly address stranded costs through an exit fee or other stranded cost provision), and during which they may seek recovery of stranded costs. However, if an existing wholesale requirements contract explicitly addresses stranded costs through an exit fee or other stranded cost provision, the initial NOPR would require the utility to recover such costs only as specified in the contract; it would not permit unilateral filings to change stranded cost provisions and would not permit the utility to seek recovery through transmission rates of stranded costs associated with that contract. Under the initial NOPR, existing contracts that prohibit stranded cost recovery, or explicitly prohibit renegotiation of an existing stranded cost or exit fee provision, or that prohibit renegotiation until after the three-year period has expired would not be subject to the obligation to renegotiate.[275]

Where an existing contract does not contain a stranded cost provision and the parties to the contract are unable to negotiate a stranded cost amendment, and the selling utility is a public utility, the initial NOPR proposed to permit the public utility to unilaterally file under section 205 or 206 of the FPA prior to the end of the three-year period a proposed stranded cost provision as an amendment to the existing contract. The NOPR also proposed to permit the selling public or transmitting utility to seek to recover stranded costs through jurisdictional transmission rates if, prior to the end of the three-year transition period, the customer under the existing wholesale requirements contract gives notice pursuant to the contract that it will no longer purchase all or part of its requirements from the selling utility, but instead will purchase unbundled section 205 or section 211 transmission services from the selling utility that will begin prior to the end of the three-year period.

Under the initial NOPR, if a contract does not include an exit fee or other explicit stranded cost provision, but does contain a notice provision, the Commission proposed that there be a rebuttable presumption that the selling utility had no reasonable expectation of continuing to serve the customer beyond the period provided in the notice provision. We proposed to apply such presumption when the public utility proposed a unilateral amendment to the contract to change the notice provision and/or add an exit fee provision, or if the public utility or transmitting utility sought stranded cost recovery through transmission rates.[276]

The Commission recognized that some utilities' existing contracts may not provide for unilateral rate changes. We noted that although under the *Mobile-Sierra* doctrine[277] a customer may waive its right to challenge the contract and/or the utility may waive its right to make unilateral rate changes, the parties may not waive the indefeasible right of the Commission to alter rates that are contrary to the public interest. We went on to explain why we believe that it is in the public interest to permit public utilities with *Mobile-Sierra* contracts a limited opportunity to

[273] We also propose to retain the section 35.15 filing requirement for any unexecuted contracts that were filed prior to the effective date of the generic tariffs proposed herein.

[274] We request comments on whether this proposal should also be applied to transmission contracts.

[275] The parties, of course, could always voluntarily renegotiate the contract.

[276] Stranded Cost NOPR at 32,861; 32,869–70.

[277] See *United Gas Pipeline Company* v. *Mobile Gas Service Corporation*, 350 U.S. 332 (1956); *FPC* v. *Sierra Pacific Power Company*, 350 U.S. 348 (1956).

propose contract changes unilaterally to address stranded costs if their contracts do not already explicitly do so.

In the NOPR, the Commission invited comments regarding, among other things, whether there should be a transition period during which utilities may renegotiate existing contracts, the appropriate length for such a transition period, whether utilities or customers with contracts that do not provide for unilateral amendments should be able to make unilateral filings or file complaints, whether the Commission should make a *Mobile-Sierra* public interest finding based on company-specific findings instead of generic industry-wide findings, the types of contractual provisions that might demonstrate a sufficient meeting of the minds between the parties so that requiring renegotiation would be inappropriate, whether to apply the rules regarding existing contracts only to contracts between unaffiliated entities, and whether the rebuttable presumption should also be applied to any contract entered into after the date of enactment of the Energy Policy Act, even though the contract does not contain an exit fee or other explicit stranded cost provision or a notice provision.

(a) Comments. (i) Contract Renegotiation. Investor-owned utilities, EEI, and the majority of state commissions generally favor renegotiation of requirements contracts.[278] These commenters argue that the transition to a competitive market should not preclude utilities from recovering costs prudently incurred to serve customers who may wish to leave the system that was planned and built to serve the customers' needs.

Commenters representing cooperatives, municipal, industrial customers, and independent power producers generally oppose renegotiation. These commenters suggest that the framework established in the NOPR, requiring good faith renegotiation of contracts and permitting the unilateral filing of revised contracts to provide for recovery of stranded costs (where renegotiation fails), will result in a violation of the *Mobile-Sierra* doctrine. Numerous commenters argue that contracts should stand on their own, and that there is no factual record upon which the Commission can make a generic public interest finding, as required by *Mobile-Sierra,* that contracts should be modified. These commenters maintain that ''assumed'' threats to the financial stability of the industry do not meet the extremely heavy *Mobile-Sierra* burden of proof that is required to release a public utility from a contract. They argue that it is not the Commission's place to relieve utilities of improvident bargains. Many customer group commenters argue that requiring contract renegotiation improperly shifts the burden of proof from the utility to the customer. These commenters further argue that permitting contract renegotiation implies that customers should pay for a utility's failure to protect itself from business risk.

Some commenters, such as American Forest, argue that the NOPR would, in essence, rewrite the law of contracts. These commenters state that there is no legal (or logical) basis for the NOPR's suggestion that wholesale customers with existing contracts containing valid notice of termination provisions can be forced to renegotiate such contracts to allow stranded cost recovery. Many of these commenters cite *Boston Edison Company* [279] and *Arizona Public Service Company* [280] for the proposition that notice provisions have been allowed and enforced. Many commenters contend that contract renegotiation is unfair because the policy would make the terms of existing contracts binding on only one party, while letting the other party unilaterally revise contract terms.

Some commenters, including the Electric Generation Association and the Iowa Utilities Board, generally oppose renegotiation, but would allow it in certain situations. They state that a utility's right to recover stranded costs should depend on the terms for which the parties have bargained. However, they recognize that there may be situations in which the parties' intent is not clearly defined. Accordingly, these commenters support renegotiation to supply missing terms to an ambiguous contract. Some commenters such as the Iowa Utilities Board maintain that companies should always be free to renegotiate contracts; however, they oppose allowing utilities to make unilateral filings to amend contracts that do not provide for unilateral amendment.

With regard to whether the renegotiation proposal should apply only to contracts between unaffiliated entities, some commenters (*e.g.,* Wisconsin Power, Sunflower) support the application of the renegotiation policy to both affiliated and non-affiliated entities alike. However, other commenters (*e.g.,* the Ohio Office of the Consumers' Counsel) recommend that the Commission not apply the proposed renegotiation rule to affiliated entities. They note that due to the mutual interest of affiliates, negotiations between them may not be arm's-length. These commenters urge the Commission to review all stranded investment agreements between affiliates to prevent cross-subsidization and to prevent interference with competition.

(ii) Three-Year Transition Period. With regard to the proposed transition period, although some commenters argue against permitting contract renegotiation, commenters generally raise no serious objections to three years as the period for contract negotiation. However, several commenters suggest that it is undesirable and unnecessary to delay the movement to competition for three years while contract renegotiations take place. For example, the Competitive Working Group argues that there is no assurance that stranded cost recovery will be resolved during the three-year period proposed in the initial notice. It suggests that the Commission could shorten the transition to competition while still providing for recovery of stranded costs by requiring that eligibility for recovery be conditioned on utilities agreeing to: (1) Grant wholesale customers the right to reduce or terminate purchase obligations under preexisting contracts and to convert to transmission-only service; (2) file comparable open-access transmission tariffs; and (3) mitigate the level of stranded assets by either divestiture or auction. The Competitive Working Group claims that these measures would ensure the move to competitive wholesale power markets.

DOE, Industrial Consumers, Enron and CLF also suggest linking the recovery of stranded costs to utility actions that will further wholesale competition. These commenters suggest linking the recovery of stranded costs to the filing of an open access transmission tariff or membership in an RTG. CLF notes that environmental as well as economic benefits may be achieved by linking the recovery of stranded costs to the retirement of environmentally unsuitable electric generating plants or initiatives that encourage the development and deployment of renewable and clean energy technologies.

Detroit Edison Company (Detroit Edison) suggests that the renegotiation period be the greater of (1) three years,

[278] Notable exceptions to this general observation include Southern California Edison Company, which opposes renegotiation of *Mobile-Sierra* contracts, and the Pennsylvania Public Utility Commission (Pennsylvania Commission) and the Vermont Department, which favor upholding the sanctity of contracts.

[279] 56 FPC 3414 (1976).

[280] 18 FERC ¶ 61,197 (1982).

(2) the term of any existing contract, or (3) the period of any moratorium on changes in rates established in existing settlement agreements. According to Detroit Edison, adoption of this provision would allow utilities that already have established long-term contracts or that have agreed to a moratorium on rate changes to honor previously negotiated agreements.

(b) Preliminary Findings. We reaffirm our proposal to permit the recovery of legitimate and verifiable stranded costs for a limited set of existing wholesale contracts, namely, contracts executed on or before July 11, 1994 that do not already contain exit fees or other explicit stranded cost provisions. We further reaffirm our desire that utilities and their customers attempt to renegotiate such contracts promptly to specify the rights and obligations of the parties. To that end, we encourage the parties to existing contracts that do not address stranded costs to reach a mutually agreeable resolution. If the parties negotiate such a provision and the seller is a public utility, the utility must file the provision with the Commission as an amendment to the existing requirements contract. Of course, in some cases, the parties may disagree in good faith about whether the utility's expectations that the customer would continue taking service were reasonable. If so, negotiations may prove unsuccessful.

In place of the three-year transition period proposed in the initial NOPR, we propose that, if an existing requirements contract does not contain an exit fee or other explicit stranded cost provision and is not mutually renegotiated to add such a provision: (1) A public utility or its customer may, at any time prior to the expiration of the contract, file a proposed stranded cost amendment to the contract under section 205 or 206; or (2) a public utility or transmitting utility may, at any time prior to the expiration of the contract, file a proposal to recover, through its transmission rates for a customer that uses the utility's transmission system to reach another generation supplier, stranded costs associated with any such existing contract. However, for a utility to be eligible for recovery of stranded costs, it must meet the evidentiary and procedural criteria discussed *infra.*

Consistent with the initial NOPR, if an existing contract includes an explicit provision for payment of stranded costs or an exit fee, we will assume that the parties intended the contract to cover the contingency of the buyer leaving the system. As proposed in the initial Stranded Cost NOPR and reaffirmed here, we will reject a stranded cost amendment to an existing contract that already contains an exit fee or stranded cost provision, unless the contract permits renegotiation of the existing stranded cost provision or the parties to the contract mutually agree to renegotiate the contract.

However, if a contract does not contain an exit fee or other explicit stranded cost provision, and the contract permits the seller and/or buyer to seek an amendment to the contract, the authorized party may seek an amendment to add a stranded cost provision. In addition, even if the contract contains an explicit *Mobile-Sierra* provision, the Commission reaffirms its preliminary determination that it is in the public interest to permit public utilities to seek unilateral amendments to add stranded cost provisions if the contracts do not already contain exit fees or other explicit stranded cost provisions. If a utility demonstrates that it has met the standards for recovery outlined in this Supplemental NOPR, we believe that its recovery of stranded costs will be in the public interest.

If neither of the parties to such a contract seeks and obtains acceptance or approval of an explicit stranded cost amendment, the Commission proposes to permit the public utility to seek recovery of stranded costs through its wholesale transmission rates. We also propose to establish procedures to provide an existing wholesale requirements customer who is contemplating switching suppliers, and using its existing supplier's transmission system in order to reach a new supplier, advance notice of how the utility would propose to calculate costs that the utility claims would be stranded by the customer's departure. We believe that the following procedures would enable such a customer to make an informed decision whether or not to switch suppliers:

(1) A customer may, at any time prior to the termination date specified in its existing wholesale requirements contract, request the public utility to either: (i) Calculate the customer's maximum possible stranded cost exposure without mitigation, as of the date set forth in the customer's request; or (ii) provide the formula that the utility would use to calculate the customer's maximum possible stranded cost exposure without mitigation, to enable the customer to assess whether to contract for new generation service from another supplier. The customer should specify in its request, to the extent possible, pursuant to its rights under the power sales agreement with the seller, the date on which the customer would substitute alternative generation for the requirements purchase and the amount of the substitution. Any remaining requirements purchased from the existing supplier after this date should be clearly indicated. The customer may seek further information on how the stranded cost charge would vary as a result of choosing different dates or different amounts of substitute purchases. The customer also should indicate its preferred payment method(s) (*e.g.*, a monthly or annual adder to its transmission rate or an up-front lump-sum payment).

(2) The utility shall, within thirty days of receipt of the request, or other mutually agreed upon period, provide the customer: (i) The customer's maximum possible stranded cost exposure without mitigation; or (ii) the formula that the utility would use to calculate the customer's maximum possible stranded cost exposure without mitigation. The utility's response should indicate the period over which the utility proposes to charge the departing customer. There should be appropriate support for each element in the calculation or formula to enable the customer to understand the basis for the element. The utility should provide a detailed rationale for its proposal as to how long the utility reasonably expected to keep the customer. The utility also should address how it intends to mitigate stranded costs.

(3) If the customer believes that the utility has failed to establish that it had a reasonable expectation of continuing to serve the customer beyond the contract term or that the proposed maximum stranded cost charge without mitigation (or formula) is unreasonable, it will have thirty days in which to respond to the utility explaining why it disagrees with the charge. The parties should then attempt to reach a mutually-agreeable charge for stranded costs within a reasonable period.

(4) If the parties are unable to resolve the matter pursuant to the procedures specified in (1)–(3) above, the customer may either: (a) File a complaint with the Commission under section 206 of the FPA to seek a Commission determination whether the utility has met the reasonable expectation standard and, if so, whether the proposed maximum stranded cost charge (or formula) satisfies the other evidentiary standards set forth in this rule;[281] or (b) wait until the proposed stranded cost charge is filed under section 205 of the

[281] If a complaint is filed, neither the customer nor the utility could raise issues not identified in their earlier discussions. The burden of proof would be on the utility to satisfy the evidentiary standards related to stranded cost recovery.

FPA, and contest it at that time.[282] In either case, *i.e.*, a section 205 or 206 proceeding, the utility would only be able to seek stranded cost recovery according to the formula and other terms identified in its earlier discussions with the customer.

The above-described procedure would provide a customer an opportunity to know its maximum possible exposure as far in advance of its decision to change suppliers as the customer chooses (*i.e.*, the customer can file its request for a stranded cost computation at any time). If the customer decides to contest the proposed stranded cost charge, in either a section 206 or 205 proceeding, it will know its exact exposure once the Commission has completed its review of the proposed charge. This procedure attempts to address the *Cajun* court's concern that exposure to an unknown stranded cost fee will discourage customers from looking at other suppliers. At the same time, this procedure will permit recovery of legitimate stranded costs as set forth herein.

We strongly encourage utilities and their existing customers to attempt to resolve stranded cost issues through a mutually-agreeable exit fee or other stranded cost amendment to existing contracts that do not address stranded cost recovery.

We invite comments on our proposal to drop the three-year negotiation requirement originally proposed in the Stranded Cost NOPR, and instead to permit amendments to certain existing requirements contracts at any time prior to the expiration of the contracts, or to permit utilities to seek recovery through a departing customer's transmission rates at any time prior to the expiration of the power sales contracts. We also invite comments on our proposal to establish a procedure whereby a wholesale requirements customer with an existing contract that does not explicitly address stranded costs can obtain its maximum stranded cost exposure without mitigation from the utility and can seek Commission review of the utility's reasonable expectation claim and the utility's proposed stranded cost charge or formula.

(6) Filing Requirements for Wholesale Stranded Cost Recovery. The Commission proposes to amend Part 35, Chapter I, Title 18 of the Code of Federal Regulations to establish filing requirements for public utilities (as defined in FPA section 201(e)) and transmitting utilities (as defined in FPA section 3(23)) that seek stranded cost recovery. We reaffirm our view that the only circumstance in which transmitting utilities that are not also public utilities may seek stranded cost recovery from this Commission is through customer-specific surcharges to rates for transmission services under FPA sections 211 and 212, and that those surcharges may only apply to costs associated with existing contracts.

The proposed regulations define ''wholesale stranded cost'' as ''any legitimate, prudent and verifiable cost incurred by a public utility or a transmitting utility to provide service to: (i) a wholesale requirements customer that subsequently becomes, in whole or in part, an unbundled wholesale transmission services customer of such public utility or transmitting utility, or (ii) a retail customer, or a newly created wholesale power sales customer, that subsequently becomes, in whole or in part, an unbundled wholesale transmission services customer of such public utility or transmitting utility.''

We seek comment on whether the proposed definition of ''wholesale stranded cost'' should encompass the situation where a wholesale requirements customer ceases to purchase power from the utility that had been making wholesale requirements sales to such customer, and the customer does not thereafter become an unbundled transmission services customer of that utility. This situation might occur, for example, in a situation where the former requirements customer was in a non-contiguous service area and does not need unbundled transmission service from the former seller in order to purchase power from a replacement supplier.

Consistent with the initial Stranded Cost NOPR, the proposed regulations would permit a public utility or transmitting utility to seek recovery of wholesale stranded costs as follows. First, for stranded costs associated with new wholesale requirements contracts (*i.e.*, any wholesale requirements contract executed after July 11, 1994), the proposed regulations would allow recovery of stranded costs only if the contract explicitly provides for recovery of stranded costs.

Second, for existing wholesale requirements contracts (*i.e.*, any wholesale requirements contract executed on or before July 11, 1994), the proposed regulations would specify that a utility may not recover stranded costs associated with such contract if recovery is explicitly prohibited by the contract (including associated settlements) or by any power sales or transmission tariff on file with the Commission.

Third, for existing wholesale requirements contracts that do not address stranded costs through exit fee or other explicit stranded cost provisions, the proposed rule would allow a public utility to seek recovery of stranded costs only as follows: (1) if the parties to the existing contract renegotiate the contract in accordance with this rule and file a mutually agreeable amendment dealing with stranded costs, and the Commission accepts or approves the amendment; (2) if either or both parties seeks an amendment to the existing contract under sections 205 or 206 of the FPA, prior to the date the contract expires, and the Commission accepts or approves an amendment permitting stranded cost recovery; or (3) if the public utility files a request, prior to the date the contract expires, to recover stranded costs through an adder to a departing customer's transmission rates under FPA sections 205–206, or 211–212.

Fourth, if the selling utility under an existing wholesale requirements contract is a transmitting utility but not also a public utility, and the contract does not address stranded costs through an explicit exit fee or other stranded cost provision, the transmitting utility may seek to recover stranded costs through an adder to a departing customer's transmission rates under FPA sections 211–212. Such utility may not seek recovery of stranded costs through a section 211–212 transmission rate if the existing contract does contain an explicit exit fee or other stranded cost provision.

Fifth, for a retail-turned-wholesale customer, the proposed rule would allow a public utility or transmitting utility to file a request to recover stranded costs from the newly created wholesale customer through an adder to that customer's transmission rate.

Sixth, for customers who obtain retail wheeling, a public utility or transmitting utility may seek recovery through transmission rates only if the state regulatory authority has no authority under state law at the time retail wheeling is required to address stranded costs.

(7) Evidentiary Demonstration Necessary—Reasonable Expectation Standard.—In the Stranded Cost NOPR, we proposed, as part of the evidentiary demonstration that a public utility or transmitting utility must make to recover stranded costs in wholesale transmission rates, or through a unilateral amendment to the power sales contract, that the utility must show

[282] As discussed in section III.F.1.c(10) *infra*, retail customers contemplating becoming wholesale customers may use the same procedures.

that it incurred costs based on a reasonable expectation when the costs were incurred that the applicable contract would be extended.[283] We indicated that, in these situations, the question of whether a utility had a reasonable expectation of continuing to serve a customer is a factual matter that will depend on the evidence produced in each case. We further proposed that a notice provision in a contract would create a rebuttable presumption that the utility had no reasonable expectation of serving the customer beyond the period provided for in the notice provision. We invited comments with regard to these proposals and also asked whether we should adopt a minimum notice period that would create a presumption that the utility had no reasonable expectation of continuing to provide service beyond such period (e.g., a five-year notice period).[284]

(a) Comments. Commenters express a variety of views on the reasonable expectation standard for extra-contractual cost recovery. Some commenters (*e.g.*, the Transmission Access Policy Study Group) do not believe there is a legal basis to permit the claimed expectation of indefinite renewal of a contract to override a customer's express contractual termination rights. These commenters argue that there has never been any assurance that utilities will be allowed to recover all of their costs, no matter how incurred. These commenters assert that utilities have been on notice for years that customers may try to exercise their contractual right to terminate service when their contracts end, and that utilities would not be entitled to any contract extensions or other relief. These commenters state that the reasonable expectation test is an inadequate basis for denying customers their contractual termination rights.

Other commenters (*e.g.*, Environmental Action) state that if reasonable expectations (as opposed to contract language) are relevant, one must determine both the utility's and the customer's reasonable expectations. These commenters support the concept of contract symmetry; if there is no obligation to serve beyond the contract term, imposing an obligation to pay beyond the contract term is asymmetrical.

With regard to the Commission's proposal that a notice provision in an existing contract creates a rebuttable presumption that there is no reasonable expectation that the contract will be renewed, many investor-owned utility commenters, as well as the Florida Commission and the Texas Commission, question whether a notice provision constitutes sufficient grounds for such an assumption. Because of the obligation to serve and the long lead time needed to construct new base-load generating units, they argue that a utility could have been found to be imprudent if it did not plan for and build sufficient generating capacity to meet its service obligations. These commenters maintain that it would have been unreasonable for a utility to assume that a customer that is served under a contract with a notice provision that has been repeatedly renewed would not again renew the contract. These commenters maintain that a notice provision is not sufficient to demonstrate a ''meeting of the minds'' on this issue.

TVA states that the notice provisions in its contracts in no way lessen its intention to serve its customers. TVA states that its legislative provisions, planning process, and history all support the assumption that it will continue serving its wholesale customers indefinitely.

Certain customer groups, such as the TDU Customers and the Wisconsin Wholesale Customers (Wisconsin Customers), believe that the Commission should make the rebuttable presumption stronger, *i.e.*, that contracts with notice provisions should absolutely preclude stranded cost recovery. Wisconsin Customers state that there should be no opportunity for renegotiation to include stranded cost provisions in contracts with reasonable notice provisions.

(b) Preliminary Findings. We believe we should retain a reasonable expectation standard as part of the evidentiary demonstration that a public utility or transmitting utility must make. Whether a utility had a reasonable expectation of continuing to serve a customer, and for how long, will be determined on a case-by-case basis. Depending on all of the facts and circumstances, a reasonable expectation that a contract would be extended could be established, for example, by: (1) Whether the customer had access to alternative suppliers; (2) a showing that the parties' actual conduct or course of dealing has been to renew the contract upon its scheduled expiration; (3) evidence that a utility has recovered construction-work-in-progress (for projects that would enter service after the scheduled contract expiration) from a particular customer without the customer's objection; or (4) communications between supplier and customer concerning system planning, such as an indication by a buyer that the seller should continue to include the buyer's load in the seller's resource planning beyond the contract term.[285]

In addition, as proposed in the initial NOPR, we believe that the existence of a notice provision in a contract should create a rebuttable presumption that the utility had no reasonable expectation of serving the customer beyond the period provided for in the notice provision. Of course, evidence that a contract with a notice provision has been repeatedly renewed (the scenario described by commenters opposing the creation of a rebuttable presumption) may, depending on the particular case, be sufficient to rebut the presumption that the utility had no reasonable expectation of contract renewal.

Further, we will not adopt a minimum notice period for purposes of applying the reasonable expectation rebuttable presumption. We believe that whether a utility had a reasonable expectation of continuing to serve a customer, and for how long, including whether there is sufficient evidence to rebut the presumption that no such expectation existed beyond the notice provision in the contract, will depend on the facts of each case. In these circumstances, we do not believe that a generic minimum notice period would be appropriate.

In addition, a contract that is extended or renegotiated for an effective date after July 11, 1994 becomes a new contract for which stranded cost recovery will be allowed only if explicitly provided for in the contract.

We seek further comment on the following specific aspect of the reasonable expectation standard: Should the reasonable expectation standard apply in a case where a utility has been making wholesale requirements sales to a customer in a non-contiguous service territory and where, in order to make such a sale possible, transmission service has been rendered by an intervening utility or utilities? Should the Commission take this as conclusive evidence that the customer had a choice of wholesale suppliers and, therefore, that the seller had no reasonable expectation that the contract would be extended? In the alternative, should the Commission choose to provide the seller with an opportunity to prove that it had a reasonable expectation, what weight should be given to the fact that transmission service was rendered by the intervening utility or utilities? Finally, in the event that the seller establishes that it had a reasonable expectation, and the former wholesale customer does not take unbundled

[283] Stranded Cost NOPR at 32,873–74.

[284] *Id.* at 32,874.

[285] See *id.* at 32,874.

transmission service from the former seller, what means ought to be available for the collection of stranded costs?

(8) Identification of Recoverable Wholesale Stranded Costs. The Stranded Cost NOPR proposed, as part of the evidentiary demonstration necessary for wholesale stranded cost recovery, that a utility show that the stranded costs it incurred are not more than the customer would have contributed to the utility had the customer remained a wholesale requirements customer of the utility. We invited comments in the initial NOPR on what would constitute reasonable compensation for stranded costs and on how to determine the amount of stranded costs that the departing customer may be liable to pay. For example, we asked whether it would be reasonable to limit the annual amount of stranded costs to what the departing customer would have contributed to the utility's capital (customer revenues minus variable costs), or whether an alternative concept would be appropriate. We also requested comments as to what would constitute a ''reasonable compensation period'' over which to determine a customer's liability for stranded costs (*e.g.*, five years, ten years, or some other period). We indicated that the present value of the customer's liability could be the discounted value of an annual amount for such reasonable compensation period and that this total amount could be paid in a lump sum or over any mutually agreeable period.[286]

We also assumed in the NOPR that stranded costs will be dominated by generating capacity, but stated that it is appropriate to consider stranded costs more broadly, including the possibility that fuel supply costs, purchased power costs (including QF costs), nuclear decommissioning costs, regulatory assets, and possibly other utility obligations may be stranded. Accordingly, we invited public comment on what categories of costs, in addition to investment costs, should be eligible for stranded cost recovery.[287]

(a) Comments. (i) Acceptable Calculation Methods. Most commenters were not very specific regarding how to calculate the level of recoverable wholesale stranded costs. However, commenters that address this issue generally fall into three groups.

The first group reflects the position of EEI and most investor-owned utility commenters. This group proposes an asset-by-asset review of stranded investments (including contractual liabilities, regulatory assets, and certain social program costs) to develop a total company estimate of stranded costs that need to be recovered. These costs could then be allocated among customers to determine a hypothetical cost-of-service measure of stranded cost liability. From this amount, the utility would subtract wheeling service revenues and any revenues from mitigation measures taken. As explained in more detail below in the discussion of allowable cost categories, investor-owned utility commenters argue for inclusion of a broad number of investments, expenses and future costs in the revenue requirement calculation of recoverable stranded costs. Commenters that support this approach also suggest that costs are properly included in the calculation (*i.e.*, are recoverable wholesale stranded costs) to the extent that such costs have been ruled to be prudently incurred in a state determination.

Some commenters, however, oppose a hypothetical cost-of-service calculation approach to determining recoverable stranded costs arguing that it will engender litigation. These commenters note that generating units are not built, and specific costs are not generally incurred, on behalf of individual customers. According to these commenters, attempting to define specific components of stranded costs associated with a specific departing customer is inconsistent with utility investment planning and historical cost incurrence.

A second approach for determining recoverable wholesale stranded costs is based on ''revenues lost'' as a result of a customer switching suppliers. Most non-investor-owned utility commenters (*e.g.*, state commissions and customers) and some investor-owned utilities (*e.g.*, Commonwealth Edison Company (Commonwealth Edison), Utility Working Group (UWG)[288]) support this method of calculation. Commenters that support this approach argue that the calculation is less complex than a hypothetical cost-of-service approach and avoids an asset-by-asset review with its attendant accounting and tracking complexities.

Many commenters note that the revenues lost approach recognizes that utilities that made multiple investment decisions under the prior regulatory scheme compact expected a revenue stream from their customers to cover the costs of those investments. Under this approach, the measure of recoverable stranded costs is the difference between revenues expected from a customer under traditional regulation and the expected revenues in a competitive market. Some commenters suggest further limitations on the revenue stream calculation, *i.e.*, calculating revenues on a present value basis, or using current revenues as the ceiling for utility expected revenues under the prior regulatory regime. According to commenters, these limitations serve at least two purposes: (1) Simplifying the calculation; and (2) creating incentives for utilities to mitigate stranded costs, which will shorten the transition period to a competitive market.

Some commenters, including Public Service Electric and Gas Company (Public Service Electric), also point out that this approach is consistent with resource acquisition. These commenters note that specific investment decisions are not made on a retail/wholesale or customer-by-customer basis, but rather on the basis of resources needed to meet load, *i.e.*, generation plant additions are made based on an analysis of total system needs. Commenters also note that under a revenues lost approach, specific investments/assets do not need to be assigned (or tracked) to a particular event causing stranded costs.

A few commenters (*e.g.*, APPA, Electric Generation Association, Illinois Commission) advocate a third method of calculating the level of recoverable wholesale stranded costs. Under this method, which is a ''netting'' or ''market analysis'' approach, recoverable stranded costs would be determined based on the difference between embedded capital costs and the market value of stranded assets. While this approach is not dissimilar to a ''revenues lost'' approach, the level of stranded costs is generally determined only after a future action with respect to the stranded costs, *i.e.*, auction, divestiture or other future disposition of assets. Other commenters (*e.g.*, Central Vermont Public Service Corporation, Long Island Lighting Company (Long Island Lighting)) suggest variations of this ''netting'' approach, such as comparing the utility's revenues with some measure of the utility's marginal cost of requirements service. Commenters claim that, in a competitive market, the marginal cost would equal the market price. Thus, under this

[286] *Id.* at 32,874–75.

[287] *Id.* at 32,867.

[288] The Utility Working Group members participating in UWG's comments in this proceeding are Dominion Resources, Inc., Duke Power Company, Duquesne Light Company, Entergy Corporation, General Public Utilities Corporation, Niagara Mohawk Power Corporation, Northern States Power Company, Pacific Gas and Electric Company, Portland General Electric Company, Public Service Electric and Gas Company, San Diego Gas & Electric Company, Southern California Edison Company, and Wisconsin Electric Power Company.

approach, recoverable stranded costs are the excess above market value of the stranded assets. Duke Power Company notes that mitigation measures would be unnecessary if this method were used to calculate recoverable stranded costs because the utility's marginal cost (not just its variable expenses), *i.e.*, the market price of the stranded assets, is used as the ''offsetting'' value in the calculation.

(ii) Reasonable Compensation Period (how long utility could reasonably expect to keep customer). Commenters support a wide range of time periods as appropriate for determining a customer's stranded cost liability. Almost all of the commenters, however, request that the Commission provide flexibility in this regard and not establish a generic recovery period so that a variety of recovery mechanisms can be accommodated.

Some state commission commenters (*e.g.*, Illinois Commission) support a limited time period for determining a customer's stranded cost liability as an incentive for utilities to mitigate stranded costs. According to the Illinois Commission, limiting the time period over which a customer's stranded cost liability is to be determined should encourage utilities to ''fervently re-market the services produced by the potentially stranded resources.'' [289] Utility customer commenters (*e.g.*, city of Las Cruces, TDU Customers) also support a limitation on the period over which stranded costs would be determined. These commenters propose limiting the reasonable compensation period to the lesser of the contractual notice period; the remaining portion of the stated term of a contract; a five-year period (as a maximum reasonable time to plan for mitigation measures); or the utility's planning horizon.

Some investor-owned utility commenters (*e.g.*, EEI, Centerior Energy Corporation), on the other hand, oppose limiting the period over which a customer's stranded cost liability would be determined. EEI, for example, states that as a general rule, the departing customer should be responsible for its regulated rate less the utility's marginal cost and mitigating revenue. It contends that the period of such responsibility should continue until the utility needs the capacity freed up by the departing customer to meet retail load growth or firm wholesale obligations. In effect, these commenters support an open-ended opportunity to recoup wholesale stranded costs. They argue that the recovery period should continue as long as possible to ensure that native load customers are held harmless.

(iii) Allowable Cost Categories. Almost all commenters agree that stranded costs should not include variable expenses. The majority of customer commenters either: (1) Support the Commission's proposed categories; or (2) do not express an opinion regarding cost categories that are appropriate for recovery because they support the use of some type of ''revenues lost'' approach for determining recoverable costs, which does not require the identification of specific utility investments or expenses.

Many investor-owned utility commenters, however, contend that, in addition to the items identified in the NOPR, recoverable stranded costs should include a broad number of other investments, expenses and future costs. These commenters propose that the additional items that are eligible for recovery should include, but not be limited to:

- Construction work in progress;
- Regulatory assets, such as phase-in plans for new generation plant, and accrual accounting requirements (*e.g.*, income tax normalization, accounting for pension and PBOP costs);
- Actual nuclear decommissioning costs as well as a utility's pro rata obligation to dismantle and decontaminate DOE's uranium enrichment facilities;
- All fuel costs pending recovery via fuel adjustment mechanisms;
- Mandatory social program costs including DSM, low-income assistance, environmental clean-up and various R&D projects;
- Clean Air Act compliance costs;
- Storm damage expenses; and
- Other unknown future liabilities.

In addition, EEI states that before 1992, *i.e.*, pre-EPAct, no regulatory commission explicitly authorized a rate of return that compensated a utility for the risk of future retail competition. EEI notes that after EPAct only four regulatory commission decisions have addressed this issue. Because the risks of the new competitive market were neither contemplated by investors nor compensated by regulators under existing ratemaking, EEI argues that the cost of such risk must also be included as a category of costs eligible for stranded cost recovery.

Public Power Council suggests that there are two dangers in creating lists of eligible and ineligible costs: (1) Wasteful regulatory battles are likely; and (2) utility managers will have the incentive to reduce ineligible costs, while ignoring opportunities to reduce eligible costs.

(b) Preliminary Findings. The Commission preliminarily concludes that the determination of recoverable stranded costs should be based on a ''revenues lost'' approach rather than a hypothetical cost-of-service approach. The Commission believes that this approach has greater benefits than a hypothetical cost-of-service approach. A ''revenues lost'' approach avoids the asset-by-asset review that is required by alternative cost-of-service approaches in order to calculate recoverable stranded costs. Cost allocation procedures are also minimized. Moreover, the Commission believes that this approach will be easier to apply, thereby minimizing the cost of administering stranded cost recovery.

The Commission's experience in the natural gas industry is relevant here. Certain pipelines faced with take-or-pay obligations under uneconomic natural gas supply contracts have developed a ''pricing differential'' mechanism that has enabled them to honor existing take-or-pay obligations, while attempting to renegotiate the contracts.[290] Under this mechanism, the pipeline continues to meet its contractual purchase obligation and continues to market the gas purchased through its separate marketing operation. The ''differential'' or ''revenues lost'' between the purchase price and the sales price is passed through as a transition cost.[291]

Under the revenues lost method that we propose here, the utility would calculate a customer's stranded cost liability by subtracting the competitive market value of the power the customer would have purchased from the utility (and the basic revenues from the transmission service) had the customer continued to take service under its contract from the revenues that the customer would have paid the utility. As discussed in section III.F.1.c(9) *infra*, the utility must attempt to mitigate stranded costs by marketing stranded power supplies.

The Commission seeks further comments on the revenues lost approach. In particular, what would be the appropriate method to calculate what the utility's revenue stream would have been had the customer continued service (*e.g.*, current revenues based on current service levels, or should projection and adjustments reflecting changes in the revenue stream be permitted)? The Commission also seeks comments on the appropriate method to

[289] Illinois Commission comments at 61–62.

[290] Texas Eastern Transmission Corporation, 63 FERC ¶ 61,100 at 61,507 (1993).

[291] For details on the mechanics of this program, see Texas Eastern Transmission Corporation, 63 FERC at 61,507–08; Texas Eastern Transmission Corporation, 64 FERC ¶ 61,378 (1994).

calculate the revenues that the utility would receive in a competitive market for the stranded assets. Should the Commission require the utility to track the actual selling price of the power over time, or should it require the utility to use an up-front approach, such as an estimate of the forecasted market value of the power for the period during which the customer would have taken service? Should the Commission allow prices in futures markets or forward markets to be used in an up-front approach, assuming such financial instruments become available? In addition, how should revenues received as a result of mitigation measures be reflected in the determination of the amount of recoverable stranded costs? What special accounts, if any, should be created to track revenue liability for specific customers, revenues from mitigation measures, and other revenues received by the utility that offset the stranded cost liability? Once determined, should any adjustment be permitted to the revenues that the utility claims will be realized in a competitive market for its stranded assets, and if so, how often and under what circumstances?

With regard to establishing a reasonable compensation period (*i.e.*, setting a limit on how long the utility could have reasonably expected to keep the customers), we do not believe that a one-size-fits-all approach is appropriate. A particular customer's stranded cost liability will depend, in each instance, on such case-specific factors as whether the utility can demonstrate that it had a reasonable expectation of continuing to serve the customer beyond the term of the contract and, if so, for how long. Therefore, we believe it appropriate to permit utilities and their customers some flexibility with regard to the period over which a customer's stranded cost liability would be determined. However, we will not allow an open-ended opportunity to recoup wholesale stranded costs. Although our preliminary finding is that a one-size-fits-all approach is not appropriate, we seek further comment with respect to whether the Commission ought to establish presumptions or, in the alternative, absolute limits on a customer's maximum liability in those situations where a utility establishes that it had a reasonable expectation that the contract would be extended. For instance, would it be appropriate to pick an outer limit equal to the revenues that the utility would lose during the length of one additional contract extension period, or during the length of the utility's planning horizon? What other events or criteria might the Commission use to establish either presumptions or absolute limits on the time period over which the customer's liability for stranded costs would be determined?

Our decision to adopt a revenues lost approach for determining recoverable stranded costs, which avoids an asset-by-asset review, in effect eliminates the need to enumerate specific categories of costs that may be recovered. However, there may be special categories of costs that are properly allocated to departing customers and that are not captured in the revenues lost approach. For example, nuclear decommissioning costs may not be reflected, or may not be fully reflected, in current requirements rates. To the extent this is true, a departing customer may be ''escaping'' from costs that it caused as a result of taking power service from its supplier during the time that the nuclear plant was operating. We seek comments on whether there are special costs that warrant some special consideration in the determination of stranded cost liability under a revenues lost approach, and if so, how they should be treated. We also solicit comments as to whether the Open Access NOPR raises any additional implementation or other issues affecting stranded cost recovery as proposed here.

(9) Mitigation Measures. As part of the evidentiary demonstration that a utility must make in order to recover stranded costs, the Stranded Cost NOPR would require the utility to show that it has taken and will take reasonable and prudent measures to mitigate stranded costs. The Commission proposed in the initial NOPR that adequate mitigation measures might include: (1) Evidence that the utility has tried to market the asset or assets, market the generating capacity, reconfigure or delay investment in or purchase of new generating capacity, or reform fuel supply contracts that form the basis for the stranded costs charge, and that such measures to mitigate stranded costs will continue for the entire period for which the stranded costs charge will be paid; or (2) the utility has given the customer the option to market the generating capacity or supply of fuel or purchased power that forms the basis for the stranded cost charge in order to afford the customer an opportunity to lower its stranded costs charge. We invited comment on the mitigation requirement and what reasonable measures to mitigate may include.

(a) Comments. Although there is nearly unanimous support for requiring that mitigation measures be taken, commenters raise several issues regarding how mitigation should be implemented and the effectiveness of such a requirement.

As noted above, many investor-owned utility commenters argue that stranded costs should be defined to include costs other than capital investment in utility property. According to these commenters, stranded costs also may include environmental clean-up costs, decommissioning costs, and regulatory assets resulting from cost recovery deferrals. Unlike capacity, these costs cannot be ''marketed.'' Therefore, mitigation measures cannot be taken with respect to these costs. Thus, according to some commenters, there is a category of ''unmarketable'' stranded costs for which mitigation efforts to reduce the level of the costs are not possible.

Many commenters (*e.g.*, Texas Commission, TDU Customers) contend that a mitigation requirement will be more effective if incentives to mitigate are created. These commenters suggest several options, including:

- Limiting recovery of stranded costs to current rate levels (no projections of increases in stranded costs for future periods);
- Requiring shareholders to shoulder some cost responsibility (to ensure that mitigation measures will be aggressively pursued); and
- Requiring any stranded investment to be offered for sale, either with the departing customer permitted to ''sell'' the stranded investment, or through some form of auction.

Other commenters suggested that effective mitigation would require auctioning off stranded assets or some type of general divestiture of assets by the utility that is allowed to recover stranded costs.

Many commenters acknowledge that revenues from mitigation measures should reduce the amount of wholesale stranded costs. An issue is raised, however, regarding how revenues associated with mitigation measures should be credited. Given the overall preference by commenters supporting stranded cost recovery for direct assignment of stranded costs to a departing customer, explicit crediting mechanisms and accounting requirements—and perhaps new accounts or subaccounts—would be needed to keep track of amounts owed by those assessed wholesale stranded costs. Consequently, these commenters contend that decisions regarding who should pay (and how) for wholesale stranded costs must be coordinated with decisions regarding the implementation of required mitigation measures so that parties receive appropriate credits.

(b) Preliminary Findings. We note that the revenues lost approach for determining recoverable stranded costs encompasses mitigation measures because it reduces the amount of stranded costs recoverable by a utility by the market price of the power that the customer no longer takes under its contract. Thus, our suggestion in the initial NOPR that revenues associated with mitigation measures be credited to the departing customer through reductions to that customer's surcharge is in effect accomplished by adoption of the revenues lost approach. This is particularly so if mitigation is reflected through a one-time, up-front estimate of the future market value of the power, and is not trued-up over time. Nonetheless, we emphasize that mitigation as a general matter remains important, and seek comment regarding implementation of a mitigation requirement. For example, if mitigation is trued-up over time, how should the Commission ensure that the utility takes all reasonable steps to mitigate its own costs so as to minimize what the customer would have paid? How should the Commission ensure that the utility does its best to sell the power at its highest possible value so as to mitigate the customer's stranded cost liability? Are there other mitigation measures that should be taken into account (*e.g.*, efficiency improvements that a utility would have undertaken regardless of whether the particular customer continued to take power under its contract, or cost savings resulting from the buy-out of a fuel contract made possible by the customer's departure)?

(10) Federal Forum for ''Retail'' Stranded Cost Recovery and Proposed New Definition of ''Wholesale'' Stranded Costs. In the initial NOPR, the Commission described two general ways in which retail stranded costs are likely to occur: (1) A retail franchise customer or group of such customers may, through state or local government action, become a wholesale customer that can then obtain unbundled transmission services in order to reach a new power supplier; and (2) a retail franchise customer may obtain voluntary unbundled retail transmission services from its existing power supplier in order to reach a new power supplier, or there may be a State or local government action that results in the existing supplier providing such retail transmission services. The Commission requested comments concerning the extent to which the Commission should provide a forum for resolving retail stranded cost issues. The Commission proposed two alternatives for addressing this issue. Under the first alternative, the Commission proposed that it would not entertain a request for retail stranded cost recovery if, in a specific circumstance, an appropriate state authority explicitly considers and deals with retail stranded costs and there is no conflict within or among state regulatory bodies regarding a state's disposition of the issue. However, in the absence of a clear expression by an appropriate state authority that it has dealt with the issue, or in the event of a conflict between states or among state officials within a single state, the Commission proposed to entertain requests to recover retail stranded costs. Under the second alternative, the Commission proposed not to entertain any request for recovery of retail stranded costs. Under this alternative, we proposed that state or local authorities would be the only forum for addressing the issue.[292]

(a) Comments. Most of the state commissions comment that the Commission should not provide a forum for addressing retail stranded cost issues. The Massachusetts Department of Public Utilities suggests Commission involvement only if a conflict arises through disparate stranded cost treatment by different states that the states are unable or unwilling to resolve. The Pennsylvania Commission suggests Commission involvement in retail stranded cost issues only if states have lost jurisdiction (for instance, due to municipalization). Most of the state commissions argue that retail costs are subject to exclusive state jurisdiction and that action or inaction by a state or any differences between state actions are matters to be resolved by the courts, not the Commission. Many of these commenters (*e.g.*, NARUC) note that numerous differences in ratemaking currently exist among states and that the Commission has not attempted to resolve those differences; they see no distinction with regard to retail stranded cost recovery. Some state commissions also argue that the possibility of Commission involvement in retail stranded cost recovery could introduce ''forum shopping.''

The New York State Public Service Commission (New York Commission) suggests that the Commission provide a backstop to the states only if a state has taken no action regarding retail stranded costs. The Ohio Public Utilities Commission (Ohio Commission) and the Wyoming Public Service Commission suggest that the Commission become involved in retail stranded costs only at the request or petition of a state.

[292] Stranded Cost NOPR at 32,878–79.

Commenters representing investor-owned utilities, on the other hand, overwhelmingly agree that the Commission should provide a forum for resolving retail stranded cost issues. They propose a broad range of scenarios in which Commission involvement in retail stranded cost recovery is appropriate.

EEI, Commonwealth Edison, Florida Power and Northern States Power Company argue that the Commission should act as a backstop to state commissions with authority to address retail stranded cost issues: (1) To address yet undefined questions; (2) when no state commission action is taken; or (3) when state commission action is not taken in a fair and timely manner or results in the confiscation of utility property.

Allegheny Power, Arizona Public Service Company and Virginia Electric and Power Company argue that the Commission should provide a forum to address situations in which states allegedly have no authority to address retail stranded cost issues (primarily municipalization).

The Coalition for Economic Competition, Entergy, Utility Working Group, and the Nuclear Energy Institute urge the Commission to address situations in which state policy is inconsistent with Commission policy. In fact, many investor-owned utilities advocate the establishment of uniform national guidelines for stranded cost recovery that will be applicable to both wholesale and retail stranded costs. These commenters contend that the Commission is the only body capable of fulfilling this role.

Houston Lighting & Power Company urges the Commission to address retail stranded costs whenever retail stranded costs have a substantial adverse impact on interstate transmission.

Two investor-owned utilities support Commission involvement in retail stranded cost issues only in limited circumstances. Entergy contends that Commission involvement is necessary only if state jurisdiction is evaded (*i.e.*, certain cases of municipalization). Public Service Electric states that Commission oversight is needed to ensure that final results are consistent with Commission guidelines and are pro-competitive.

Commenters representing small customer interests, such as Electric Consumers' Alliance and the National Black Caucus of State Legislators, support Commission involvement in retail stranded cost issues in order to ensure that large customers that leave the system do not evade their fair share

of stranded costs to the detriment of residential and other small customers.

Commenters representing municipal and electric cooperatives (such as APPA, TAPS and SCOOP), commenters representing independent power producers (such as the National Independent Energy Producers), commenters representing industrial customers, some customer advocacy group commenters (such as Industrial Consumers, American Forest, and the National Association of State Utility Consumer Advocates (NASUCA)), and commenters representing environmental groups (such as CLF) generally oppose Commission involvement in retail stranded cost issues.

DOE agrees with the Commission that retail stranded cost recovery is primarily a state issue. However, DOE states that the Commission has correctly determined that it has authority to regulate the rates, terms and conditions of retail transmission service. Accordingly, DOE supports Commission involvement in retail stranded cost issues.

DOE notes that states may decide to make retail competition contingent upon the recovery of stranded costs by their jurisdictional utilities. DOE states that the Commission does not appear to have considered the possibility that a utility may seek recovery of retail-related stranded costs through a retail transmission tariff filed with this Commission that has the support of the state commission. DOE submits that the Commission, as a matter of policy, should allow utilities to file tariffs for retail transmission service that recover stranded retail costs when such filings have the support of the affected state commissions. However, DOE states that the Commission should not give deference to tariffs for retail transmission service that contain a provision for stranded cost recovery if the tariff is opposed by any state commission that has a material interest in the filing.

Public Service Electric states that due to the vertical integration of electric utilities, the distinction between wholesale and retail stranded costs is merely a matter of cost allocation. It contends that utilities generally do not have specific generating facilities in place to serve strictly wholesale customers, but rather include wholesale customer loads into their planning models as if they were retail customers. Public Service Electric thus concludes that no distinction between wholesale and retail stranded costs is necessary for purposes of evaluating stranded cost recovery.

In contrast, other commenters contend that there are inherent differences between retail and wholesale stranded costs, resulting primarily from the different regulatory regimes in place. These commenters state that, at the state level, a utility provides retail service pursuant to a ''regulatory compact'' under which the utility undertakes an obligation to serve retail customers in exchange for an exclusive service franchise. In contrast, they submit that the utility's obligation to serve a customer at the wholesale level is established through contract. Some commenters conclude that these differences necessitate different approaches for recovery of wholesale and retail stranded costs.

Several commenters (*e.g.*, Duke, Entergy, Long Island Lighting, Nuclear Energy Institute,[293] Public Service Electric, Coalition for Economic Competition, Utility Working Group) request that the Commission issue a uniform national set of standards to govern the treatment of all stranded investment (both retail and wholesale), irrespective of jurisdiction with respect to retail stranded costs.

In contrast, several of the state commission commenters emphasize a need for flexibility in dealing with retail stranded costs in lieu of a one-size-fits-all solution, which they argue may fail to address important differences between states. Accordingly, several of the state commission commenters, including the Alabama, California, Indiana, Michigan, and New York Commissions, urge that the Commission develop in cooperation with the state commissions a flexible approach to retail stranded cost recovery through various means such as joint boards or through more informal conferences or other joint forums.

With respect to the issue of stranded costs caused by retail-turned-wholesale customers, EEI and several investor-owned utilities (particularly those in Michigan, New York and California) maintain that the most important stranded cost issue before the Commission at this time is the formation of new municipal utilities. These commenters urge Commission involvement in the recovery of stranded costs resulting from this action. EEI notes that most states have constitutions or laws that permit municipalization, through which groups of retail customers may, in effect, become wholesale customers and thereby transfer primary regulatory responsibility for regulating sales to such entities from a state commission to the Commission.

EEI argues that in most instances the Commission will be the regulatory body that will have to consider stranded cost recovery issues resulting from municipalization. EEI states that in approximately 28 states, there is virtually no limitation on the ability of municipalities to form utilities or to oust current suppliers;[294] these states will be unable to protect their utilities from stranded costs. According to EEI, only 14 state commissions have some jurisdiction over the creation or expansion of municipal utilities,[295] and only a few states require reimbursement for stranded generation or for lost earnings. Moreover, EEI notes that condemnation proceedings based on eminent domain principles often do not consider regulatory policies regarding stranded cost assignment and recovery.

NARUC, on the other hand, argues that states and/or state commissions have the ability to address all retail stranded cost issues. From NARUC's perspective, the recovery of stranded costs due to municipalization is a matter to be addressed by state authorities. Appendix D to NARUC's comments contains information regarding state practices and policies in the areas of municipalization and newly-municipalized service territory (*i.e.*, annexation). While policies do vary among the states, NARUC as well as most state commission commenters (*e.g.*, Iowa Commission) maintain that state authorities (commissions, courts and legislative bodies) clearly have the ability to impose stranded asset payments on new municipal utilities. NARUC contends that resolution by state authorities is mandated by the legal authority of the states to act, and does not depend upon Commission deference to the states. NARUC also cautions the Commission against becoming an appellate body for reviewing state determinations that allegedly overrecover or underrecover stranded costs.

However, NARUC suggests two situations where Commission involvement with stranded cost recovery in a municipalization scenario

[293] Nuclear Energy Institute's utility members operate all (109) of the nuclear power plants in the United States.

[294] EEI states that these states are Arizona, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Montana, Nevada, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Utah, Virginia, Washington and Wyoming.

[295] EEI states that these states are Alaska, Arkansas, Iowa, Indiana, Maryland, Massachusetts, North Carolina, New Hampshire, South Carolina, South Dakota, Texas, Vermont, West Virginia and Wisconsin.

is reasonable. The first case is when a state determines that the appropriate cost recovery mechanism would involve a wholesale transmission rate beyond the state's jurisdiction. The second case is when the sequence of events or the timing of the transaction creates some ambiguity regarding the retail or wholesale character of the costs (*e.g.*, the Massachusetts Bay Transit Authority case cited in the NOPR).

Some commenters (*e.g.*, Florida Commission) request joint federal/state consultation on the issue of municipalization. The Florida Commission also requests that the Commission delay the effectiveness of wholesale contracts resulting from municipalization until retail stranded cost issues are resolved.

(b) Preliminary Findings. As discussed in the initial NOPR, as a general matter we believe that both this Commission and state commissions have the legal authority to address stranded costs that result from retail customers becoming wholesale customers who then obtain wholesale wheeling, or from retail customers who obtain retail wheeling, in order to reach a different generation supplier. Based on an analysis of all the comments received, we propose to exercise our authority to address stranded costs as follows.

Because the vast majority of commenters have urged the Commission not to assume responsibility for retail stranded costs, except in certain circumstances, we have concluded that it is appropriate to leave it to state regulatory authorities to deal with any stranded costs occasioned by retail wheeling. The circumstances under which we will entertain requests to recover stranded costs caused by retail wheeling are when the state regulatory authority does not have authority under state law to address stranded costs at the time the retail wheeling is required. We continue to believe that utilities are entitled, from both a legal and policy perspective, to an opportunity to recover all of their prudently incurred costs. In addition, as discussed further below, we believe the Commission should be the primary forum for addressing recovery of stranded costs caused by retail-turned-wholesale customers.

With regard to stranded costs caused by retail wheeling, we emphasize that we will not allow states to use the interstate transmission grid as a vehicle for passing through any retail stranded costs, with the limited exception discussed above. Only if the state regulatory authority does not have authority under state law at the time the retail wheeling is required to resolve the retail stranded cost issue will we permit a utility to seek a customer-specific surcharge to be added to an unbundled transmission rate. We have accepted the view that stranded costs caused by retail wheeling are primarily a matter of local or state concern. Thus, these costs generally must be passed through in a manner that does not involve ''transmission of electric energy in interstate commerce'' as that phrase is used in the FPA. We are proposing to prohibit the pass-through of these costs on interstate transmission facilities except in the limited circumstance described. As discussed in section III.F.1.c(11), we believe that most states have a number of mechanisms for addressing stranded costs caused by retail wheeling, as well as retail-turned-wholesale customers. In addition, as further discussed in section III.F.1.c(12), we are proposing to define ''facilities used in local distribution'' under section 201(b)(1) of the FPA. Rates for services using such facilities to make a retail sale are state-jurisdictional. States therefore will be free to impose stranded costs caused by retail wheeling on facilities or services used in local distribution.

At this juncture, the Commission is comfortable with this approach and our hope is that a federal forum for recovery of retail stranded costs ultimately will not be necessary. When states address retail stranded costs caused by retail wheeling, the Commission holds the strong expectation that states will provide procedures for, and the full recovery of, legitimate and verifiable stranded costs. This is the same standard we set out for wholesale stranded costs. We do so as part of our goal to assure a smooth and orderly industry transition to competition that is fair to all affected parties. In this proposal we also set out procedures that all parties can use to seek equitable treatment of stranded cost recovery. Again, we expect a state providing for direct access to provide similar procedures. We know that states are aware and concerned about the impacts of providing direct access as shown by many state comments. Based on this awareness and concern, we anticipate state approaches to retail stranded costs not unlike our approach to wholesale stranded costs. Although our hope is that a federal forum will not be necessary, we will watch with interest the states' efforts to address the retail stranded cost problem.

We believe this approach represents an appropriate balance between federal and state interests. It ensures that the wholesale market, except in a narrow circumstance, will not be burdened by retail costs. It also helps to ensure that one state will not be able to burden customers in another state with stranded costs due to retail wheeling.

We have a different view with regard to stranded costs caused by retail-turned-wholesale customers. If a retail customer becomes a legitimate wholesale customer, *e.g.*, through municipalization, it would thereby become eligible to use the non-discriminatory open access tariffs we are proposing to require public utilities to provide. If costs are stranded as a result of this wholesale transmission access, we believe that these costs should be viewed as ''wholesale stranded costs.'' But for the ability of the new wholesale entity to reach another generation supplier through the FERC-filed open access transmission tariff, such costs would not be stranded. While the stranded costs likely would derive primarily from generation investments that previously were in retail rate base, we note that utilities generally build generating facilities and incur other costs to serve their entire load, both retail and wholesale. We believe that costs stranded by the departure of a retail-turned-wholesale customer could and should be considered FERC-jurisdictional stranded costs once the new wholesale customer begins taking wholesale transmission services. They are identifiable economic costs that were incurred by the jurisdictional transmitting utility, and they do not disappear simply because the identity of the customer changes from retail to wholesale. There is a clear nexus between the FERC-jurisdictional transmission and the exposure to non-recovery of prudently incurred costs. Accordingly, we believe this Commission should be the primary forum for addressing recovery of such costs. To avoid forum shopping and duplicative litigation of the issue, we expect parties to raise claims before this Commission in the first instance.

To implement this policy, we propose to change the definition of ''wholesale stranded costs'' that was contained in the initial NOPR, and to propose a definition that includes stranded costs resulting from unbundled wholesale transmission for newly created wholesale customers. We seek comment on this proposed change.

We propose to require the same evidentiary demonstration for recovery of stranded costs from a retail-turned-wholesale customer or a retail customer that obtains retail wheeling as that required when wholesale requirements customers leave a utility's system. In this regard, we no longer propose to

adopt the proposal in the initial NOPR that the ''reasonable expectation'' test should not apply in the case of retail-turned-wholesale customers or retail customers that obtain retail wheeling.[296] We propose that the utility must demonstrate that it incurred stranded costs based on a reasonable expectation that the customers would continue to receive bundled retail service. We expect that the reasonable expectation test would be easily met in those instances in which state law awards exclusive service territories and imposes a mandatory obligation to serve.[297] We solicit comments on this proposed change.

We reaffirm our proposal in the initial NOPR that utilities will have to make an evidentiary showing that the stranded costs are not more than the net revenues that retail-turned-wholesale customers or retail customers that obtain retail wheeling would have contributed to the utility had they remained retail customers of the utility, and that it has taken and will take reasonable steps to mitigate stranded costs. If the state has permitted any recovery from departing retail-turned-wholesale customers, we will deduct that amount from what we determine to be legitimate stranded costs for which we will allow recovery.

The procedures that we propose for a wholesale customer to file with the public utility when it requests computation of its stranded cost exposure will apply with equal force to a retail customer contemplating becoming a wholesale transmission customer (*e.g.*, through municipalization). In particular:

(1) Such a retail customer or group of customers may, at any time, request the public utility to either: (i) Calculate its maximum possible stranded cost exposure without mitigation, as of the date set forth in the customer's request; or (ii) provide the formula that the utility would use to calculate the customer's maximum possible stranded cost exposure without mitigation, to enable the customer to assess whether to become a wholesale transmission customer. The customer should specify in its request, to the extent possible, the date on which the customer would become a wholesale transmission customer of the utility and the amount of generation, if any, it will continue to purchase from its existing supplier. The customer may seek further information on how the stranded cost charge would vary as a result of choosing different dates or different amounts of substitute purchases. The customer also should indicate its preferred payment method(s) (*e.g.*, a monthly or annual adder to its transmission rate or an up-front lump-sum payment).

(2) The utility shall, within thirty days of receipt of the request, or other mutually agreed upon period, provide to the customer: (i) The customer's maximum possible stranded cost exposure without mitigation; or (ii) the formula that the utility would use to calculate the customer's maximum possible stranded cost exposure without mitigation. The utility's response should indicate the period over which the utility proposes to charge the departing customer. There should be appropriate support for each element in the calculation or formula to enable the customer to understand the basis for the element. The utility should provide a detailed rationale for its proposal as to how long the utility reasonably expected to keep the customer. The utility also should address how it intends to mitigate stranded costs.

(3) If the customer believes that the utility has failed to establish that it had a reasonable expectation of continuing to serve the customer or that the proposed maximum stranded cost charge without mitigation (or formula) is unreasonable, it will have thirty days in which to respond to the utility explaining why it disagrees with the charge. The parties should then attempt to reach a mutually-agreeable charge for stranded costs within a reasonable period.

(4) If the parties are unable to resolve the matter pursuant to the procedures specified in (1)–(3) above, the customer may either: (a) File a complaint with the Commission under section 206 of the FPA to seek a Commission determination whether the utility has met the reasonable expectation standard and, if so, whether the proposed maximum stranded cost charge (or formula) satisfies the other evidentiary standards set forth in this rule;[298] or (b) wait until the proposed stranded cost charge is filed under section 205 of the FPA, and contest it at that time. In either case, *i.e.*, a section 205 or 206 proceeding, the utility would only be able to seek stranded cost recovery according to the formula and other terms identified in its earlier discussions with the customer.

(11) State Mechanisms to Address Stranded Costs Caused By Retail Wheeling. The initial NOPR set forth a number of mechanisms that the Commission believes states can use to address stranded costs caused by retail wheeling and retail-turned-wholesale customers. We suggested that a state that permits a retail franchise customer to become a wholesale entity may consider whether to impose an exit fee prior to, or as a condition of, creating the wholesale entity.[299] We also suggested that a state may consider whether to require payment of an exit fee prior to a franchise customer being permitted to obtain unbundled retail wheeling. We noted that, in situations in which local distribution facilities are used by a retail wheeling customer, the state may consider whether to allow recovery of stranded costs through rates for local distribution services. Further, if a state decides not to impose an exit fee, or a surcharge through distribution rates, it may consider whether to allow recovery of stranded costs from remaining retail customers or whether shareholders should bear all or part of those costs.

We further suggested the possibility that state condemnation proceedings will provide a forum for a utility to seek recovery of any stranded costs where a new wholesale entity obtains ownership or control of a franchise utility's transmission or distribution facilities. The Commission solicited comments on other mechanisms that states can use to determine whether to allow stranded cost recovery, and from whom to allow recovery, and whether those mechanisms are adequate to deal with retail stranded costs.

(a) Comments. We note, as an initial matter, that many of the state commission commenters did not specifically respond to our questions concerning mechanisms available to the states for addressing stranded costs. Those that did, such as NARUC, the Texas Commission and the Vermont Department, however, agree that the states have a variety of mechanisms available to deal with stranded costs. In addition to the mechanisms that we identified in the initial NOPR (*i.e.*, imposing an exit fee prior to, or as a condition of, creating the wholesale entity; requiring an exit fee before a franchise customer is permitted to obtain unbundled retail wheeling; imposing a surcharge on local distribution rates; or state condemnation proceedings), these commenters identified the following: (1) Avoiding stranded costs in the first instance by seeking to preserve the integrity of the

[296] Stranded Cost NOPR at 32,879.

[297] We note, however, that certain states do not have service territories or have non-exclusive service territories (*e.g.*, Louisiana).

[298] If a complaint is filed, neither the customer nor the utility could raise issues not identified in their earlier discussions.

[299] Stranded Cost NOPR at 32,878.

utility's franchised service territory;[300] (2) seeking to reduce the burden of uneconomic costs through accelerated depreciation, revaluing of assets, or adjusting returns during the transition period; (3) allowing utilities to charge discounted rates (*i.e.,* below embedded cost but above marginal cost) or reforming retail rates through new rate methodologies such as performance-based pricing or price caps; (4) charging access fees to generating entities seeking to enter retail markets; (5) adopting tax-based solutions, such as credits or deductions; (6) requiring utility write-offs of uneconomic costs; (7) establishing a stranded cost recovery fund to be funded through a broad-based surcharge or a tax on retail market participants; (8) encouraging research and development of more efficient end-use electrical technologies; and (9) not guaranteeing service to a departing customer that seeks to resume retail service if capacity is unavailable when the customer seeks to return. NARUC suggests that these options are not mutually-exclusive, but instead could be used in combination with others depending on the particular circumstances.

In response to our question whether these mechanisms are adequate to deal with retail stranded costs, NARUC submits that the states have adequate legal authority to impose any existing regulatory mechanisms or to enact new mechanisms that may be needed to address stranded cost issues. NARUC further states that whether these mechanisms are adequate to provide utilities firm assurance that stranded costs will be recovered is not relevant to the Commission's inquiry. It argues that whether a utility in a particular case recovers all or part of what it identifies as stranded retail costs should be a fact-based determination made by the appropriate state commission(s).

(b) Preliminary Findings. We are satisfied that the states do have a number of mechanisms available to them to address stranded costs that result from retail customers who obtain retail wheeling, in order to reach a different generation supplier.[301] We encourage the states to use the mechanisms available to them in whatever way they deem appropriate to address stranded costs.

(12) Commission Authority to Regulate Transmission Rates, Terms, and Conditions for Unbundled Retail Transactions and Definition of State Jurisdictional Local Distribution. In the NOPR, the Commission stated that it has exclusive jurisdiction over the rates, terms and conditions of unbundled retail interstate transmission services. We based our conclusion in that regard on the plain meaning of the FPA and noted that there is nothing in the statute, the legislative history, or the case law to indicate that the Commission's jurisdiction over the rates, terms and conditions of transmission in interstate commerce extends only to wholesale transmission and not to retail transmission.[302] In the initial NOPR, we left open the question of the jurisdictional line between Commission- jurisdictional ''transmission'' and state-jurisdictional ''local distribution.'' However, as discussed, we believe it is appropriate to set forth our views in this document on the demarcation of our respective authorities in this regard.

(a) Comments. Some commenters note that the Commission's authority to regulate sales for resale and transmission of electric energy in interstate commerce is premised on Congressional intent to fill the ''Attleboro gap.'' These commenters note that Congress enacted the FPA to complement, not diminish, state authority. In light of this complementary jurisdictional posture, several commenters believe the Commission must explain how an unbundled retail sale is different from a bundled retail sale, which state commissions have regulated and will continue to regulate.

Various non-investor-owned utility commenters, including the Illinois Commission and NASUCA, maintain that the Commission does not have jurisdiction over transmission service for an unbundled retail transaction. NARUC maintains that the issue is, at the very least, unsettled. Therefore, before addressing the question of whether and how the Commission has jurisdiction over retail stranded costs, these commenters argue that the Commission should first re-examine whether its jurisdictional premise is correct, or simply convenient. Investor-owned utility commenters, on the other hand, generally concur with the conclusions in the NOPR regarding Commission jurisdiction.

The Illinois Commission maintains that this Commission's jurisdiction extends only to the transmission of electricity between utility systems. It fails to see how ''unbundling'' of generation service from transmission/distribution services, in order to effectuate ''retail wheeling,'' changes the basic intrastate nature of such services. The Illinois Commission states that if unbundled retail transmission is within the scope of federal jurisdiction, then one may question why the retail transmission portion of bundled services would not also be subject to Commission jurisdiction. It maintains that there is no legal or policy foundation supporting Commission jurisdiction over either bundled or unbundled retail electric services.

The Illinois Commission further argues that the case law relied upon in the NOPR fails to establish that the Commission has retail wheeling ratemaking authority. The Illinois Commission contends that each of the cases cited by the Commission (as well as the FPA itself) all predate the issues of retail wheeling and retail stranded costs. Thus, according to the Illinois Commission, the courts have never contemplated retail wheeling or the effects that retail wheeling would have in terms of stranded costs for public utilities or transmission carriers. The Illinois Commission argues that, because section 201(a) of the FPA prohibits infringement of Federal regulation on matters subject to regulation by the states and because states currently regulate bundled retail transmission, the Commission is necessarily precluded by the FPA from regulating retail transmission.

The Illinois Commission notes that under the Natural Gas Act, the states, and not the Commission, determine the rates, terms, and conditions of unbundled retail transportation services provided by local distribution companies. The Illinois Commission recommends that the Commission apply to the electric industry the same policy that it has adopted concerning its regulation of the gas industry and leave unbundled retail service regulation to state authorities.

Notwithstanding the jurisdictional debate, other state commission commenters such as the Ohio Commission contend that Commission assertion of jurisdiction may chill state willingness to undertake competitive reform at a retail level.[303] These

[300] The Texas Commission suggests, for example, that a state might limit certain forms of retail competition, such as retail wheeling or multiple certification in utility service areas.

[301] As discussed above, we have determined that we will address stranded costs caused by retail-turned-wholesale customers.

[302] Stranded Cost NOPR at 32,876–77.

[303] The Ohio Commission proposes a model for drawing the line of demarcation between federal and state jurisdiction whereby the states would have rate jurisdiction over the wheeling-in portion of unbundled retail service (*i.e.,* the point at which retail power enters the system of the last entity who redelivers the power to the end-use customer) and this Commission would retain jurisdiction over the wheeling-out and wheeling-through portions of a transaction. It contends that retention of

commenters further contend that Commission intervention in retail ratemaking will undermine a state's ability to address retail issues without being ''second guessed.'' Commenters view this regulatory uncertainty as an unwarranted and unnecessary result of the Commission's purported invalid assumption of jurisdiction.

(b) Commission Ruling. We reaffirm our legal conclusion that the Commission has jurisdiction over the rates, terms and conditions of unbundled interstate transmission services by public utilities to retail customers, and that we have the authority to address retail stranded costs through our jurisdiction over such services.

However, we also believe the States have authority to address retail stranded costs through their jurisdiction over facilities used in local distribution.[304] It is therefore important to define what we believe to be the legal demarcation between ''transmission in interstate commerce'' and ''local distribution,'' as used in the FPA. In addition, this demarcation is important because of the consequences it will have for the public utility facilities that will be affected by the open access requirements being proposed. We set forth below our jurisdictional analysis, and technical factors, for determining what constitutes ''facilities used in local distribution.''

(13) Stranded Costs in the Context of Voluntary Restructuring. As we note in the Open Access NOPR, the functional unbundling of wholesale services that we are proposing does not require corporate unbundling (disposition of assets to a non-affiliate, or establishing a separate corporate affiliate to manage a utility's transmission assets) in any form. At the same time, we recognize that some utilities may ultimately choose such a course of action. The Commission is willing to consider case-specific proposals for dealing with stranded costs in the context of any restructuring proceedings that may be instituted by individual utilities.

G. Transmission/Local Distribution

In light of the proposals in both the Open Access NOPR and the Stranded Cost Supplemental NOPR, the Commission believes it is important to express its views on the distinction between Commission-jurisdictional transmission in interstate commerce, and state-jurisdictional local distribution, in the context of unbundled wheeling by public utilities.[305] The distinction is important for three reasons. First, facilities that can be used for wholesale transmission in interstate commerce would be subject to the Commission's open access requirements. It is important that public utilities and their customers have a good understanding of which facilities will be subject to such requirements. Such understanding will be crucial to appropriate planning as we enter into the competitive regime. It is also important that utilities not be able to shield themselves from the Commission's open access requirements by claiming that the facilities necessary to deliver power to a wholesale purchaser are non-jurisdictional ''local distribution'' facilities.

Second, as discussed *supra*, states may, through their jurisdiction over facilities used in local distribution, impose a surcharge on local distribution that will permit recovery of stranded costs resulting from retail wheeling or retail-turned-wholesale customers. Providing guidance on the demarcation between transmission and local distribution should assure States that they have the ability to assess stranded costs on the departing customers. This should result in more realistic economic evaluations by retail customers contemplating leaving via retail wheeling and/or municipalization.

Third, as the structure of the electric industry continues to change dramatically, particularly with the wide availability of unbundled wholesale (and perhaps retail) services to deliver power and the potential for various forms of voluntary corporate unbundling, utilities need to know which regulator has jurisdiction over which facilities in order to meet State and Federal statutory filing requirements.

Two specific circumstances are addressed:

First, what facilities are jurisdictional to the Commission in a situation involving the unbundled delivery in interstate commerce by a public utility of electric energy from a third-party supplier to a purchaser who will then re-sell the energy to an end user?

Second, what facilities are jurisdictional to the Commission in a situation involving the unbundled delivery in interstate commerce by a public utility of electric energy from a third-party supplier directly to an end user?

Based on an analysis of the relevant legislative history and case law under the FPA, the Commission reaches the following conclusions. With respect to the first circumstance, the Commission concludes that a public utility's facilities used to deliver electric energy to a wholesale purchaser, whether labeled ''transmission,'' ''distribution,'' or ''local distribution'' are subject to the Commission's exclusive jurisdiction under sections 205 and 206, and that a public utility's facilities used to deliver electric energy from the wholesale purchaser to the ultimate consumer are ''local distribution'' facilities subject to the rate jurisdiction of the state.[306]

With respect to the second circumstance, the Commission believes that, based on the particular facts of the case, some of the public utility's facilities used to deliver electric energy to an end-user may be FERC-jurisdictional transmission facilities, while some of the facilities used may be state-jurisdictional local distribution facilities.

We set forth below the relevant legislative history and case law, our legal conclusions, and the factors which we believe are indicative of whether facilities are used in ''local distribution'' or ''transmission in interstate commerce,'' as those terms are used in the FPA.

1. Relevant Federal Power Act (FPA) Provisions

The Commission's jurisdiction is set forth in section 201 of the FPA.[307] Section 201(b)(1) provides in pertinent part:

> The provisions of this Part shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce * * *. The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, but shall not have jurisdiction * * * over *facilities used in local distribution* or only for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter.[308]

Section 201(c) provides that:

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jurisdiction over a portion of wheeling is necessary for states to be able to assess retail stranded costs.

[304] States also have the authority to address so-called ''stranded benefits'' (*e.g.*, environmental benefits associated with conservation, load management and other DSM programs) through their jurisdiction over local distribution.

[305] The term ''wheeling'' is intended to cover any delivery of electric energy from a supplier to a purchaser, *i.e.*, transmission, distribution, and/or local distribution. The Commission also has jurisdiction to order wholesale transmission services in either interstate or intrastate commerce by transmitting utilities that are not also public utilities. See *Tex La Electric Cooperative of Texas, Inc.*, 67 FERC ¶ 61,019 (1994), *reh'g pending.*

[306] There are, of course, facilities that are used to provide delivery to both wholesale purchasers and end users. In those situations, we believe that the Commission and the States have jurisdiction to set rates for the services that are within their respective jurisdictions. That facilities are used to serve resale and retail customers does not, however, necessarily mean that the facilities are local distribution facilities.

[307] 16 U.S.C. 824.

[308] 16 U.S.C. 824(b) (emphasis added).

electric energy shall be held to be transmitted in interstate commerce if transmitted from a State and consumed at any point outside thereof; but only insofar as such transmission takes place within the United States.[309]

Some of the court decisions that construe jurisdictional facilities under section 201 also construe the Commission's jurisdiction under section 203. Section 203(a) provides, in relevant part:

No public utility shall sell, lease, or otherwise dispose of the whole of its *facilities subject to the jurisdiction of the Commission*, * * * or by any means whatsoever, directly or indirectly, merge or consolidate such facilities or any part thereof with those of any other person * * * without first having secured an order of the Commission to do so.[310]

In addition, section 206(d) concerns facilities ''under the jurisdiction of the Commission'':

The Commission upon its own motion, or upon the request of any State commission whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transmission of electric energy by means of *facilities under the jurisdiction of the Commission* in cases where the Commission has no authority to establish a rate governing the sale of such energy.[311]

2. Legislative History of the FPA

The relevant legislative history of the general purposes of Title II of the FPA, and of section 201 in particular, focuses primarily on bundled sales of electric energy and does not directly address the issue of what constitutes local distribution as opposed to transmission in interstate commerce.

In discussing the general purposes of Title II of the House bill, the House Report states:

Title II * * * establishes for the first time regulation of electric utility companies transmitting energy in interstate commerce.

* * * * *

* * * Under the decision of the Supreme Court of the United States in *Public Utilities Commission* v. *Attleboro Steam & E. Co.* (273 U.S. 83 [(1927)]) [(*Attleboro*)], the rates charged in interstate wholesale transactions may not be regulated by the States. Part II gives the Federal Power Commission jurisdiction to regulate these rates. A ''wholesale'' transaction is defined to mean the sale of electric energy for resale and the Commission is given no jurisdiction over local rates even where the electric energy moves in interstate commerce.[312]

In its analysis of section 201, the House Report states:

As in the Senate bill no jurisdiction is given over local distribution of electric energy, and the authority of States to fix local rates is not disturbed even in those cases where the energy is brought in from another State.[313]

The Senate Report's discussion of the general purposes of the FPA states:

The decision of the Supreme Court in [*Attleboro*] placed the interstate wholesale transactions of the electric utilities entirely beyond the reach of the States. Other features of this interstate utility business are equally immune from State control either legally or practically.[314]

In discussing material differences between the final version of the Senate bill and the original version, the Senate Report states:

Subsection (b), formerly (a), which states the subject matter to which the part relates, has been clarified to make plain that it includes interstate transmission where there is no sale and excludes all facilities used only for production of transmission in intrastate commerce or in local distribution.[315]

In discussing section 201 of the Senate bill, the Senate Report further states:

The rate-making powers of the Commission are confined to those wholesale transactions which the Supreme Court held in [*Attleboro*] to be beyond the reach of the States. Jurisdiction is asserted also over all interstate transmission lines whether or not there is sale of the energy carried by those lines and over the generating facilities which produce energy for interstate transmission and sale. It is obvious that no steps can be taken to secure the planned coordination of this industry on a regional scale unless all of the facilities, other than those used solely for retail distribution, are made subject to the jurisdiction of the Commission. Facilities used only for intrastate commerce or local distribution are expressly excluded from the operation of the act.[316]

The Conference Report adds little description regarding jurisdictional facilities. In reference to section 201(b) it states that:

[T]he language of the House amendment has been followed with a clarifying phrase added to remove any doubt as to the Commission's jurisdiction over facilities used for the generation and local distribution of electric energy to the extent provided in other sections of this part and the part next following.[317]

In addition to the above statements pertaining to section 201 of the FPA, Congress referenced distribution of energy in the legislative history of section 206(d). Section 206(d) was originally enacted as section 206(b) of the FPA. Under the Regulatory Fairness Act of 1988,[318] section 206(b) was redesignated as section 206(d).

The Conference Report on the original FPA does not address section 206(b). The Senate Report on the FPA bill states in pertinent part:

Subsection (b) authorizes the Commission to investigate and determine the cost of the production or transmission of electric energy by means of facilities under the jurisdiction of the Commission in cases where the Commission has no authority to establish a rate governing the sale of such energy * * *. Since the rate-making powers granted to the Commission apply only to the wholesale rates of energy sold in interstate commerce, this last subsection should be of great benefit in removing the practical difficulty which the States may encounter in regulating the *interstate distribution rates* which are left under their control. Such rate regulation involves the examination and valuation of property *outside* the State. The task is one requiring an agency with a jurisdiction broader than that of a single State. The authority of the Federal Commission is to render assistance to the State commissions in a way which would preserve and make more effective the jurisdiction which is thus left to the States.[319]

The House Report discusses section 206(b) as follows:

This subsection reaches those situations where electric energy is transmitted in interstate commerce *by the same company which distributes it locally*, and will greatly aid State commissions in fixing reasonable rates in such cases.[320]

Thus, the discussions in the two reports do not appear to contemplate a situation in which the transmitter and seller of electric energy are different, and neither is a ''local'' distributor. The House Report expressly refers to the same company being the transmitter and seller of electric energy. The Senate Report by its terms addresses the regulation of interstate distribution rates.[321]

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[309] 16 U.S.C. 824(c).

[310] 16 U.S.C. 824b (emphasis added).

[311] 16 U.S.C. 824e(d) (emphasis added).

[312] H.R. Rep. No. 1318, 74th Cong., 1st Sess. 7–8 (1935).

[313] *Id.* at 27.

[314] S. Rep. No. 621, 74th Cong., 1st Sess. at 17 (1935). See *id.* at 18 (''The revision [between the original and final versions of the Senate bill] has also removed every encroachment upon the authority of the States. The revised bill would impose Federal regulation only over those matters which cannot effectively be controlled by the States.'')

[315] *Id.* at 19.

[316] *Id.* at 48. The provisions of the Senate bill regarding federal jurisdiction over generating facilities were eliminated from the final version of the bill.

[317] H.R. Conf. Rep. No. 1903, 74th Cong., 1st Sess. 74 (1935).

[318] Pub. L. 100–473, 102 Stat. 2299 (1988).

[319] S. Rep. No. 621, 74th Cong., 1st Sess. 51 (1935) (emphasis added).

[320] H.R. Rep. No. 1318, 74th Cong., 1st Sess. 29 (1935) (emphasis added).

[321] The Senate Report states that interstate distribution rates are left in the States' control. Obviously, the Senate drew a distinction between interstate distribution (left in the States' control) and interstate transmission (given to the FPC). *Compare* S. Rep. No. 621 at 49 with H.R. Rep. No. 1318 at 51.

The above legislative history on sections 201 and 206(b) does not provide any definitive answers to the questions raised. We therefore turn to the case law under the FPA.

3. Case Law under the FPA

Jersey Central Power & Light Company v. *Federal Power Commission (Jersey Central)* [322] was the first of the major FPC jurisdictional cases considered by the Supreme Court. The case involved the acquisition by New Jersey Power and Light Company (New Jersey Power) of certain securities of Jersey Central Power & Light Company (Jersey Central) without the Commission's prior approval. The question before the Court was whether Jersey Central was a ''public utility'' under section 201(e) [323] of the FPA so that the Commission's prior approval of the stock acquisition was necessary under section 203 of the FPA.

Jersey Central owned transmission facilities that connected to facilities that Public Service Electric & Gas Company (Public Service) owned. The interconnection of these transmission facilities was in New Jersey. Public Service's facilities in turn connected to the facilities of the Staten Island Edison Corporation (Staten Island Edison), a New York utility, at the mid-channel of Kill van Kull, a body of water separating New Jersey and New York. Jersey Central delivered energy to and received energy from Public Service under contract, and Public Service delivered energy to and received energy from Staten Island Edison under contract.[324]

The Court found that, although Jersey Central generated and received electricity only in New Jersey, some of the electric energy that it dispatched to Public Service ''was instantaneously transmitted to New York.'' [325] The Court held that ''[t]his evidence * * * furnishes substantial basis for the conclusion of the Commission that facilities of Jersey Central are utilized for the transmission of electric energy across state lines.'' [326] Therefore, the Court found that Jersey Central was a public utility within the meaning of section 201(e).[327] The

The Court cited *Attleboro,* in which the Court found that the sale of locally produced electric energy for use in another state resulted in the transmission of electric energy in interstate commerce, even though title passed at the state line.[328] In *Jersey Central,* the Court explained the rationale for federal jurisdiction as follows:

> [Section 201(c) of the FPA] defines the electric energy in commerce as that ''transmitted from a State and consumed at any point outside thereof.'' There was no change in this definition in the various drafts of the bill. The definition was used to ''lend precision to the scope of the bill.'' It is impossible for us to conclude that this definition means less than it says. * * * The purpose of this act was primarily to regulate the rates and charges of the interstate energy.[329]

The Court in *Jersey Central* thus interpreted the FPA as placing within the federal province regulation of wholesale sales of electric energy that, in any manner, flows in interstate commerce. The language quoted above and the citation to section 201(c) of the FPA, to be relied upon in subsequent Supreme Court cases, strongly suggested that the Commission's jurisdiction was not based on whether there was a sale by the utility, but rather on the flow of electric energy either into or out of a state, so long as the energy crosses state lines.

Connecticut Light & Power Company v. *Federal Power Commission (CL&P),*[330] which was decided two years after *Jersey Central,* is the leading case interpreting the section 201(b) local distribution proviso. In *CL&P,* the Commission sought to regulate the accounting practices of Connecticut Light & Power Company (*CL&P*).[331] At issue was whether *CL&P* was a ''public utility'' under the FPA. The utility's system encompassed an area solely within a single state (Connecticut) [332] and did not interconnect with any other company that operated out of state.[333] ''Its purchases and sales, its receipts and deliveries of power, [were] all within the state.'' [334] However, CL&P did purchase energy from companies that had, in turn, purchased energy from Massachusetts. The company also sold energy to a municipality that exported a portion of that energy to Fishers Island, located off the coast of Connecticut but ''territory of New York.'' [335] The Commission based its jurisdiction on these few transactions.[336]

The Court of Appeals affirmed the Commission, holding that the Commission's jurisdiction extended to ''electric distribution systems which normally would operate as interstate businesses.'' The Court of Appeals found that:

> whether or not the facilities by which petitioner distributes energy from Massachusetts should be classified as ''local'' is not relevant to this case. The sole test of jurisdiction of the Commission over accounts is whether these facilities, ''local'' or otherwise, are used for the transmission of electric energy from a point in one state to a point in another.[337]

The Supreme Court reversed. It held that the statutory language in section 201(b) of the FPA providing that the Commission ''shall not have jurisdiction * * * over facilities used in local distribution'' is a limitation upon Commission jurisdiction that ''the Commission must observe and the courts must enforce.'' [338] In analyzing the statute, the Court stated:

> It has never been questioned that technologically generation, transmission, distribution and consumption are so fused and interdependent that the whole enterprise is within the reach of the commerce power of Congress, either on the basis that it is, or that it affects, interstate commerce, if at any point it crosses a state line.
>
> * * * * *
>
> But whatever reason or combination of reasons led Congress to put the provision in the Act, we think it meant what it said by the words ''but shall not have jurisdiction * * * over facilities used in local distribution.'' Congress by these terms plainly was trying to reconcile the claims of federal and local authorities and to apportion federal and state jurisdiction over the industry.[339]]

The Court decided that this limitation on jurisdiction was ''a legal standard that must be given effect in this case in addition to the technological transmission test.'' [340]

The Court stated that whether or not local distribution facilities carried out-of-state electric energy was irrelevant. Whatever the origin of the electric energy they carried, so long as the utility used the lines for local

[322] 319 U.S. 61 (1943) *(Jersey Central).*

[323] Section 201(e) defines a ''public utility'' as ''any person who owns or operates facilities subject to the jurisdiction under this Part (other than facilities subject to such jurisdiction solely by reason of section 210, 211, or 212).'' 16 U.S.C. 824(e). The section as adopted in 1935 did not contain the parenthetical, which was adopted in 1978 as part of the Public Utility Regulatory Policies Act.

[324] *Jersey Central,* 319 U.S. at 63–65.

[325] *Id.* at 66.

[326] *Id.* at 67 (citation omitted).

[327] *Id.* at 73.

[328] 273 U.S. at 86, 89–90.

[329] 319 U.S. at 71 (footnote omitted).

[330] 324 U.S. 515 (1945) (*CL&P*).

[331] *Id.* at 517.

[332] *Id.* at 518.

[333] *Id.* at 521.

[334] *Id.* at 522.

[335] *Id.* at 519–21.

[336] *Id.*

[337] *Id.* at 522, quoting *Connecticut Light & Power Co.* v. *FPC,* 141 F.2d 14, 18 (D.C. Cir. 1944).

[338] 324 U.S. at 529.

[339] *Id.* at 529–31.

[340] *Id.* at 531.

distribution,[341] they were exempt from federal jurisdiction. [342] In fact, the Court stated that local distribution facilities ''may carry no energy except extra-state energy and still be exempt under the Act.'' *Id.* at 531. The Court concluded that the Commission's order:

> Must stand or fall on whether this company owned facilities that were used in transmission of interstate power and which were not facilities used in local distribution.[343]

Upon reversing the Court of Appeals, the Court commented, in dictum, on the evidence the Commission had relied upon in finding that the facilities in question were used for transmission. It noted that the Commission had relied upon certain gas transportation cases in concluding that transmission extends from the generator to the point where the function of conveyance in bulk over distance is completed and the process of subdividing the energy to serve ultimate consumers, which is the characteristic of ''local distribution,'' is begun. The Court cautioned:

> But a holding that distributing gas at low pressure to consumers is a local business is not a holding that the process of reducing it from high to low pressure is not also part of such local business. In so far as the Commission found in these cases a rule of law which excluded from the business of local distribution the process of reducing energy from high to low voltage in subdividing it to serve ultimate consumers, the Commission has misread the decisions of this Court. No such rule of law has been laid down.[344]

The Court also noted in its dictum, however, that once a company is properly found to be a ''public utility'' under the Act, the fact that a local commission may also have jurisdiction does not preclude exercise of the Commission's functions. *Id.* at 533.[345]

The Court instructed the lower court to remand the case to the Commission for a finding regarding whether the facilities in question were used in local distribution.[346]

The *CL&P* case was ultimately disposed of without the Commission having made a finding that the facilities were used in local distribution. While the Commission found that it was ''extremely doubtful'' that it could find that the facilities in question were not local distribution facilities, 6 FPC 104, 106 (1947), the Commission did not articulate a definition of local distribution facilities.

In *Wisconsin-Michigan Power Co.* v. *Federal Power Commission,* [347] the Seventh Circuit held that a utility was a jurisdictional public utility where it operated two divisions in Wisconsin and Michigan in a coordinated manner such that electric energy from one state was transmitted to the other, and vice versa, ''in appreciable amounts by the power company and by it commingled with energy generated in the two respective districts and then delivered to the [wholesale] customers.* * * '' [348] The court also rejected the notion that the energy changed its form or character when it was stepped down in voltage before it reached the wholesale purchasers.[349]

The court in *Wisconsin-Michigan* distinguished between transmission and local distribution by focusing on wholesale sales of electric energy versus retail sales (''local rates'') of electric energy. It cited the House Report on the FPA, and characterized the legislative history as follows:

> The legislative history, [H.R. Rep. No. 1318], 74th Cong., 1st Sess. pages 7, 8 and 27 [(1935)], discloses that the Congressional Committee intended that *the provisions of the [FPA] should apply to the transmission of electric energy in interstate commerce, i.e., the sale of energy at wholesale in interstate commerce, but not to the retail sale of any such energy in local distribution;* that the [FPA] left to the state the authority to fix local rates where the energy is brought in from other states, and that the rate making power of the [FPC] was to be confined to those *wholesale transmissions* which the Supreme Court had held in [*Attleboro*] to be beyond the reach of the state. Under that decision, said the committee, the rates charged in interstate wholesale transactions could not be regulated by the states. It defined a wholesale transaction as the sale of electric energy for resale.[350]

The Seventh Circuit's characterization of the House Report seems to equate transmission of electric energy in interstate commerce with the sale of energy at wholesale in interstate commerce. However, this interpretation is at odds with both the plain words of the statute as well as the language of the House Report, both of which refer to transmission in interstate commerce separately from sales for resale in interstate commerce.[351] In addition, the Senate Report, which the Seventh Circuit did not mention, clearly recognized jurisdiction over all interstate transmission lines, whether or not a sale of energy is carried by those lines.[352]

The *Wisconsin-Michigan* court also cited analogous natural gas cases, stating that ''[t]he question is essentially, when does interstate commerce transportation end and where does the local distribution facilities first become operative.''[353] The court further stated that:

> [U]pon delivery to [the wholesaler] local distribution begins when he resells. His sales and distribution at retail are clearly local in character, and constitute only local distribution; but at no point before delivery to him has been completed, has interstate transmission terminated. In other words, ''facilities used in local distribution'' means facilities used for making resale and distribution to consumers, jurisdiction over which is left to the states. It was only because of this conclusion that the Supreme Court said, [citation omitted], the Act ''cut[s] sharply and cleanly between sales for resale and direct sales for consumptive uses.'' We think there is no ground for the position that local distribution includes any transmission occurring before the wholesaler who resells at retail is reached. [354]

The Seventh Circuit concluded that the sales for resale were made in interstate commerce; that local distribution had not begun; that the interstate character of the transmission persisted until delivery to the wholesaler; that, up to that point, no

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[341] It appears that while the Company received power (at one location) at 66 kV, it primarily owned facilities at 13.8 kV and below.

[342] 324 U.S. at 531.

[343] *Id.* at 531 (emphasis added).

[344] *Id.* at 534.

[345] See *United States* v. *Public Utilities Commission of California,* 345 U.S. 295, 316 (1953) (Public Utilities Commission):

> Certainly the concrete fact of resale of some portion of the electricity transmitted from a state to a point outside thereof invokes federal jurisdiction at the outset, despite the fact that the power thus used traveled along its interstate route ''commingled'' with other power sold by the same seller and eventually directly consumed by the same purchaser-distributor.

See also *Arkansas Power & Light Co.* v. *FPC,* 368 F.2d 376, 383 (8th Cir. 1966) (''Where a company is in fact a public utility, all wholesale sales for resale in interstate commerce are subject to the provisions of sections 205 and 206 of the [FPA], regardless of the facilities used.''). The Eighth Circuit further noted that the section 201(b) exemption applies to a company's status as a public utility and not to the Commission's jurisdiction over sales in interstate commerce for resale. *Id.,* citing *Public Utilities Commission, Colton, infra,* and *Wisconsin-Michigan, infra.*

[346] *Id.* at 536.

[347] 197 F.2d 472 (7th Cir. 1952), cert. denied, 345 U.S. 934 (1953) (Wisconsin-Michigan).

[348] Id. at 474.

[349] Id. (''Obviously the energy thus transmitted in interstate commerce is not changed in form or in character except that the voltage is reduced to an extent consistent with efficient economic management and operation.'').

[350] 197 F.2d at 476 (emphasis added).

[351] See H.R. Rep. No. 1318 at 27. (''Subsection (b) confers jurisdiction upon the Commission over the transmission of electric energy in interstate commerce and the sale of electric energy in wholesale in interstate commerce* * *'' emphasis added).

[352] See S. Rep. No. 621 at 48 (''Jurisdiction is asserted over all interstate transmission lines whether or not there is a sale of the energy carried by those lines * * *'').

[353] 197 F.2d at 477.

[354] *Id.,* citing *FPC* v. *East Ohio Gas Co.,* 338 U.S. 464 (1950) (East Ohio).

local distribution facilities were in operation and that, therefore, the sales were subject to Commission regulation.

In *Federal Power Commission* v. *Southern California Edison Company* (the *Colton* case),[355] the Supreme Court held that the FPA provides a clear line of demarcation between jurisdictional transactions and non-jurisdictional transactions. However, this case, too, involved bundled sales of electric energy. In the facts of the case, Southern California Edison Company (Edison) admitted that it was a public utility by virtue of owning two interstate transmission lines.[356] At issue was whether its sales of electric energy to the City of Colton, California, for resale to Colton's retail customers, were jurisdictional. Included in the electric energy that Edison sold to Colton was out-of-state electric energy from Hoover Dam.[357] The Commission ruled that the sale to Colton was a sale of electric energy at wholesale in interstate commerce subject to regulation under the FPA.[358] In upholding the Commission, the Court held that Edison's importation of out-of-state electricity for resale to Colton sufficed to confer Federal jurisdiction.

The Court, citing an earlier Supreme Court case,[359] characterized Congressional intent in the FPA:

> [W]hat Congress did was to adopt the test developed in the *Attleboro* line which denied state power to regulate a sale ''at wholesale to local distributing companies'' and allowed state regulation of a sale at ''local retail rates to ultimate consumers.'' [360]

The Court rejected the argument that FPC jurisdiction was confined to those interstate wholesale sales constitutionally beyond the power of State regulation by force of the Commerce Clause, and was to be determined on a case-by-case analysis of the impact of state regulation upon the national interest. The Court stated that in the FPA:

> [C]ongress meant to draw a bright-line easily ascertained, between state and federal jurisdiction, making unnecessary such case-by-case analysis. This was done in the Power Act by making FPC jurisdiction plenary and extend[ed] it to all wholesale sales in interstate commerce except those which Congress has made explicitly subject to regulation by the States. [361]

The Court held that ''[t]here is no such exception covering the Edison-Colton sale.'' [362]

Parties in the Colton case had raised the question of whether jurisdiction over the Colton sale was prevented by the ''local distribution'' proviso of section 201(b). The Court stated that whether facilities are local distribution facilities is a matter for the Commission to decide in the first instance. Citing *CL&P, supra,* it stated:

> Whether facilities are used in local distribution—although a limitation on FPC jurisdiction and a legal standard that must be given effect in addition to the technological transmission test . . . —involves a question of fact to be decided by the FPC as an original matter. [363]

The Court cited evidentiary support and the Commission's expertise in such matters in upholding the Commission's determination that certain facilities owned by Edison were used exclusively to effect the wholesale sale to Colton and not for local distribution. Such facilities included 12 kV lines that served an industrial customer, several lighted highway signs, a residence and a railroad section house before they reached the transformers in the Colton substation. The FPC had held that those uses prior to the lines reaching the Colton substation did not transform the lines into local distribution facilities.[364]

In *Duke Power Company* v. *Federal Power Commission (Duke),* [365] the D.C. Circuit held that a public utility's acquisition of facilities used solely in local distribution, and which would continue to be used for local distribution, was beyond the Commission's jurisdiction under section 203. The case involved Duke Power Company's (Duke's) proposed acquisition of facilities owned by Clemson University (Clemson), which were used to distribute electricity off-campus to customers (primarily university personnel) in two South Carolina counties. Clemson purchased the power at wholesale from Duke. No one appeared to contest the conclusion that the 7 miles of distribution line and 418 service connections owned by Clemson were ''local distribution'' facilities.[366] Rather, the case turned on interpreting section 203 and whether it was intended to affect only acquisitions of jurisdictional facilities, or also to affect acquisitions of non-jurisdictional facilities. In interpreting section 203, however, the D.C. Circuit extensively analyzed and discussed the fundamental jurisdictional lines that Congress drew in section 201.

Citing to the CL&P case, the court in Duke stated:

> The Act, as we have seen, effectuated federal control over the transmission and the sale at wholesale of electric energy in interstate commerce, and established the Commission's regulatory power over public utilities engaging in either of these pursuits.[367]

However, quoting *CL&P,* the court further stated:

> The expression ''facilities used in local distribution'' is one of relative generality. But as used in this Act it is not a meaningless generality in the light of our history and the structure of our government. We hold the phrase to be a limitation on jurisdiction and a legal standard that must be given effect in this case in addition to the technological transmission test.[368]

The court further rejected the Commission's concept that, in order to determine whether jurisdiction over any particular acquisition existed, the impact of local supervision be measured on a case-by-case basis. Quoting from *Colton,* the court stated:

> [T]his ''flexible approach''—involving as it does the consideration, inter alia, of ''the effect of the regulation upon the national interest in the commerce''—has been flatly rejected as a technique for resolving jurisdictional conflicts between the Commission and state bodies * * * We think that like the line ''[i]t cut sharply and cleanly between sales for resale and direct sales for consumptive uses'' to facilitate jurisdictional determinations in rate regulation, ''Congress meant to draw a bright line easily ascertained, between state and federal jurisdiction, making unnecessary such case-by-case analysis,'' in distributing regulatory power over the acquisition of facilities.[369]

The court rejected the Commission's argument that jurisdiction over the merger or consolidation of jurisdictional facilities with those of any other ''person'' under section 203 gave the Commission jurisdiction over Duke's acquisition. The court stated that the FPA reflects a policy '''that matters largely of a local nature, even though

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[355] 376 U.S. 205 (1964) (*Colton*).

[356] The Supreme Court noted that Edison's status as a public utility did not decide the question of whether the FPC could assert jurisdiction over the rates for the Edison-Colton sale. *Id.* at 208 n.3.

[357] *Id.* at 208, 209 & n.5.

[358] *Id.* at 208. See *Arkansas Electric Cooperative Corp.* v. *Arkansas Public Service Commission,* 461 U.S. 375, 380 (1983) (''[Colton] held, among other things, that * * * a California utility that received some of its power from out-of-State was subject to Federal and not State regulation in its sales of electricity to a California municipality that resold the bulk of the power to others.'').

[359] *Illinois Natural Gas Co.* v. *Central Illinois Public Service Co.,* 314 U.S. 498, 504 (1942).

[360] 376 U.S. at 214.

[361] *Id.* at 215–216.

[362] *Id.* at 216 (footnote omitted).

[363] *Id.* at 210 n.6 (citation omitted).

[364] *Id.* at 210 n.6.

[365] 401 F.2d 930 (D.C. Cir. 1968) (*Duke*).

[366] Duke delivered power to Clemson at a distribution voltage of 4,160 volts. The step-down transformers by which the voltage was reduced, and the substations at which the delivery was effected, were owned by Duke. 401 F.2d at 931, n.8.

[367] 401 F.2d at 938–39 (emphasis added, footnotes omitted).

[368] Id. (footnote omitted).

[369] *Id.* at 949 (footnotes omitted).

interstate in character, should be handled locally and should receive the consideration of local [officials] familiar with the local conditions in the communities involved.''[370]

Federal Power Commission v. *Florida Power & Light Company* [371] is the last major court case to address the Commission's transmission jurisdiction. In this case, the Commission sought to impose its accounting rules upon Florida Power & Light Company (Florida Power & Light). The company's system lay solely within the borders of Florida and did not directly connect with any out-of-state utility.[372] The Commission held that Florida Power & Light did own facilities that transmitted electric energy in interstate commerce, but the Court of Appeals for the Fifth Circuit ruled that the Commission did not have substantial evidence to support its finding.

The Supreme Court reversed. The Supreme Court noted that Florida Power & Light was a member of the Florida Power Pool along with Florida Power Corporation (Florida Power Corp.).[373] In turn, Florida Power Corp. connected with Georgia Power Company (Georgia Power) at a ''bus'' [374] south of the Georgia-Florida border.[375] Florida Power Corp. regularly exchanged power with Georgia Power.[376] In many instances, Florida Power Corp. transferred power to Florida Power & Light instantly after receiving power from Georgia Power, and transferred power to Georgia Power immediately after receiving power from Florida Power & Light.[377] The Supreme Court found that power commingled in the bus moved across state lines, and concluded that Florida Power & Light engaged in transmission in interstate commerce. The Court held that, to establish jurisdiction, the Commission need only show that ''some [Florida Power & Light] power goes out of State.'' [378] The Court further explained that ''[i]f any [Florida Power & Light] power has reached Georgia, or [if Florida Power & Light] makes use of any Georgia power * * * FPC jurisdiction will attach * * *.'' [379]

There is also a line of cases that address, among other things, what constitutes a Commission jurisdictional ''sale of electric energy at wholesale'' [380] under section 201 of the FPA.[381] These cases all concerned bundled sales. While the issues posed above involve unbundled wheeling, the ''resale'' cases are helpful to the extent they suggest that local distribution takes place only after power is subdivided. See, *e.g.*, 345 U.S. at 316 (''the facilities supplied 'local distribution' only after the current was subdivided for individual consumers.'').

4. Natural Gas Act

The Natural Gas Act (NGA) was adopted in 1938. Like the FPA, the NGA contains language limiting the Commission's jurisdiction in situations involving local distribution.[382]

Section 1(b) of the NGA provides:

> The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural gas companies engaged in such transportation or sale, *but shall not apply* to any other transportation or sale of natural gas or *to the local distribution of natural gas or to the facilities used for such distribution* or to the production or gathering of natural.[383]

There is similarity in many respects between the House and Senate Reports on the FPA and the NGA with respect to the jurisdiction given the Commission. For example, all four reports mention *Attleboro* as placing interstate wholesale transactions beyond the reach of the States. As indicated in the House Report on the NGA, the States could ''regulate sales to consumers even though such sales are in interstate commerce, such sales being considered local in character and in the absence of congressional prohibition subject to State regulation.'' (See H.R. Rep. No. 709, 75th Cong., 1st Sess. 1). However, the House and Senate Reports on the NGA contain identical language not found in the reports on the FPA:

> In view of the importance of section 1(b), which states the scope of the act, it seems advisable to comment on certain provisions appearing therein. It will be noted that this subsection of the bill, after affirmatively stating the matters to which the act is to apply, contains a provision specifying what the act is not to apply to, as follows:
>
> But shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.
>
> *The quoted words are not actually necessary,* as the matters specified therein could not be said fairly to be covered by the language affirmatively stating the jurisdiction of the Commission, but similar language was in previous bills, and, rather than invite the contention, however unfounded, that the elimination of the negative language would broaden the scope of the act, the committee has included it in this bill. *That part of the negative declaration stating that the act shall not apply to ''the local distribution of natural gas'' is surplusage by reason of the fact that distribution is made only to consumers in connection with sales, and since no jurisdiction is given to the Commission to regulate sales to consumers the Commission would have no authority over distribution, whether or not local in character.* (Emphasis added). [384]

As a result of this language it can be argued that Congress considered distribution (and local distribution) only in the context of bundled retail sales of natural gas. In fact, it appears that all of the court cases affirming the states' right to regulate local distribution of gas have involved bundled retail sales. See *Panhandle Eastern Pipe Line Co.* v. *Michigan Public Service Commission,* 341 U.S. 329 (1951) *(Panhandle).* There the Court, in affirming the State of Michigan's right to regulate an interstate pipeline's proposed bundled retail sales of gas to industrial consumers, noted that the pipeline company proposed to lay pipeline in ''the streets and alleys of Detroit'' and ignored the local distribution company's request for additional gas to meet the increased needs of the industrial consumers. *Id.* at 333. While the Court based its holding on a state's authority to regulate direct (retail) sales to an end-user, rather than on the basis of the section 1(b) local distribution provision, it also found that the proposed sales were ''primarily of local interest'' and ''emphasized the need for local regulation.'' *Id.* Two years before *Panhandle*, the Supreme Court issued its decision in *FPC* v. *East Ohio Gas Co.*, 338 U.S. 465 (1949) *(East Ohio).* East Ohio Gas Company owned and operated a natural gas business wholly within the State of Ohio. The company sold gas only to Ohio customers but most of the gas was transported to Ohio from other states by interstate pipelines. These interstate

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[370] *Id.* at 936 (quoting from Hearings on H.R. 5423 before the House Committee on Interstate and Foreign Commerce, 74th Cong., 1st Sess. 393 (1935) (testimony of then-FPC Commissioner Seavey)).

[371] 404 U.S. 453, *reh'g denied,* 405 U.S. 948 (1972) (*Florida Power & Light*).

[372] 404 U.S. at 456.

[373] *Id.* at 456.

[374] A ''bus'' is a connector or group of connectors that serves as a common connection for two or more circuits.

[375] 404 U.S. at 457.

[376] *Id.*

[377] *Id.* at 457 & n.8.

[378] *Id.* at 461. (emphasis omitted).

[379] *Id.* at 461 n.10. (emphasis added).

[380] *See* Section 201(d), 16 U.S.C. § 824(d) (1988).

[381] *Public Utilities Commission, supra* note 345; City of Oakland, *California* v. *FERC,* 754 F.2d 1378 (9th Cir. 1985) (*Oakland*). See also *Alexander* v. *FERC,* 609 F.2d 543 (D.C. Cir. 1979) (*Alexander*).

[382] Courts often rely on cases construing the NGA when interpreting the FPA, and vice versa. *E.g., Arkansas Louisiana Gas Co.* v. *Hall,* 453 U.S. 571, 577 n.7 (1981).

[383] 15 U.S.C. 717(b) (emphasis added).

[384] H.R. Rep. No. 709, 75th Cong., 1st Sess. 3 (1937); S. Rep. No. 1162, 75th Cong., 1st Sess. 3 (1937).

pipelines connected inside Ohio with East Ohio's large high pressure lines. The gas then was transported over 100 miles through East Ohio's system to its local distribution system. East Ohio argued that it was exempt from Commission jurisdiction because all of its facilities were local distribution.

The Court disagreed, finding the Commission's jurisdiction extends over the transportation of gas in interstate commerce through high-pressure transmission lines and that distribution did not begin until the point where pressure is reduced and gas enters local mains. The Court stated that: ''[w]hat Congress must have meant by 'facilities' for 'local distribution' was equipment for distributing gas among customers within a particular local community, not the high-pressure pipelines transporting the gas to the local mains.'' [385]

The Commission relied in part on *East Ohio's* high pressure/low pressure distinction in a recent NGA section 7 certificate case which authorized construction of facilities to bypass the local distribution company.[386] On appeal, the California Commission argued that under section 1(b) it should at least have ''jurisdiction over the 'taps, meters and other tie-in facilities' that link the pipeline to end users.'' [387] The court disagreed:

> While as a matter of ordinary English 'local distribution' might be understood to encompass any delivery to an end user, that is hardly the only or even more plausible reading. Distribution conjures up receiving a large quantity of some good and parcelling it out among many takers.[388]

After reviewing the report language discussed above, the court also stated:

> Insofar as congressional committees spoke to the matter * * * they appear to have viewed distribution as confined to its parcelling out function and (probably) even more narrowly, to parcelling out *accompanied by* retail sales.[389]

In *Cascade Natural Gas Corporation* v. *FERC, et al. (Cascade),* the court affirmed the Commission's authorizing an interstate pipeline under section 7 of the NGA ''to construct a tap and meter facility that would allow it to deliver natural gas directly to two industrial consumers * * *.'' [390] To reach the interstate pipeline, the industrials constructed a nine-mile pipeline. Together, the facilities bypassed the local distribution company.[391]

The court rejected arguments that section 1(b) deprived the Commission of jurisdiction holding that:

> ''Local distribution,'' as Congress viewed the term, involves two components: the retail sale of natural gas and its local delivery, normally through a network of branch lines designed to supply local consumers.[392]

5. Analysis

a. What facilities are jurisdictional to the Commission in a situation involving the unbundled delivery in interstate commerce by a public utility of electric energy from a third-party supplier to a purchaser who will then re-sell the energy to an end user? The case law supports the conclusion that any facilities of a public utility used to deliver electric energy in interstate commerce to a wholesale purchaser, whether such facilities are labeled ''transmission,'' ''distribution'' or ''local distribution,'' are subject to the Commission's jurisdiction under sections 205 and 206.

This conclusion is supported by *Public Utilities Commission, supra,* in which the Supreme Court, in the section of its opinion addressing the section 201(b) local distribution provision, held that local distribution facilities began ''only after the current was subdivided for individual consumers.'' [393] *Wisconsin-Michigan, supra,* in which the Seventh Circuit held that there is no local distribution until the wholesaler who re-sells at retail is reached, is to like effect.

This conclusion, which results in a ''functional'' line being drawn to determine Commission jurisdiction, is not only consistent with the case law under section 201, but is also consistent with our interpretation of the line drawn under newly amended FPA sections 211 and 212. As long as electric energy is being sold to a legitimate wholesale purchaser, we believe the Commission has jurisdiction under sections 201, 205, and 206 of the FPA over the public utility's facilities used to deliver electric energy to that purchaser.

b. What facilities are jurisdictional to the Commission in a situation involving the unbundled delivery in interstate commerce by a public utility of electric energy from a third-party supplier directly to an end user? In analyzing jurisdiction over unbundled retail wheeling, we believe it is important to distinguish between unbundled wheeling provided by the public utility who previously provided bundled retail service to the end user, and unbundled wheeling provided by other public utilities to the end user. For example, a former bundled retail customer may need unbundled wheeling services from its previous public utility generation supplier, as well as unbundled wheeling from one or more intervening public utilities, in order to reach a distant generation supplier. In this scenario, the Commission believes it would have jurisdiction over all of the facilities used for the unbundled wheeling provided by the intervening public utilities.[394] The more difficult issue is whether some portion of the facilities used to transmit energy from the transmitting utility in closest proximity to the end user (the former supplier of the bundled product) is local distribution facilities. We believe that in most, if not all circumstances, some portion will be local distribution facilities.

The case law is replete with statements that the local distribution provision of section 201 must be given effect. However, the Supreme Court in both *CL&P* and *Colton, supra,* has stated that whether facilities are used in local distribution is a question of fact to be decided by the Commission as an original matter. Thus, there is no clear case law on a ''bright line'' between transmission and local distribution. In addition, regardless of the details of the chain of delivery services necessary to move electric energy from the generator to the end user, in most cases the last public utility in the chain will use facilities that historically were considered local distribution facilities. Accordingly, unlike the situation involving unbundled wholesale wheeling, for which the case law clearly supports a ''functional'' test, the Commission believes the case law and practical realities of a changing industry support an analysis of local distribution facilities based on the facilities' functional as well as technical characteristics.

While it would be preferable to draw an absolutely ''bright'' line (*e.g.,* based on technical characteristics such as voltage), this does not appear to be

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[385] 338 U.S. at 469–70.

[386] See Mojave Pipeline Company, 35 FERC ¶ 61,199 (1986), *reh'g denied,* 41 FERC ¶ 61,040 (1987), *reh'g denied,* 42 FERC ¶ 61,351 (1988); *see also* Mojave Pipeline Company, 66 FERC ¶ 61,194 (1994), *reh'g pending.*

[387] See *Public Utilities Commission of the State of California* v. *FERC, et al.,* 900 F.2d 269, 273 (D.C. Cir. 1990) (footnote omitted) (*WyCal*).

[388] *Id.* at 276.

[389] *Id.* (emphasis in original).

[390] 955 F.2d 1412, 1414 (10th Cir. 1992).

[391] Unlike the situation in *WyCal* where the pipeline made direct sales to end users, in *Cascade* the pipeline transported gas purchased from third parties. See Northwest Pipeline Corporation, 51 FERC ¶ 61,289 at 61,909 (1990).

[392] *Cascade,* 955 F.2d at 1421.

[393] 345 U.S. at 316 (footnote omitted).

[394] The Commission would not have jurisdiction over the rates for the sale of generation by the distant supplier because the transaction would be a retail sale of electric energy.

required by the case law and, importantly, would not be a workable approach in all cases because of the variety of circumstances that may arise and because utilities themselves classify facilities differently (*e.g.*, one utility may classify a 69 kV facility as transmission; another may classify it as distribution).

There are several indicators that we propose to evaluate in determining whether particular facilities are transmission or local distribution in the case of vertically integrated transmission and distribution utilities.[395]

- Local distribution facilities are normally in close proximity to retail customers.
- Local distribution facilities are primarily radial in character.
- Power flows into local distribution systems, it rarely, if ever, flows out.
- When power enters a local distribution system, it is not reconsigned or transported on to some other market.
- Power entering a local distribution system is consumed in a comparatively restricted geographical area.
- Meters are based at the transmission/local distribution interface to measure flows into the local distribution system.
- Local distribution systems will be of reduced voltage.[396]

In summary, for unbundled wholesale wheeling we will apply a functional test. The only definitive question will be whether the entity to whom the power is delivered is a lawful wholesaler.

For unbundled retail wheeling we will apply a combination functional-technical test that will take into account technical characteristics of the facilities used for the wheeling. In most, if not all, circumstances in this situation, we expect there to be local distribution facilities. To assist states in dealing with stranded costs resulting from retail wheeling, we will make every attempt to expedite a decision if a state requests clarification concerning whether certain facilities are local distribution facilities.

By clarifying the tests the Commission will apply to determine if facilities used to deliver unbundled electric energy are FERC-jurisdictional or state-jurisdictional, we believe we have facilitated the ability of this Commission and, importantly, state commissions to assess legitimate stranded costs to customers who leave their existing suppliers' systems. The application of these tests means that states will be able to address stranded costs by imposing an exit fee on departing retail customers, or including an adder in the retail customers' local distribution rates.

H. Implementation

Because the proposed requirements in the Open Access NOPR are aimed at eliminating undue discrimination in the provision of transmission services in interstate commerce, and at achieving competitive bulk power markets for the benefit of electricity consumers, our preliminary view is that open access tariffs should be in place as soon as possible. Very simply, we would not want to delay a program which we expect to produce significant ratepayer benefits over time. We also would want to provide procedures and guidance for stranded cost recovery as soon as possible in order to complete the transition from a tightly-controlled cost-of-service regulatory regime to the competitive regime we expect in the very near future.

To those ends, we propose implementation procedures that the Commission currently believes will be appropriate for non-discriminatory open access transmission and stranded (transition) cost recovery. These proposed implementation procedures attempt to balance the goals of: Placing good open access tariffs into effect as soon as possible; supporting the transmission pricing flexibility permitted by our Transmission Pricing Policy Statement; and providing for implementation that is administratively feasible for utilities, customers, and the Commission.

With respect to open access, we currently estimate that about 137 public utilities would be required to have on file non-discriminatory open access tariffs if the Commission adopts a final rule.

If the Commission were to employ traditional filing procedures in implementing an open access regime, we could attempt to streamline the process by, for example, relying, where appropriate, on paper hearing procedures and technical conferences and summarily disposing of the maximum number of issues possible. Nevertheless, we would still expect delays (and attendant uncertainty) measured in years.[397] As a result, we propose a two-stage procedure to put in place without delay basic open access tariffs. We believe this procedure will ensure non-discriminatory open access transmission services that would: (1) Satisfy most utilities and customers; and (2) provide a framework for utilities to subsequently submit novel proposals that they believe to be better tailored to their individual circumstances. We request comments on all aspects of the proposed procedure, including the proposed generic tariffs discussed *infra*.

1. Two-Stage Implementation Process

Stage One

The Commission proposes to put into effect (not subject to refund) for every public utility that owns and/or controls transmission facilities, pursuant to section 206 of the FPA, generic tariffs providing network transmission services, firm and non-firm point-to-point transmission services, and ancillary services necessary to effect network and point-to-point service.[398] The Commission proposes to specify the rates, terms, and conditions in the final rule and to put all such tariffs into effect simultaneously on a date certain—12:00 midnight 60 days after the effective date of the final rule.

The proposed network and point-to-point tariffs contained in Appendices B and C establish the minimum terms and conditions which we believe are necessary to eliminate undue discrimination in the transmission of electric energy in interstate commerce. We propose to place these terms and conditions into effect for each affected public utility.

Although the proposed generic tariffs contain the minimum terms and conditions of service that is not unduly discriminatory, they do not contain specific rates. However, section 206(a) of the FPA requires the Commission to fix by order the just and reasonable rate.[399] We therefore propose to establish and set forth in the final rule, for each affected public utility, just and reasonable rates for network service, point-to-point service, and six identified ancillary services. We propose to

[395] In the case of a distribution-only utility, which is franchised by a State or local government and sells only at retail, all of the circuits (and related wires, transformers, towers, and rights of way) which it owns or operates (regardless of voltage) would be local distribution facilities.

[396] The Commission has analyzed utilities' filings required by the Commission's regulations. These filings are made on FERC Form No. 1. While there is no uniform breakpoint between transmission and distribution, it appears that utilities account for facilities operated at greater than 30 kV as transmission and that distribution facilities are usually less than 40 kV.

[397] Such uncertainty could adversely impact on utilities' cost of capital. Moreover, case-by-case implementation would result in a patchwork of open access around the country until the process is complete. This patchwork of conflicting requirements could inhibit the timely transition to competitive markets—a result directly at odds with the objectives of this proceeding.

[398] As noted *infra*, we will address in a separate document the application of the proposed rule to public utilities who have open access proceedings pending before the Commission.

[399] *Electrical District No. 1, et al.* v. *FERC*, 774 F.2d 490 (D.C. Cir. 1985).

establish such rates using the most current Form No. 1 data available for each public utility, and to incorporate them into the generic tariffs for each affected public utility.

While the rates we will calculate using Form No. 1 data will be postage stamp rates, we wish to emphasize that utilities are free in Stage Two to propose immediately and support non-traditional conforming, as well as non-conforming, transmission pricing proposals consistent with the Commission's Transmission Pricing Policy Statement. The proposed calculation of these rates is discussed in detail *infra*.

Customers will be able to rely on existing contracts for transmission service until such contracts expire or are otherwise terminated. While customers will be able to use the generic tariffs and any revised tariffs established in Stage Two for new or additional services, we do not propose to allow customers to seek termination of their existing transmission arrangements in order to use the generic or subsequently revised tariffs, unless such filings are contractually authorized or shown to be in the public interest. Of course, to the extent that such filings are contractually authorized, the Commission must still determine whether the termination of such existing transmission arrangements is just and reasonable, based upon the circumstances presented.

The above procedures would apply to individual public utility open access tariffs. However, many public utilities transact under jurisdictional power pooling agreements. As discussed herein, power pools would have to comply with the non-discrimination requirements of the Open Access NOPR by making power pool transmission services available to all wholesale transmission customers and offering services at rates, terms, and conditions that are not unduly discriminatory. However, power pools raise complex issues and the Commission cannot at this time develop compliance tariffs for power pools. Therefore, we seek comments on how to implement the NOPR for power pools. After we have received comments on this matter, and before a final rule is adopted, we intend to hold technical conferences with power pools to discuss implementation issues. After holding these technical conferences, and taking into account the comments received in the Open Access NOPR proceeding as well as in our pending Notice of Inquiry on Alternative Power Pooling Institutions, we will issue a supplemental order directing compliance for power pools.

Stage Two

The Commission proposes that Stage Two begin 61 days after the date the final rule becomes effective. On and after that date, public utilities may propose changes to the rates, terms, and conditions in the generic tariffs pursuant to section 205 of the FPA and Part 35 of the regulations. In addition, customers and others may file complaints pursuant to section 206 of the FPA seeking changes in the rates, terms, and conditions in the generic tariffs. We note, however, that Stage Two tariffs must contain at least the non-price tariff terms and conditions contained in the *pro forma* tariffs. Moreover, customers (or potential customers) dissatisfied with the generic tariffs may file section 211 applications at any time (*i.e.*, before Stage Two).

We are hopeful that the generic tariffs will initially be acceptable to large numbers of utilities and their customers. Because we expect our Stage One tariffs to be satisfactory for the immediate needs of many transmission providers and customers, we would expect Stage Two proposals to be staggered somewhat, permitting us to process and reach final decisions more quickly on subsequent proposals to revise the generic tariffs.

We propose to require any utility seeking to modify the generic tariffs in Stage Two to file, in addition to the other requirements specified in the regulations, an original and 14 copies of the revised tariffs showing any changes proposed by means of highlighting and striking out. In addition, we propose that the utilities also file two copies of such changes on diskette in ASCII format.

2. Calculations of Stage One Rates

Because most utilities currently use embedded cost pricing for the transmission component of their own power sales and purchases, and because the Commission's Transmission Pricing Policy Statement requires comparability between transmission rates and the transmission pricing component of those power sales and purchases, the Commission proposes to establish rates for the generic tariffs based on embedded cost principles. However, these tariffs will include a provision that allows the transmission provider to file unilateral changes in all rates, terms, and conditions any time after the effective date of the generic tariffs (Stage Two filings). However, as we noted above, the minimally acceptable tariff terms and conditions in Stage Two will be the terms and conditions established in Stage One.

We emphasize that utilities and customers have discretion under the Commission's Transmission Pricing Policy Statement to pursue other types of rate treatments, and that they may file a proposal any time after the generic tariffs become effective. For example, Stage Two filings could include:

- A filing by the public utility under section 205 amending the generic tariff in a limited respect, such as a change in the loss factor, a change in the embedded cost unit charge, implementing an option to charge an incremental cost rate, including opportunity cost, when capacity is constrained, or the addition of another ancillary service.
- A filing by the public utility under section 205 proposing an entirely new rate method such as a zone or distance based transmission rate. The generic tariff would constitute a conforming open access transmission tariff, but revised tariff filings could also include nonconforming proposals.
- A complaint by a customer (or potential customer) under section 206 seeking limited changes to the generic tariff, such as a change in the loss factor, a change in the embedded cost unit charge, or the addition of another ancillary service.
- A complaint by a customer (or potential customer) under section 206 proposing an entirely new rate method.

We expect that, for many transmission providers and customers, the Stage One tariffs will satisfy their immediate needs. For example, a customer might believe that it could demonstrate in a section 206 proceeding that a lower rate is appropriate, but decide the monetary impact is not sufficient to justify the filing of a complaint because its current needs are small or because the expected rate reduction is slight. In this situation, the customer may delay raising objections to the Stage One tariffs until the company files its next general rate case. Also, a company might believe that it could demonstrate that a higher rate is reasonable, but decide that its resources are best spent comprehensively designing a Stage Two non-traditional tariff, such as, a distance sensitive rate, a non-conforming proposal, or a spin-off of transmission assets into a separate company. Similarly, companies negotiating regional transmission tariffs may decide to devote their resources to that project rather than fine tuning their company specific rates.

If we had not proposed this two-stage process and simply directed the filing of company specific tariffs, utilities and customers would have been forced to proceed on an inflexible schedule. In

addition, parties may have felt pressured to file proposals prematurely out of concern that a failure to do so would prejudice their ability to initiate them later. We believe that industry participants are better served by a process that, in addition to avoiding the delay inherent in a series of separate section 206 compliance filings, allows affected parties to raise these complex issues when it best meets their needs and after taking whatever time is necessary to evaluate non-traditional alternatives.

The Commission proposes to establish the rates for Stage One tariffs as follows:

Derivation of the Embedded Cost Transmission Charge for Point-to-Point Service

To establish firm point-to-point transmission charges, the Commission proposes to use the fixed charge methodology that it uses to evaluate rate schedule filings. This methodology is available to the public on the Commission's Electric Power Data Bulletin Board and has been referenced in various proceedings before the Commission.[400]

Form No. 1 data are used to develop the cost relationship between fixed transmission costs and transmission plant investment (a fixed charge rate). The unit charge is calculated by: (1) Dividing plant investment by capability, using the annual system peak as a proxy for capability;[401] and (2) multiplying the result by the fixed charge rate. All data would be taken from the Form No. 1 except the return on equity.

For the equity return, the Commission proposes to use an industry-wide return calculated using the Commission's standard discounted cash flow (DCF) analysis of company specific dividend yields and an industry average constant growth rate.[402] As an alternative, the Commission could use its DCF method to compute company specific equity returns. However, this is not likely to change materially the Stage One rates (*e.g.*, a 1% change in the equity return would change the monthly charge by about $.08/kW/month, equivalent to an hourly charge of 0.1 mill/kWh). We invite comments on this issue.

We also propose an alternative rate treatment and we ask for comment on which we should adopt for all affected public utilities. The alternative is a variation of our fixed charge rate method. Under our alternative proposal, the Commission would multiply an industry-wide transmission fixed charge rate by the company-specific investment cost per kW from the Form No. 1.[403] This would simplify the process. In our experience, differences in unit charges among companies are due primarily to differences in investment cost per kW of capability and not the fixed charge rate. We note that we adopted a similar approach in developing cost-based ceiling rates for the WSPP, although we developed a single composite rate for WSPP services.

The following illustrates the computation of a specific Stage One point-to-point transmission charge for three utilities using the alternative proposal and 1993 Form No. 1 data, Dayton Power & Light Company (Dayton), Louisville Gas & Electric Company (LGE), and Minnesota Power & Light Company (MPL):

(1) Company	(2) Transmission plant in service (000)	(3) System peak MW	(4) Annual charge (2)/(3)×17.5%
(1) Dayton	$247,186	2,765	$15.64/kW
(2) LGE	173,836	2,239	13.59/kW
(3) MPL	162,656	1,252	22.74/kW

Under either alternative, the final rule would establish specific unit charges. Charges for shorter term services would be derived from the annual charge using standard Commission methods:

Monthly Charge = Annual Charge/12

Weekly Charge = Annual Charge/52

Daily Charge = Weekly Charge/5

Hourly Charge = Daily Charge/16

Revenues for daily and hourly service would be capped at the equivalent weekly and daily rates pursuant to our standard requirements.[404]

[400] See, *e.g.*, Western Systems Power Pool (*WSPP*), 55 FERC ¶ 61,099 (1991); Jersey Central Power & Light Company, 38 FERC ¶ 61,275 (1987); and UtiliCorp United Inc., 70 FERC ¶ 61,149 (1995).

[401] The Commission consistently requires this method for non-customer specific rates such as this. See, *e.g.*, American Electric Power Service Company, 67 FERC ¶ 61,168 (1994); Kentucky Utilities Company, 67 FERC ¶ 61,189 (1994).

[402] An industry-wide return on equity calculated using this method would currently yield a return of about 11%.

[403] Based on analyses prepared by the Commission's staff to support acceptance of filings tendered by utilities during the last two years, a representative transmission fixed charge rate is 17.5%. The Form No. 1 data used to compute a company specific investment cost per kW of load is found at Page 207, line 69, column g (end of year plant transmission plant in service) and Page 401, column D (system peak load) of the Form No. 1.

[404] See Appalachian Power Company, *et al.*, 39 FERC ¶ 61,296 at 61,965 (1987); *WSPP, supra*, 55 FERC at 61,321.

We propose to establish ceiling rates for non-firm service equal to the firm rates, consistent with industry practice. As a practical matter, there is generally a charge for non-firm service only in the hours when energy is scheduled and, therefore, non-firm service is provided at a discount from firm service, which is generally subject to a charge based on reservations without regard to actual usage. As we have emphasized in the past, we expect that a rate for firm service will be higher than a rate for another service that differs only in the degree of firmness.[405] We also expect that such discounts will be offered on a non-discriminatory basis to all customers and that customers will have sufficient information about the availability of discounts (*e.g.*, through an information network).

[405] Commonwealth Edison Company, 64 FERC ¶ 61,253 (1993).

Derivation of Embedded Cost Charge for Network Service

To establish network transmission charges, the Commission proposes to adopt the load ratio method we approved in *Florida Municipal Power Agency*.[406] Under this approach, the company's annual transmission costs (the product of column (2) in the table above for point-to-point service and the same fixed charge rate used to develop the point-to-point rates) are multiplied by a load ratio percentage. The load ratio reflects the average of the 12 monthly customer coincident peaks divided by the average of the 12 monthly total system peaks. Total monthly system peaks for this calculation would reflect all firm uses of the transmission system, including the transmission owners' own long term

[406] See *supra*, 67 FERC at 61,481.

firm and unit power sales. We shall specify the annual revenue requirement in the generic tariff and direct the transmission provider to insert the load ratio computation into the service agreement when filed after a request for service is accepted by the utility.

Derivation of the Charges for Ancillary Services

Loss Compensation

The Commission proposes to establish a loss factor of 3% and a charge for energy losses equal to 110% of seller's incremental cost. A 3% loss factor is representative of those in transmission agreements on file and a loss compensation charge based on the seller's incremental cost is also common.

Energy Imbalances

The Commission proposes to establish an hourly deviation band of +/- 1.5% with a minimum of 1 MW per hour and imbalances within this band would be returned in kind or subject to a charge equal to seller's incremental cost (or a payment equal to decremental cost if the public utility transmission provider receives too much energy and must compensate the transmission customer). Energy imbalances outside this band would be subject to a charge of 100 mills/kWh, the standard industry rate for emergency service. We propose the emergency service charge for this purpose because, as with emergency service, the rate should provide an incentive to minimize energy imbalances. We seek comment on the size of the deviation band and size of the imbalance charge.

Scheduling & Dispatching Charges

The Commission's fixed charge rate methodology which will be used to establish the transmission charge includes Account No. 566, where the costs of transmission related scheduling and dispatching are booked. Accordingly, the generic tariffs would include no separate charge for scheduling and dispatching. This should be adequate for most transmission services because most customers are likely to require this scheduling and dispatching service. If a customer does not require this service, it may propose a different rate treatment by filing a complaint at Stage Two.

Other Charges

The other ancillary services—Load Following, System Protection, and Reactive Power—have a common attribute. They all involve the cost incurred by the transmission provider as a result of using generation facilities to support the transmission service. In the past, some or all of these services were often provided at a rate reflecting embedded transmission costs, *i.e.*, without a separate charge reflecting the cost of generation facilities. However, the Commission has allowed a 1 mill/kWh charge for difficult to quantify costs that served to compensate transmission providers for costs like these. We propose, for purposes of the Stage One tariffs, to maintain a ceiling of 1 mill/kWh as the charge for these three ancillary services on a combined basis. We would expect that the parties would negotiate charges below this ceiling if the customer can provide some or all of these ancillary services and that this would be filed as a change in Stage Two. We emphasize that, if a utility believes that a 1 mill/kWh charge is unsatisfactory, it may file to revise the charge under section 205 in Stage Two. Similarly, if a customer finds a 1 mill/kWh charge unsatisfactory, it may file a complaint in Stage Two.

Questions

We invite comments on which of the methodologies we should adopt. For example, we are interested in commenters' preference for the first alternative, which uses company specific Form No. 1 data for all inputs, or the second alternative, which uses company specific Form No. 1 data only for investment and load. With respect to the first alternative, we seek comments on our proposal to use an industry-wide equity return for each affected public utility and, with respect to the second alternative, we seek comments on our proposed uniform 17.5% transmission fixed charge rate. We also seek comments as to whether a more specific definition of the load ratio should be adopted, and whether this ratio can be used fairly in all situations. We also invite comments on our proposals for ancillary service charges. All comments should take into account our intention to immediately put in place generic tariffs so that there will be no delay in the availability of nondiscriminatory open access transmission services.

3. Ongoing Proceedings

There are currently a number of ongoing proceedings in which the Commission is investigating utilities' open access tariff filings. Concurrently with this order, the Commission is issuing a separate order concerning those cases.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[407] requires that rulemakings contain either a description and analysis of the effect the proposed rule will have on small entities or a certification that the rule will not have a substantial economic effect on a substantial number of small entities. Because the entities that would be required to comply with the proposed rule are public utilities and transmitting utilities that do not fall within the RFA's definition of small entities,[408] the Commission certifies that this rule will not have a ''significant economic impact on a substantial number of small entities.''

V. Environmental Statement

The Commission concludes that promulgating the proposed rule would not represent a major federal action having a significant adverse impact on the human environment under the Commission's regulations implementing the National Environmental Policy Act.[409] The proposed rule falls within the categorical exemption provided in the Commission's regulations for electric rate filings submitted by public utilities under sections 205 and 206 of the FPA.[410] Consequently, neither an environmental assessment nor an environmental impact statement is required.

VI. Information Collection Statement

The Office of Management and Budget's (OMB) regulations[411] require that OMB approve certain information and recordkeeping requirements imposed by an agency.

The information collection requirements in the proposed regulations are contained in FERC–516, ''Electric Rate Filings'' (OMB approval No. 1902–0096). The Commission uses the data collected in this information collection to carry out its responsibilities under Part II of the FPA. The Commission's Office of Electric Power Regulation uses the data to review electric rate filings. The data enable the Commission to examine and evaluate the utility's costs and rate of return.

The Commission is submitting notification of this proposed rule to OMB. Interested persons may obtain

[407] 5 U.S.C. 601–612.

[408] 5 U.S.C. 601(3) (citing section 3 of the Small Business Act, 15 U.S.C. 632). Section 3 of the Small Business Act defines a ''small-business concern'' as a business which is independently owned and operated and which is not dominant in its field of operation. 15 U.S.C. 632(a).

[409] 18 CFR Part 380.

[410] 18 CFR 380.4(a)(15).

[411] 5 CFR 1320.13.

information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415]. Comments on the requirements of the proposed rule can also be sent to the Office of Information and Regulatory Affairs of OMB [Attention: Desk Officer for Federal Energy Regulatory Commission].

VII. Public Comment Procedures

The Commission invites comments on the proposed rule from interested persons. An original and 14 copies of written comments on the proposed rule must be filed with the Commission no later than August 7, 1995.

The Commission will also permit interested persons to submit reply comments in response to the initial comments filed in this proceeding. Reply comments should be submitted no later than October 4, 1995.

In addition, commenters are requested to submit a copy of their comments on a 3½ inch diskette formatted for MS–DOS based computers. In light of our ability to translate MS–DOS based materials, the text need only be submitted in the format and version that it was generated (*i.e.*, MS Word, WordPerfect, ASCII, etc.). It is not necessary to reformat word processor generated text to ASCII. For Macintosh users, it would be helpful to save the documents in Macintosh word processor format and then write them to files on a diskette formatted for MS–DOS machines. All comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket Nos. RM95–8–000 and RM94–7–001.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's public reference room at 941 North Capitol Street, NE., Washington, DC, 20426, during regular business hours.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission.

Commissioner Massey concurred in part and dissented in part with a separate statement attached.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission proposes to amend part 35, chapter I, title 18 of the Code of Federal Regulations, as set forth below.

PART 35—FILING OF RATE SCHEDULES

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

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Part 35 is amended by revising § 35.15, by redesignating § 35.28 as § 35.29, and by adding new §§ 35.26, 35.27, and 35.28 to read as follows:

§ 35.15 Notices of cancellation or termination.

(a) General rule

When a rate schedule or part thereof required to be on file with the Commission is proposed to be cancelled or is to terminate by its own terms and no new rate schedule or part thereof is to be filed in its place, each party required to file the schedule shall notify the Commission of the proposed cancellation or termination on the form indicated in § 131.53 of this chapter at least sixty days but not more than one hundred-twenty days prior to the date such cancellation or termination is proposed to take effect. A copy of such notice to the Commission shall be duly posted. With such notice each filing party shall submit a statement giving the reasons for the proposed cancellation or termination, and a list of the affected purchasers to whom the notice has been mailed. For good cause shown, the Commission may by order provide that the notice of cancellation or termination shall be effective as of a date prior to the date of filing or prior to the date the filing would become effective in accordance with these rules.

(b) Applicability

(1) The provisions of paragraph (a) of this section shall apply to all contracts for unbundled transmission service and all power sale contracts:

(i) Executed prior to [INSERT DATE 90 DAYS AFTER THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**]; or

(ii) If unexecuted, filed with the Commission prior to [INSERT DATE 90 DAYS AFTER THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**].

(2) Any power sales contract executed on or after [INSERT DATE 90 DAYS AFTER THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**] shall not be subject to the provisions of paragraph (a) of this section.

(c) Notice

Any public utility providing jurisdictional services under a power sales contract that is not subject to the provisions of paragraph (a) of this section shall notify the Commission of the date of the cancellation or termination of such contract within 30 days after such cancellation or termination takes place.

§ 35.26 Recovery of stranded costs by public utilities and transmitting utilities.

(a) Purpose

This section establishes the standards that a public utility or transmitting utility must satisfy in order to recover stranded costs.

(b) Definitions

(1) *Wholesale stranded cost* means any legitimate, prudent and verifiable cost incurred by a public utility or a transmitting utility to provide service to:

(i) A wholesale requirements customer that subsequently becomes, in whole or in part, an unbundled wholesale transmission services customer of such public utility or transmitting utility; or

(ii) A retail customer, or a newly created wholesale power sales customer, that subsequently becomes, in whole or in part, an unbundled wholesale transmission services customer of such public utility or transmitting utility.

(2) *Wholesale requirements customer* means a customer for whom a public utility or transmitting utility provides by contract any portion of its bundled wholesale power requirements.

(3) *Wholesale transmission services* has the same meaning as provided in section 3(24) of the Federal Power Act: the transmission of electric energy sold, or to be sold, at wholesale in interstate commerce.

(4) *Wholesale requirements contract* means a contract under which a public utility or transmitting utility provides any portion of a customer's bundled wholesale power requirements.

(5) *Retail stranded cost* means any legitimate, prudent and verifiable cost incurred by a public utility or transmitting utility to provide service to a retail customer that subsequently becomes, in whole or in part, an unbundled retail transmission services customer of that public utility or transmitting utility.

(6) *Retail transmission services* means the transmission of electric energy sold, or to be sold, in interstate commerce directly to a retail customer.

(7) *New contract* means any contract executed after July 11, 1994, or

extended or renegotiated to be effective after July 11, 1994.

(8) *Existing contract* means any contract executed on or before July 11, 1994.

(c) Recovery of Wholesale Stranded Costs

(1) *General requirement.* A public utility or transmitting utility will be allowed to seek recovery of wholesale stranded costs only as follows:

(i) No public utility or transmitting utility may seek recovery of wholesale stranded costs if such recovery is explicitly prohibited by a contract or settlement agreement, or by any power sales or transmission rate schedule or tariff.

(ii) If wholesale stranded costs are associated with a new wholesale requirements contract containing an exit fee or other explicit stranded cost provision, and the seller under the contract is a public utility, the public utility may seek recovery of such costs, in accordance with the contract, through rates for electric energy under sections 205 through 206 of the FPA. The public utility may not seek recovery of such costs through any transmission rate for section 205 or 211 transmission services.

(iii) If wholesale stranded costs are associated with a new wholesale requirements contract, and the seller under the contract is a transmitting utility but not also a public utility, the transmitting utility may not seek an order from the Commission allowing recovery of such costs.

(iv) If wholesale stranded costs are associated with an existing wholesale requirements contract, if the seller under such contract is a public utility, and if the contract does not contain an exit fee or other explicit stranded cost provision, the public utility may seek recovery of stranded costs only as follows:

(A) If either party to the existing contract seeks a stranded cost amendment pursuant to a section 205 or section 206 filing made prior to the expiration of the contract, and the Commission accepts or approves an amendment permitting recovery of stranded costs, the public utility may seek recovery of such costs through section 205 rates for electric energy.

(B) If the existing contract is not amended to permit recovery of stranded costs as described in paragraph (c)(1)(iv)(A) of this section, the public utility may file a proposal, prior to the expiration of the contract, to recover stranded costs through section 205 or section 211 through 212 rates for wholesale transmission services to the customer.

(v) If wholesale stranded costs are associated with an existing wholesale requirements contract, if the seller under such contract is a transmitting utility but not also a public utility, and if the contract does not contain an exit fee or other explicit stranded cost provision, the transmitting utility may seek recovery of stranded costs through section 211 through 212 transmission rates.

(vi) If a retail customer becomes a legitimate wholesale transmission customer of a public utility or transmitting utility, *e.g.*, through municipalization, and costs are stranded as a result of the retail-turned-wholesale customer's access to wholesale transmission, the utility may seek recovery of such costs through section 205 or section 211 through 212 rates for wholesale transmission services to that customer.

(2) *Evidentiary Demonstration for Wholesale Stranded Cost Recovery.* A public utility or transmitting utility seeking to recover wholesale stranded costs in accordance with paragraphs (c)(1)(iv) through (vi) of this section must demonstrate that:

(i) it incurred stranded costs on behalf of its wholesale requirements customer or retail customer based on a reasonable expectation that the utility would continue to serve the customer;

(ii) the stranded costs are not more than the customer would have contributed to the utility had the customer remained a wholesale requirements customer of the utility, or, in the case of a retail-turned-wholesale customer, had the customer remained a retail customer of utility; and

(iii) it has taken and will take reasonable measures to mitigate stranded costs.

(3) *Rebuttable Presumption.* If a public utility or transmitting utility seeks recovery of wholesale stranded costs associated with an existing contract, as permitted in paragraph (c)(1) of this section, and the existing contract contains a notice provision, there will be a rebuttable presumption that the utility had no reasonable expectation of continuing to serve the customer beyond the term of the notice provision.

(d) Recovery of Retail Stranded Costs

(1) *General requirement.* A public utility may seek to recover retail stranded costs through rates for retail transmission services only if the state regulatory authority does not have authority under state law to address stranded costs at the time the retail wheeling is required.

(2) *Evidentiary Demonstration Necessary for Retail Stranded Cost Recovery.* A public utility seeking to recover retail stranded costs in accordance with paragraph (d)(1) of this section must demonstrate that:

(i) it incurred stranded costs on behalf of a retail customer that obtains retail wheeling based on a reasonable expectation that the utility would continue to serve the customer;

(ii) the stranded costs are not more than the customer would have contributed to the utility had the customer remained a retail customer of the utility; and

(iii) it has taken and will take reasonable measures to mitigate stranded costs.

§ 35.27 Power sales at market-based rates.

Notwithstanding any other requirements, any public utility seeking authorization to engage in sales for resale of electric energy at market-based rates shall not be required to demonstrate any lack of market power in generation with respect to sales from capacity first placed in service on or after [INSERT DATE 30 DAYS AFTER THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**].

§ 35.28 Non-discriminatory open access transmission tariffs.

(a) Every public utility owning and/or controlling facilities used for the transmission of electric energy in interstate commerce must have on file with the Commission no later than [INSERT DATE 90 DAYS AFTER THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**] tariffs of generally applicability for transmission services, including ancillary services, over these facilities on both a point-to-point basis and network basis consistent with the requirements of Order No. _____ (Final Order on Open Access and Stranded Costs).

(b) Every public utility owning and/or controlling facilities used for the transmission of electric energy in interstate commerce, but not in existence on [INSERT DATE THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**], must file tariffs of generally applicability for transmission services, including ancillary services, over these facilities on both a point-to-point basis and network basis consistent with the requirements of Order No. _____ (Final Rule on Open Access and Stranded Costs) no later than the date any agreement under which such public utility would engage in a sale of electric

energy at wholesale in interstate commerce or the transmission of electric energy in interstate commerce is accepted for filing by the Commission.

(c) Any public utility that owns and/or controls facilities used for the transmission of electric energy in interstate commerce, and that uses those facilities to engage in wholesale sales and/or purchases of electric energy, must take transmission service for such sales and/or purchases under the tariffs filed pursuant to paragraph (a) or (b) of this section.

Note: Appendix D and Commissioner Massey's statement will not appear in the *Code of Federal Regulations.*

Appendix D—Docket No. RM94–7–000, Recovery of Stranded Costs by Public Utilities and Transmitting Utilities List of Commenters

1. Ad Hoc Coalition on Environmental and Consumer Protection (Ad Hoc Coalition), consisting of Environmental Action Foundation, Citizen Action, Consumer Federation of America, Greenpeace, Toward Utility Rate Normalization, Public Citizen, Sierra Club, Nuclear Information & Resource Service, Economic Opportunity Research Institute, and U.S. Public Interest Research Group
2. Alabama Public Service Commission
3. Allegheny Electric Cooperative, Inc.
4. Allegheny Power Service Corporation (Allegheny Power)
5. American Forest & Paper Association (American Forest)
6. American Public Power Association (APPA)
7. American Society of Utility Investors
8. Arizona Public Service Company
9. Arkansas Public Service Commission
10. Atlantic City Electric Company
11. Blue Ridge Power Agency, Northeast Texas Electric Cooperative, Sam Rayburn G&T Electric Cooperative and Tex-La Electric Cooperative (Blue Ridge)
12. California Public Utilities Commission
13. Centerior Energy Corporation
14. Central Maine Power Company
15. Central Vermont Public Service Corporation
16. Cities of Anaheim, Azusa, Banning, Colton and Riverside, California
17. City of Las Cruces, New Mexico
18. Coalition For Economic Competition, consisting of Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, and Rochester Gas & Electric Company
19. Coalition of California Utility Employees
20. Colorado Association of Municipal Utilities
21. Colorado Office of Consumer Counsel
22. Colorado Public Utilities Commission
23. Commonwealth Edison Company (Commonwealth Edison)
24. Competitive Electric Market Working Group (Competitive Working Group), consisting of Electric Clearinghouse, Inc., Enron Power Marketing, Inc., and Destec Power Services, Inc.
25. Conservation Law Foundation
26. Consumer-Owned Utilities in Maine, consisting of Eastern Maine Electric Cooperative, Inc., Fox Islands Electric Cooperative, Inc., Houlton Water Company, Isle au Haut Electric Power Co., Kennebunk Light & Power District, Madison Electric Works, Swans Island Electric Cooperative, Inc., Union River Electric Cooperative, Inc., and Van Buren Light & Power District
27. Consumers Power Company
28. Dairyland Power Cooperative
29. Department of Water and Power of the City of Los Angeles
30. Detroit Edison Company (Detroit Edison)
31. Direct Action For Rights and Equality
32. District of Columbia Public Service Commission
33. Duke Power Company
34. Duquesne Light Company
35. Edison Electric Institute (EEI)
36. Electric Consumers' Alliance
37. Electric Generation Association
38. Electricity Consumers Resource Council, the American Iron and Steel Institute and the Chemical Manufacturers Association (Industrial Consumers)
39. El Paso Electric Company
40. Enron Power Marketing, Inc. (Enron)
41. Entergy Services, Inc. (Entergy)
42. Environmental Action Foundation (Environmental Action)
43. Environmental Law and Policy Center of the Midwest
44. Florida Municipal Power Agency, Michigan Municipal Cooperative Group and Wolverine Power Supply Cooperative (Florida and Michigan Municipals)
45. Florida Power Corporation
46. Florida Public Service Commission (Florida Commission)
47. Fuel Managers Association
48. Houston Lighting & Power Company (Houston Lighting & Power)
49. Idaho Public Utilities Commission
50. Illinois Commerce Commission (Illinois Commission)
51. Illinois Power Company
52. Indiana Office of Utility Consumer Counselor
53. Indiana Utility Regulatory Commission (Indiana Commission)
54. Iowa Utilities Board
55. Irrigation and Electrical Districts' Association of Arizona
56. Land and Water Fund of the Rockies
57. Large Public Power Council
58. Long Island Lighting Company (Long Island Lighting)
59. Louisiana Energy and Power Authority
60. Maryland Public Service Commission
61. Massachusetts Department of Public Utilities
62. Metropolitan Edison Company, Pennsylvania Electric Company and Jersey Central Power & Light Company
63. Michigan Public Service Commission Staff
64. Mid-Atlantic Energy Project
65. Municipal Resale Service Customers of Ohio Power Company
66. National Association of Regulatory Utility Commissioners (NARUC)
67. National Association of State Utility Consumer Advocates (NASUCA)
68. National Black Caucus of State Legislators
69. National Independent Energy Producers (NIEP)
70. National Rural Electric Cooperative Association
71. New England Power Company
72. New York Mercantile Exchange
73. New York State Electric & Gas Corporation
74. New York State Public Service Commission (New York Commission)
75. North Carolina Electric Membership Corporation
76. North Dakota Public Service Commission
77. Northern States Power Company
78. Nuclear Energy Institute
79. Oglethorpe Power Corporation
80. Ohio Office of the Consumers' Counsel
81. Ohio Public Utilities Commission (Ohio Commission)
82. Older Women's League
83. Omaha Public Power District
84. Pace Energy Project
85. Pacific Gas and Electric Company
86. Pacific Gas and Electric Company and Natural Resources Defense Council
87. PECO Energy Company
88. Pennsylvania and Massachusetts Municipals
89. Pennsylvania Power & Light Company
90. Pennsylvania Public Utility Commission (Pennsylvania Commission)
91. Public Power Council
92. Public Service Company of New Mexico
93. Public Service Electric and Gas Company (Public Service Electric)
94. Rhode Island Division of Public Utilities and Carriers and Jeffrey B. Pine, Attorney General of the State of Rhode Island
95. Rural Utilities Service
96. Sacramento Municipal Utility District
97. San Diego Gas & Electric Company
98. Sierra Pacific Power Company
99. South Carolina Electric & Gas Company
100. Southern California Edison Company
101. Southern Company Services, Inc.
102. Stranded Cost Order Opponent Parties, consisting of the Delaware Municipal Electric Corporation, Village of Freeport, New York, City of Jamestown, New York, Town of Massena, New York, Modesto Irrigation District, M–S–R Public Power Agency, City of Santa Clara, California, and Southern Maryland Electric Cooperative, Inc. (SCOOP)
103. Suffolk County Electrical Agency
104. Sunflower Electric Power Corporation (Sunflower)
105. Tampa Electric Company
106. Tennessee Valley Authority (TVA)
107. Public Utility Commission of Texas (Texas Commission)
108. Texas Utilities Electric Company
109. Transmission Access Policy Study Group (TAPS)

110. TDU Customers, consisting of Chicopee Municipal Lighting Plant of the City of Chicopee, Massachusetts, Golden Spread Electric Cooperative, Inc., Holy Cross Electric Association, Inc., Kansas Electric Power Cooperative, Inc., Old Dominion Electric Cooperative, Seminole Electric Cooperative, Inc., South Hadley Electric Light Department of the Town of South Hadley, Massachusetts, and Westfield Gas and Electric Department of the City of Westfield, Massachusetts
111. Trigen Energy Corporation
112. United Illuminating Company
113. United States Department of Defense
114. United States Department of Energy (DOE)
115. United Utility Shareholders Association of America
116. Utility Investors and Analysts
117. Utility Working Group (consisting of Dominion Resources, Inc., Duke Power Company, Duquesne Light Company, Entergy Corporation, General Public Utilities Corporation, Niagara Mohawk Power Corporation, Northern States Power Company, Pacific Gas and Electric Company, Portland General Electric Company, Public Service Electric and Gas Company, San Diego Gas & Electric Company, Southern California Edison Company, and Wisconsin Electric Power Company)
118. Vermont Department of Public Service (Vermont Department)
119. Virginia Electric and Power Company
120. Virginia State Corporation Commission
121. Washington Utilities and Transportation Commission
122. Washington Water Power Company
123. Wheeled Electric Power Company
124. Wisconsin Electric Power Company
125. Wisconsin Power & Light Company (Wisconsin Power)
126. Wisconsin Public Service Commission
127. Wisconsin Wholesale Customers
128. Wyoming Public Service Commission

Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities

Docket No. RM95–8–000

Recovery of Stranded Costs by Public Utilities and Transmitting Utilities

Docket No. RM94–7–001

Issued March 29, 1995.

Massey, Commissioner, *concurring in part and dissenting in part:*

I. Concurring Opinion

Today, the Commission takes the logical next step—a bold, aggressive and historic step—toward full and robust competition in the electric power industry. Our proposal will change fundamentally the nature of this industry, and the relationships among transmission-owning utilities, their customers and competing power suppliers.

Why now? An uninformed observer might think it somewhat startling, at the very least counterintuitive, that in the current political climate, at the very same time Congress is debating a regulatory moratorium, this Commission issues the most profound regulatory proposal for the electric utility industry since the New Deal legislation. Why now?

There are several compelling reasons. First, *now* is always the best time to end undue discrimination. Federal law ''bristles'' with concern about undue discrimination. The Federal Power Act does not allow this Commission to tolerate it. There will never be a better time than now to stop it.

Second, now is also an appropriate time to eliminate the industry's uncertainty over our policy directions. Uncertainty is deeply unsettling for this industry. Instead of focusing on how to beat the competition, industry participants must first speculate about the future rules of the competition. This is intolerable in the long term and, in the short-term, stifles creativity, initiative and investment. We believe industry participants will applaud efforts to end the uncertainty now.

Third, this Commission wants to move boldly toward customer choice and light-handed regulation of wholesale generation. We believe it will bring lower rates. But we are limited greatly by transmission market power. We cannot move forcefully in these directions if transmission owners are able to skew the market and eliminate competition by denying or delaying transmission access, or by offering inferior terms and conditions for transmission service. The current patchwork of transmission access impedes competition. We must move beyond voluntary open access tariffs and time-consuming and expensive case-by-case rulings on wheeling requests. Now is the time to eliminate the transmission market power of the utilities over which we have jurisdiction. How can there be truly robust competition if buyers and sellers can't reach each other? Those who believe in competition and lower rates will applaud this step.

And, fourth, we cannot move to new rules without assuring utilities that they will recover the costs they prudently incurred under the old rules. That is a fundamental principle of our NOPR. We must strive to eliminate the uncertainty in the industry over the way in which this Commission will address stranded cost issues. Now is the time to speak clearly on this critical issue.

For these reasons, now is not only an appropriate time, but may indeed be the best time to take this bold step toward truly robust competition. It is my fervent hope that the market-based solutions this proposal portends, and the giant step it takes toward eliminating industry uncertainty over policy directions and stranded cost recovery, will strike a responsive chord among lawmakers, other policy makers, and others who care about the future of this important industry.

I strongly support virtually all of this NOPR. The NOPR addresses dozens of open access and stranded cost issues in ways that have my wholehearted support.

For example, I agree strongly with the proposed requirements of open access tariffs. It is one thing to state somewhat blithely that we favor the golden rule of transmission access. That is about all we have said so far. It is another thing entirely, and much more valuable to industry participants, to put real meat on the bones of comparability. The extensive text of the order accomplishes this objective, with unparalleled clarity. In fact, this entire document is a persuasive, compelling, technically brilliant work.

Let me highlight three specific issues. First is the issue of the NOPR's effect on regional transmission groups. Some in the industry may erroneously conclude that this rulemaking will lessen the value of, and need for, RTGs. The order emphatically disagrees. As the order states:

RTGs are structures to reflect the interest of all of the grid's users, not just some. RTGs allow for consensual solutions to local or regional issues, instead of solutions imposed by FERC. RTGs can function as regional laboratories for experimentation on transmission issues. And, RTGs will provide a regional forum, a necessary predicate to regional cooperation.

In short, RTGs remain a key part of our vision of the future of this industry.

Second, the NOPR requires the new tariffs to include a reciprocity provision. This provision would ensure that a public utility offering transmission access to others can obtain similar service from its transmission customers. If customers want access on a public utility's transmission wires, they must be willing to offer access for the utility on their own transmission wires. That is only fair.

Third, the NOPR would require functional unbundling of public utilities' jurisdictional services. That is, utilities would be required to take transmission service (including ancillary services) for new wholesale sales and purchases of electric energy under the open access tariffs. The tariffs also must state separately the rates for each type of transmission or ancillary service. This requirement of functional unbundling will give public utilities the incentive to offer service on fair terms and conditions, since the public utility will have to live with the same terms and conditions it proposes for others.

Now let me turn to an issue involving symmetry of rights between customers and utilities. Today's order makes an explicit generic finding that it is in the public interest to allow utilities to make filings at FERC for the recovery of stranded costs even if their contracts contain so-called *Mobile-Sierra* restrictions that would bar such filings.[1] I fully agree with this conclusion. I believe the policy rationale justifying the recovery of stranded costs is so strong that the public interest test is met and such a generic finding is necessary.

I have some concern, however, about the fact that today's order does not sufficiently explore making that same type of public interest finding on behalf of customers. The order spends many pages making a persuasive case that the current environment, in which no more than a handful of utilities have filed open access tariffs, is rife with undue discrimination and can no longer be tolerated. This is the fundamental philosophical and legal underpinning for the order's new open access requirements.

[1] *United Gas Pipeline Co.* v. *Mobile Gas Service Corp., 350 U.S. 332 (1956); FPC* v. *Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

But if the order's perception of undue discrimination is accurate, and I believe it is, would it not suggest that some power supply contracts negotiated in that environment were infected with undue discrimination and therefore unlawful? Would it not be appropriate, and more symmetrical, to allow such customers the right to make a filing asking the Commission to determine whether their current contract is unduly discriminatory, unjust or unreasonable? We would not, of course, allow such customers to escape their stranded cost responsibility in any event. Even if we allowed customers to make such filings, they would remain fully responsible for the costs reasonably incurred on their behalf.

A more symmetrical approach to customers and utilities during the transition to competitive markets would be consistent with the Commission's Order 636. There, the Commission granted all pipeline ''sales'' customers the right to choose other gas suppliers but granted all pipelines 100 percent recovery of their eligible and prudent transition costs. In granting ''conversion rights'' to pipeline sales customers, the Commission found that continued enforcement of customers' existing purchase obligations, entered into when pipelines provided bundled service and had a virtual monopoly over certain aspects of interstate service, was contrary to the requirements of the Natural Gas Act.

I am not suggesting today that we mirror precisely the natural gas model by granting all customers, regardless of contracts, the right to choose other suppliers. I am suggesting, however, that during the comment period we give full and fair consideration to the argument that power customers with contracts lacking explicit stranded cost recovery provisions should have the same right we grant utilities to make filings seeking contract modifications regardless of *Mobile-Sierra* restrictions. I am confident that commenters will give us the benefit of their thinking on this issue.

II. Dissenting Opinion

Finally, let me turn briefly to the sole issue on which I will be dissenting in part from an otherwise exceptionally strong order. That issue involves this Commission's role and relationship with the states in making determinations with respect to stranded costs arising from retail competition and from municipalizations.

There have been full and vigorous discussions at the Commission about how to handle this issue. My goal, which the entire Commission shares, is to strike an appropriate balance that ensures the recovery of stranded costs, and ensures that the legitimate rights of states are respected. We have all struggled with these issues in good faith. I simply disagree with the majority in certain respects about how to accomplish these goals.

First, I will address retail competition. Under the NOPR, this Commission would allow filings seeking recovery of stranded costs related to retail competition only when the state regulatory commission does not have authority under state law to address stranded costs at the time retail wheeling is required.

I find this approach too narrow. I would allow such filings when the state commission lacks authority to decide the issue or when the state commission has authority but does not decide the issue. I would not second-guess the state decision, but I would not allow retail stranded costs to ''fall through the cracks'' merely because the state commission has, but does not use, authority to decide the issue.

On municipalization, the NOPR proposes making this Commission the primary forum for seeking recovery of stranded costs. The NOPR says that, if a state has allowed recovery of any stranded costs from municipalized customers, this Commission will deduct that amount from the amount we determine to be recoverable. In other words, even when states have and exercise the authority to decide the recoverability of stranded costs related to municipalization, this Commission would take over and federalize the issue.

I cannot support this approach. The Federal Power Act does not constitute this Commission as the court of appeals to challenge unsatisfactory state decisions. It is not this Commission's role to stand in judgment of policy choices and decisions lawfully made by our state counterparts.

In my judgment, the following principles should govern this Commission's approach to stranded costs arising from either retail competition or municipalization. In either case, utilities are entitled to a decision on the recoverability of such costs. It would be unfair, and would unduly jeopardize the financial health of utilities, for stranded costs to slip through because no regulatory commission provides a forum and decides the issue.

For either retail competition or municipalization, when the state commission has authority to address the issue, and uses such authority to decide the recoverability of the stranded costs, the state's decision should not be second-guessed by this Commission. However, when a state commission does not have the authority to decide the recoverability of stranded costs, or has authority but does not use it, this Commission should act on requests for stranded cost recovery.

My approach would assure utilities of getting a decision on the merits of their claim. Costs would not be stranded for lack of a regulatory decision. At the same time, this Commission would allow states to make decisions, when they have authority, on issues of critical concern to their local utilities and ratepayers. Only if states lack, or fail to use, such authority would this Commission step in to assure the utility of receiving a decision on the merits.

My views on how we should handle stranded costs arising from municipalization are influenced by the fact that, according to commenters, roughly 14 states have municipalization statutes that do in fact authorize states to deal with stranded cost issues. Arkansas, for example, has a statute enacted in 1987 that appears to give the Arkansas Public Service Commission full authority to deal with the stranded cost issue in a way that protects both the remaining customers and shareholders. It is an extensive, thoughtful statute that deals with a wide range of issues. It is, apparently, the will of the sovereign state of Arkansas that this state statute be enforced. I see no reason to yank this issue from the Arkansas Commission, or from any other state commission that has statutory authority to act.

In that vein, if this Commission were to decide the recoverability of stranded costs for either retail competition or muncipalization (because the state lacked authority or did not decide the issue), I believe we should adopt procedures allowing the affected state commissions to participate in our proceeding in a meaningful way. Specifically, I propose allowing state participation through one of the procedures specified in section 209 of the Federal Power Act.[2] These include joint state boards, joint hearings, concurrent hearings and technical conferences. I have no views at this time on which of these tools could or should be used in particular cases. The decision on which of these tools to use can be made in individual cases, as they arise. But, clearly, they are useful mechanisms for obtaining state input in proceedings involving retail competition and municipalization.

For all of these reasons, I will concur in part and dissent in part. In virtually all respects, this is an excellent order; except as I have noted, it has my wholehearted support.

William L. Massey,

Commissioner.

[FR Doc. 95–8534 Filed 4–6–95; 8:45 am]

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18 CFR Parts 141 and 388

[Docket No. RM95–9–000]

Real-Time Information Networks; Notice of Technical Conference and Request for Comments

March 29, 1995

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Technical Conference and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission), is issuing this notice to announce a technical conference to be scheduled at a later date, and, in preparation for that conference, to request comments on: whether real-time information networks (RINs) or some other option is the best method to ensure that potential purchasers of transmission services receive access to information to enable them to obtain open access transmission service on a non-discriminatory basis from public utilities that own and/or control facilities used for the transmission of electric energy in interstate commerce; and what

[2] 16 U.S.C. 824h (1988).

standards should be adopted if the Commission requires such public utilities to institute RINs systems.

DATES: Comments must be received on or before June 6, 1995.

ADDRESSES: Send comments to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Gary D. Cohen (Legal Information), Electric Rates and Corporate Regulation, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 208–0321

Marvin Rosenberg (Technical Information), Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 208–1283

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104 at 941 North Capitol Street, N.E., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the text of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200, or 300 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this document will be available on CIPS for 60 days from the date of issuance in ASCII and Wordperfect 5.1 format. After 60 days, the document will be archived, but still accessible. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street, N.E., Washington, D.C. 20426.

Introduction

The Commission is considering requiring each public utility (or its agent) that owns and/or controls facilities used for the transmission of electric energy in interstate commerce to create a real-time information network (RIN) to ensure that potential purchasers of transmission services have access to information to enable them to obtain open access transmission services on a non-discriminatory basis from the public utility. This initiative is being taken in conjunction with the Commission's proposed rules, [1] today being issued, that would require public utilities to provide open access non-discriminatory transmission services (Open Access NOPR) and would permit the recovery of legitimate and verifiable stranded costs in certain circumstances.

The Commission's goal in this proceeding is to establish uniform requirements for a RIN or other communications device at the same time that the Commission adopts a rule requiring open access non-discriminatory transmission services. To accomplish this objective, the Commission invites interested persons to file comments and to participate in a Technical Conference in which they can make presentations on their positions. Thereafter, the Commission expects to hold informal conferences, enlisting working groups to reach consensus on any remaining issues.

We expect that input from the Technical Conference and informal conferences will be the basis for subsequent procedures. This notice sets a timetable to be followed so that requirements on RINS can be in place no later than the effective date of an open access rule.

Background

In the Open Access NOPR, the Commission is inviting comments on a proposed rule that would require any public utility that owns and/or controls facilities used for the transmission of electric energy in interstate commerce to have on file an open access transmission tariff.

To be effective, however, non-discriminatory open access transmission service requires transmission customers to be able to compete effectively with the public utility that owns or controls the transmission. Customers must have simultaneous access to the same information available to the transmission owner. Thus, in this proceeding, the Commission expects to require RINs or other options to ensure that potential and actual transmission service customers receive access to information so that they can obtain service comparable to that provided by transmission owners (or controllers) to themselves.

[1] See Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities & Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Notice of Proposed Rulemaking, Docket Nos. RM95–8–000 & RM94–7–001 (1995).

Discussion

A. Objectives

As noted above, the Commission expects to undertake further procedures in this docket after the Technical Conference and informal conferences are held and input from those conferences is evaluated. Nevertheless, to help participants focus on the issues, the Commission here sets out its preliminary views. Any requirement we establish must have safeguards to ensure that public utilities owning and/or controlling transmission facilities use the same procedures and meet the same substantive requirements when they arrange transmission to support their wholesale sales and purchases as are required for third parties. Further, we expect that each public utility (or a control area operator acting as its agent) that provides transmission service must, at a minimum, give its customers electronic access in real time to information on transmission capacity availability, ancillary services, scheduling of power transfers, economic dispatch, current operating and economic conditions, system reliability, and responses to system conditions.

This means that public utilities or their agents must give competitors and other users of the transmission system access to the same information available to the public utility personnel who trade (sell or purchase) power in the wholesale market, and at the same time. Moreover, this information cannot be declared privileged (and kept from competitors) if it is available to the company's own employees who trade wholesale power. Thus, if a utility wishes to keep this information confidential, it must assign control over this information to employees whose duties do not involve trading in wholesale power, and it must implement procedures to ensure that the traders do not get access to the information unless and until that information becomes public. The Commission invites parties to comment on the best way to implement these requirements in their comments and in their presentations at the Technical Conference and informal conferences.

RINs should operate under industry-wide standards; otherwise, each RIN could contain different information, have different file formats, or use different means to transfer information between utilities and customers. We are concerned that some customers (those who need transmission service across utility boundaries) might be forced to obtain information in different and perhaps incompatible environments. Efficient wholesale power markets

require that information formats not impede the ability of parties to make trades in a timely manner within and across utility boundaries. Such impediments should be eliminated, or at a minimum, reduced to the maximum extent possible.

In addition, we request comments on the following questions:

Information availability: What information should be available on a RIN? Possibilities include transmission availability data, scheduling information, information on economic dispatch, system reliability conditions, service interruptions, and other information that parties might suggest. Would a RIN be appropriate, not only to report transactions, but to conduct the transactions themselves? If so, for what kinds of transactions would this be appropriate?

RINs standards: What standard formats would be appropriate for transferring files containing specific information? What are appropriate communication protocols? How can a RIN be designed to accommodate not only today's needs, but also those in the future, such as an ability to trade power and have real-time price signals?

Attached to this notice is a Staff Discussion Paper that gives Staff's preliminary views on some of the issues that need to be addressed in this proceeding. We have attached this document to help the parties focus on pertinent issues as early in the process as possible.

B. Timetable for Comments, Technical Conference, and Informal Conferences

The Commission's experience with Order No. 636[2] and electronic bulletin boards (EBBs) in the natural gas industry[3] has taught us that when industry standards are needed, they should be established as early as possible. We wish to avoid systems being developed, and expenses being incurred, before consensus can be reached on the best way to proceed.

These same considerations also persuade us that a case-by-case approach to setting standards for electronic information transfer is inappropriate. Public utilities should not be required to invest extensive capital in a RIN or EBB that might be obsolete in the near future.[4]

We intend, therefore, to have requirements in place no later than the date when we issue any final rules on open access transmission. In this way, we hope to avoid unnecessary expenditures by public utilities.

At the Technical Conference, the Commission will focus on determining exactly what information must be made available to transmission customers and what standards are needed as to the transfer of this information on a real-time basis from transmission operators to their customers, including the public utility itself for its wholesale transactions.

The Technical Conference will be open to all interested persons. The exact date, time, and location of the Technical Conference will be announced in a subsequent notice.

To better organize the Technical Conference, interested persons are invited to submit written comments. Comments must be received on or before [insert a date 60 days following the **Federal Register** publication date]. The comments should be no more than 25 pages in length, double spaced on 8½″ x 11″ paper, with standard margins. Parties must submit fourteen (14) written copies of their comments. In addition, commenters are requested to submit a copy of their comments on a 3½ inch diskette, formatted for MS-DOS based computers. In light of our ability to translate MS-DOS based materials, the text need only be submitted in the format and version in which it was generated (*i.e.*, MS Word, Wordperfect, ASCII, etc.). It is not necessary to reformat word processor generated text to ASCII. For Macintosh users, it would be helpful to save the documents in Macintosh word processor format and then write them to files on a diskette formatted for MS-DOS machines. The comments must be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, and their caption should refer to Docket No. RM95–9–000.

All written comments will be placed in the Commission's public files and will be available for inspection or copying in the Commission's Public Reference Room (Room 3104, 941 North Capitol Street, N.E., Washington, D.C. 20426), during normal business hours. The Commission also will make all comments publicly available on its EBB.

Following the Technical Conference, the Commission's Staff will promptly schedule a series of informal conferences using, as appropriate, working groups enlisting the participants at the Technical Conference.[5] The informal conferences are intended to narrow or resolve issues and to help the Commission determine what information must be made available, and what standards are needed, for the delivery of pertinent information on a real-time basis from transmission operators to their customers, including the public utility itself.

Staff will designate what working groups are to be formed, when they will meet, and what topics they will consider. Staff will work with these working groups as needed.[6] The working groups will be invited to reach consensus on the issues and report that consensus to the Commission. The working group reports should identify issues where no consensus is possible so that the Commission may take appropriate action to resolve all remaining technical issues.

By direction of the Commission.

Lois D. Cashell,

Secretary.

Staff Discussion Paper Electronic Bulletin Boards and Real-Time Information Networks

Introduction

The Commission has issued a Notice of Proposed Rulemaking, proposing non-discriminatory open access transmission services. The NOPR proposes that public utilities provide all potential wholesale transmission users, including the wholesale power marketing department of the transmission owner, simultaneous access to transmission and ancillary services. Potential customers' access to information on transmission capacity and other matters pertaining to transmission services must be made comparable to the information access

[2] Pipeline Service Obligations and Revisions Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 Fed. Reg. 13,267 (April 16, 1992), III FERC Stats. & Regs. Preambles ¶30,939 (April 8, 1992); order on reh'g, Order No. 636–A, 57 Fed. Reg. 36,128 (August 12, 1992), III FERC Stats. & Regs. Preambles ¶30,950 (August 3, 1992).

[3] See Standards For Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, Order No. 563, 59 FR 516 (Jan. 5, 1994); III FERC Stats. and Regs., Regulations Preambles ¶30,988 (1993), order on reh'g, Order No. 563–A, 59 FR 23,624 (May 9, 1994); III FERC Stats. and Regs., Regulations Preambles ¶30,994, reh'g denied, Order No. 563–B, 68 FERC ¶61,002, Order No. 563–C, order accepting modifications, Order No. 563–C, 68 FERC ¶61,362 (1994).

[4] We note that there is an extensive network already in place to conduct intercompany transactions reliably. To the maximum extent possible, we intend to build on the existing institutional arrangements and ongoing efforts to help better schedule, monitor, and model transactions involving multiple control areas.

[5] The Commission made use of working groups in drafting the Commission's standards for EBBs. *See, e.g.*, Standards For Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, *Final Rule*, Order No. 563–A, 59 FR 23624 (May 9, 1994); III FERC Stats. & Regs., Regulations Preambles ¶30,994 (1994).

[6] To promote candor and productivity, Staff will set up and sponsor these meetings, but, where appropriate, will not attend the meetings while the parties discuss the issues. The parties are instructed, however, to brief Staff fully on their progress at any such meetings.

available to the power marketing department of the transmission owner and its affiliates. Staff believes that electronic communication is critical to achieving comparable access to information, which in turn is a cornerstone of comparable access to transmission service. Comparable access by customers to information as it becomes available is the key to both a successful comparable access program and competitive power markets for electricity. Rapid transfer of information between a transmitting utility's computers and those of its potential wholesale competitors is necessary to achieve these goals.

The technical conference begins the process of determining what information and procedures will be required to achieve comparable access to information. We request comments or concrete proposals that address the issues and questions raised in this paper. Areas that need to be addressed include:

- *Information Needs.* What specific information is required to ensure that all eligible parties (including the transmission owner) have comparable access to information needed to conduct wholesale power transactions over the transmission system?
- *Type of Information System.* What types of information systems are available to communicate transmission information, and which of these are most appropriate to achieve comparable access to information?
- *Standards and Systems Development.* What standard record formats should be developed to exchange information? What protocols are needed? Should regional systems, or a national system, be developed?

This paper provides short discussions of Staff's understanding of the major issues and options in these areas. Each discussion is followed by a list of questions intended to guide comments.

Information Needed for Comparability

Comparability requires that wholesale transmission customers be provided with the same information that the transmission owner or controller has about the availability and price of transmission services, and that the information be provided at the same time and cost. A customer, when making wholesale power transactions using transmission services, should have the same information the transmission owner has available to make wholesale power transactions. This includes, but is not necessarily limited to, the following types of information:

- Availability of firm and non-firm transmission services (including ancillary services), rates for these services and the amount and terms of any available rate discounts.
Information on the opportunity costs on constrained paths and the incremental cost of expansion, if known.
- Hourly transfer capacities with other interfacing control areas on a time interval corresponding to the interval that a transmission owner uses in committing its own units. For example, if the interval is weekly, hourly transfer capacities should be provided each week as the transmission owner commits its own units.
- Hourly amounts of firm and non-firm power scheduled over each of the owner's interfaces with other control areas. These quantities should be the amounts scheduled over the following hour. They should be provided at some short interval before the start of each hour (e.g., 15 minutes).
- Transmission outages, or planned and forced unit outages that may affect trans-mission availability, as they become known, as well as anticipated and actual interruptions of services.
- Load flow data that would allow customers to do their own preliminary review of incremental transfer capability to accommodate long-term transfers. Updates to load flow information should be made available to customers whenever the transmission owner updates its load flow information.
- Transaction specific information on all requests for transmission service (including requests by the transmission owner's wholesale power marketing personnel). This information should be sufficient to permit customers to evaluate the current state of transmission requests on the system and to monitor potential discrimination. This information should be provided when requests are received and updated when the status of a request changes.
- Transmission capacity available for resale by customers seeking to resell their rights to transmission service, and announcements by prospective buyers who are seeking to acquire rights to transmission service. These requests should be made available when received.

Staff believes that transmission-owning utilities have such information available in the normal course of business under today's current industry practices. We also believe this information is important for any parties using transmission services to perform wholesale power transactions. Accordingly, comparability requires that such information be made available to prospective customers and to the transmission owner's wholesale power marketing department on the same basis. However, the list is provided only as an example of our current understanding of the information. We invite comment on additional information that is needed, but not included in the list, as well as information in the list that is not needed.

Current industry practice should not be the sole standard for judging what information to consider for inclusion in information networks. Consideration should be given to likely future industry developments, and how these might affect information needs. In particular, the role of electronic information in the dispatch function may change significantly as power markets change. Future networks may need to provide for the electronic trading of power. The design of current systems should retain sufficient flexibility to accommodate these types of future developments. We invite comment on what developments might affect the design of a current information network, and how consideration of such developments might be considered in the design of today's systems.

Questions Regarding Information Needed for Comparability

1. What information about capacity availability is needed? Is this information needed with respect to interfaces with other control areas and within a single control area?

2. How often does information on available capacity need to be updated? What other information is necessary? In designing RINs requirements, what consideration should the Commission give to NERC's interest in improving and communicating the calculation of transfer capability in real-time.[1]

3. What information about transmission constraints should be included? Is it possible to develop information about anticipated constraints and their associated opportunity cost? Could information on interruptions be conveyed after a constraint has occurred?

4. Should the information include requests for transmission capacity, offers of transmission capacity (from utility and third party entitlement holders), rates and an index of entitlement holders? How often does information need to be updated? What other information is necessary to facilitate the development of a

[1] *See* Report on Electric Utilities' Response to the Cold Wave of January 1994, Report by NERC Blue Ribbon Task Force at 10 (Apr. 11, 1994).

secondary market for transmission capacity?

5. Can requests for transmission service be submitted electronically, through an EBB or an information network, rather than by telephone or FAX? What specific information is needed for electronic submission of transmission requests?

Systems for Communicating Transmission Information

Many kinds of information systems could support electronic exchange of transmission information between a transmission-owning public utility and its customers, potential customers, and the transmission owner's wholesale marketing department. But there is a tradeoff between the cost of a system and the capabilities it offers. We would like comment on the capabilities needed in a system to communicate transmission information and what type of system will best meet those needs. In order to provide technical background for this discussion, we offer the following three categories as general system types, from the simple to the more complex:

- *Electronic Bulletin Board (EBB).* One simple method of electronically communicating information is to use EBB displays. A user of this type of EBB simply connects to (logs onto) the EBB and sees the information displayed. We believe this simple type of EBB should also permit a user to post information, such as a transmission request, to the EBB.

This type of information system may be adequate for small customers who are not very active in the transmission market and who have only an occasional need for small amounts of timely information. However, as information needs increase, the method of EBB displays may become inadequate. A major disadvantage is that displayed information cannot be processed directly by the receiving party's own computer. Thus, if the receiving party wants to use this information in its own computer displays or as part of an analysis, it must enter it again. Reentering information is slow, error-prone and costly, particularly for users who need large amounts of information from several different EBBs. For this reason, even the simplest form of EBB should provide a capability that permits users to capture the information presented in the display on their computer systems.

- *EBBs with Standardized File Transfer.* A second method of communicating information is to allow users to transfer files between the EBB and the user's computer system. Downloading (transferring the file from the EBB to the user's computer system) eliminates the need to reenter information into a user's computer system when it is already present on the EBB. Uploading (transferring a file from the user's system to the EBB) permits information already present in a file on a user's computer to be sent to the EBB without manual reentry. Therefore, the capability of transferring files containing relevant information between the EBB and its users solves the data reentry problem for large and more sophisticated users.

File transfer capability also makes possible efficient processing of information from several different EBBs. Computer software can be programmed to dial each EBB automatically and to transfer files from (or to) each EBB. The user can then choose how to display the information, or process it directly in a computer program. Third parties can aggregate transmission information from multiple EBBs to provide an information service for customers who prefer to use a single EBB. Standard file formats and protocols for the transfer of information are essential for the efficient transfer of this information. Without standard formats and transfer protocols, a user must develop separate methods and programs for transferring files to and from each EBB.

- *Real-time Information Network (RIN) Connection.* This type of network permits a continuous information connection between the transmission-owning public utility and users of the transmission network. In contrast, displays and downloads are means of distributing information to users who connect intermittently to an EBB specifically to request information. Continuous connection permits a user to have all new information as soon as it becomes available, without needing to make specific requests. A user can directly monitor all new information, or use a computer program to monitor new information selectively as it becomes available. The computer program can then identify time critical information as soon as it is available and alert key company staff of the need to take action.

To a customer, a RIN means the immediate receipt of information when it becomes available. Only some customers may need information immediately, and even these customers will not need all information immediately. We believe, however, that some customers will need this type of information connection, and that the number of these customers will increase over time as markets develop and expand.

RINs would need standardized formats for information and protocols for its transfer. Such standards may be different, and more complex, than standards for file downloads and uploads. However, the development of a RIN could eliminate the need to develop separate file transfer capabilities through EBB uploads and downloads. Such networks could be designed to support both continuous connection and intermittent access using the same formats and transfer protocols.

Questions Regarding the Means of Communicating Information

6. What information is sufficiently time sensitive to require real-time transmission and receipt? What information is sufficiently unchanging and time insensitive to permit efficient transmission by request? Should the amount and timing of real-time information provided be a user option?

7. Is an EBB requirement necessary at all if transmission-owning public utilities are required to provide information to, and receive information and requests from, an information network? Would EBBs be developed voluntarily, either by utilities or third parties, if data were available through an information network?

8. What is the minimum acceptable transfer time for the network? Should it be measured in milli-seconds, seconds or minutes? Should the transfer time be a function of the information transferred?

9. Should EBBs and/or RINs be developed in several phases? If so, what phases and timing are appropriate?

10. How can the development of EBBs and RINs be made flexible enough to accommodate future information needs?

11. Should the network be developed using lines leased or can it use existing Value Added Networks (VANs)?

Standards and System Development

Standardization of information, record formats, and protocols for the exchange of information are crucial to computer-to-computer transfer of information. Without standards, each utility could develop its own file formats and protocols to govern the transfer of information. As experience with the development of EBBs in the gas industry has shown, different formats and communication methods impose significant costs on using information and provide barriers to trade across multiple companies. Moreover, once companies design their own information systems, they understandably tend to resist the imposition of generic standards. It is therefore especially important to reach consensus on what

standards should govern the operation of electronic information systems and how information systems should be developed in accordance with those standards. We would also like comment on how the cost of system development and use should be recovered.

Questions Regarding Standards and System Development

12. What standard information should be included in the datasets to be exchanged electronically? What standard definitions and units should be used for this information?

13. What standard record formats and identification codes are needed to exchange the information associated with comparable access?

14. What standard codes should be used to identify facilities, interconnection points, and other locations?

15. What standard protocol(s) should be developed to download and upload files, or to exchange information across the information network?

16. Should a regional or national information system be developed?

17. If some regional development of information systems is desirable, what regional entities should develop and maintain the system? Do these entities currently exist? If they do not exist, how should they be developed?

18. What system development and usage costs should be borne by all transmission users, and what costs should be paid for only by users of the information system?

[FR Doc. 95–8553 Filed 4–6–95; 8:45 am]
BILLING CODE 6717–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Chapter III

Review of Social Security Administration Regulations

AGENCY: Social Security Administration.

ACTION: Notice with Request for Comments.

SUMMARY: In accordance with President Clinton's memorandum of March 4, 1995 to heads of Departments and Agencies which announced a government-wide Regulatory Reinvention Initiative, we are soliciting comments on Social Security Administration (SSA) regulations which mandate burdens on States, other governmental agencies or the private sector and suggestions to reduce or eliminate any such mandated burden.

DATES: To be sure your comments are considered, we must receive them no later than May 8, 1995.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, Maryland 21235, sent by telefax to (410) 966–2830, sent by E-mail to ''regulations@ssa.gov,'' or delivered to the Division of Regulations and Rulings, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, telephone (410) 965–1762.

SUPPLEMENTARY INFORMATION: The Regulatory Reinvention Initiative announced by the President on March 4, 1995 is designed to provide to all Americans the benefits of effective regulation while minimizing burdens on States and members of the public. The initiative is aimed primarily at regulatory agencies which impose mandatory burdens on States, other governmental entities and the private sector as part of their core business processes.

While SSA is not generally regarded as a ''regulatory agency,'' SSA does issue regulations. However, SSA regulations usually serve only to amplify Congressional direction in administering the social insurance and assistance programs for which we are responsible. While we have some program rules which may create a burden on the public in terms of forms completion or other activities concerning information collection, we generally do not impose mandatory burdens on States, other governmental entities or the private sector.

We recognize that members of the public may have a very different view of the burdens imposed by SSA regulations than the views of those who administer the programs. In the hope of obtaining the widest possible span of viewpoints, we issue this invitation for public comments on any SSA regulations which mandate actions by States, other governmental entities, or the private sector. We are requesting that the public assist us in identifying any SSA regulation which creates such a burden, along with suggested changes to lessen or eliminate the burden. We request further that commenters provide specific details regarding the regulation which imposes the burden, the nature of the burden, and the recommended solution.

We do not consider as part of this initiative SSA regulations which provide the rules we use to determine entitlement to retirement, survivors, disability insurance or supplemental security income benefits since they do not, by their very nature, impose mandatory burdens. Also, we view as outside the scope of this initiative our internal operating procedures in which members of the public do not have a direct role, including the statutory relationship under which State Disability Determination Services make disability determinations on behalf of SSA.

We do consider ''burdens'' on individuals and other segments of the public as needing our attention. However, in accord with the principles of the National Performance Review we initiated a process that allows customers to provide input on such matters. By means of focus groups, customer surveys, comment cards, and other means, we have in place a process for determining the needs of the public we serve. We will address burdens on individuals through a separate initiative to provide ''world class service'' to the public. This is a long-term project related to one of the Agency's major goals. Accordingly, we are restricting this request for comments to those SSA regulations which appear to impose mandatory burdens on States, other governmental entities, or the private sector.

Dated: April 4, 1995.

Shirley Chater,

Commissioner of Social Security.

[FR Doc. 95–8751 Filed 4–6–95; 8:45 am]
BILLING CODE 4190–29–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI–33–94]

RIN 1545–AS76

Debt Instruments with Original Issue Discount; Annuity Contracts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the

federal income tax treatment of annuity contracts not issued by insurance companies. Under the proposed regulations, certain annuity contracts are taxed as debt instruments for purposes of the original issue discount provisions of the Internal Revenue Code. The proposed regulations provide guidance to sellers and buyers of these contracts. This document also provides a notice of a public hearing on the proposed regulations.

DATES: Written comments must be received by Tuesday, July 18, 1995. Requests to appear and outlines of topics to be discussed at the public hearing scheduled for Tuesday, August 8, 1995, at 10 a.m. also must be received by Tuesday, July 18, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (FI–33–94), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (FI–33–94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. A public hearing has been scheduled for Tuesday, August 8, 1995, at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Andrew C. Kittler, (202) 622–3940, or Jeffrey W. Maddrey, (202) 622–3940; concerning submissions and the hearing, Michael Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Sections 163(e) and 1271 through 1275 of the Internal Revenue Code of 1986 (Code) provide rules for the treatment of debt instruments that have original issue discount (OID). On February 2, 1994, the IRS published in the **Federal Register** final regulations under these sections (59 FR 4799). This document contains proposed amendments to § 1.1275–1(d) relating to the definition of a debt instrument for purposes of the OID provisions of the Code.

Explanation of Provisions

Section 1275(a)(1)(A) provides that the term debt instrument means a bond, debenture, note, or certificate or other evidence of indebtedness. Under § 1.1275–1(d), the term debt instrument means any instrument or contractual arrangement that constitutes indebtedness under general principles of federal income tax law (including, for example, a certificate of deposit or a loan).

Certain annuity contracts, however, are excluded from the definition of a debt instrument for purposes of the OID provisions. Under section 1275(a)(1)(B)(ii), an annuity contract to which section 72 applies and which is issued by an insurance company is generally excluded from the definition of debt instrument if the circumstances of its issuance meet certain broad statutory requirements. By contrast, section 1275(a)(1)(B)(i) provides a more limited exception from the definition of debt instrument for an annuity contract to which section 72 applies and which is not issued by an insurance company. The section 1275(a)(1)(B)(i) exception applies if the annuity contract depends (in whole or in substantial part) on the life expectancy of one or more individuals. Thus, if a contract is both a debt instrument and an annuity contract not issued by an insurance company, it is subject to taxation as a debt instrument under the OID provisions rather than as an annuity contract under section 72, unless it qualifies for the exception provided in section 1275(a)(1)(B)(i).

If a debt instrument has OID, section 1272 generally requires the holder of the debt instrument to include OID in income currently on a constant yield basis, regardless of the holder's overall method of accounting. This mandatory accrual is intended, in part, to provide an economically accurate reflection of income and to prevent a mismatch of issuer deductions and holder inclusions. In the case of a debt instrument that does not pay interest on a current basis, this mismatch would occur if the holder were allowed to defer including OID in income until the year in which it is actually paid. See H.R. Rep. No. 413 (Part I), 91st Cong., 1st Sess. 109 (1969); H.R. Rep. No. 432 (Part II), 98th Cong., 2d Sess. 1242–43 (1984).

By contrast, the holder of an annuity contract to which section 72 applies is allowed to defer including economically earned income until distributions on the contract are made. Generally, under section 72(b), the holder of an annuity contract includes the earnings on the contract in income on a pro rata basis as distributions are made.

The disparity between the tax treatment of debt instruments and that of annuity contracts is most pronounced in the case of an annuity contract that provides for distributions to commence significantly after the date of initial investment. In that case, a substantial portion of the value of the annuity contract when distributions begin may be attributable to income economically earned prior to that time. If the contract is taxed as an annuity contract under section 72, the income economically earned prior to the commencement of distributions is not taxed to the holder until distributions are made. If the same contract, instead, is taxed under the OID provisions as a debt instrument, income is taxed to the holder in the year it is earned, regardless of when distributions are made.

Differences between the tax treatment of debt instruments and annuity contracts also exist when an annuity contract provides for distributions commencing on or near the date of initial investment. Although the holder of the contract has income inclusions over the entire term of the contract, the rate of inclusion under section 72 is different from that under the OID provisions. In general, the rules of section 72 provide a less economically accurate recognition of income than the OID provisions. The difference in the rate of inclusion, however, is most significant in the case of an annuity contract that has deferred payments or payments that increase in amount over the life of the contract.

The IRS has determined that the exception contained in section 1275(a)(1)(B)(i) does not apply to annuity contracts that provide for significant deferral of income, that is, those contracts that provide for no distributions, or for relatively small distributions, in the early years of the contract. Since 1969, when Congress first required current inclusion of OID by holders, one of the principal purposes of the OID rules has been to provide a more economically accurate reflection of income. See H.R. Rep. No. 413 (Part I), 91st Cong., 1st Sess. 109 (1969); H.R. Rep. No. 432 (Part II), 98th Cong., 2d Sess. 1242–43 (1984). Given the well-established Congressional preference for current inclusion, it would be inappropriate to interpret the exception in section 1275(a)(1)(B)(i) as permitting section 72 rather than the OID provisions to govern the holder's tax treatment of annuity contracts that provide for significant deferral.

The proposed regulations provide that an annuity contract qualifies for the exception described in section 1275(a)(1)(B)(i) only if all payments under the contract are periodic payments that (1) are made at least annually for the life (or lives) of one or more individuals, (2) do not increase at any time during the term of the contract, and (3) are part of a series of payments that begins within one year of the date of the initial investment in the contract.

The proposed regulations further provide that an annuity contract that is otherwise described in the preceding sentence does not fail to qualify for the section 1275(a)(1)(B)(i) exception merely because it also provides for a payment (or payments) made by reason of the death of one or more individuals.

The proposed regulations only apply to annuity contracts that are also debt instruments under general principles of federal income tax law. An annuity contract that is not a debt instrument for federal income tax purposes is not subject to the OID provisions. See the general rule of section 1275(a)(1)(A). It is, therefore, unnecessary to inquire whether such an annuity contract is described in section 1275(a)(1)(B). For example, an annuity contract under which payments are wholly contingent on the continued life of an individual generally is not a debt instrument for federal income tax purposes. As a result, such a contract will continue to be taxed as an annuity contract under section 72. No inference is intended under the proposed regulations as to whether a particular annuity contract constitutes a debt instrument for federal income tax purposes.

Although the proposed regulations do not apply to an annuity contract that is not a debt instrument because it does not provide for a guaranteed return, the OID provisions nevertheless may apply if a return is guaranteed by another instrument. Thus, for example, it is anticipated that the Commissioner's anti-abuse authority under § 1.1275–2T would be invoked to apply the OID provisions to the combination of an annuity contract that is not a debt instrument and a life insurance contract that, together, effectively provide for a guaranteed return.

Comments are requested on whether certain annuity contracts other than those described in the proposed regulations should qualify for the section 1275(a)(1)(B)(i) exception.

Proposed Effective Date

The proposed regulations are proposed to be effective for annuity contracts held on or after the date that is 30 days after final regulations are published in the **Federal Register**. However, the proposed regulations will not apply to an annuity contract that is purchased prior to April 7, 1995. For purposes of the proposed regulations, any additional investment in a contract made on or after April 7, 1995, will be treated as the purchase of a contract after April 7, 1995, unless the investment is required to be made under a binding contractual obligation that was entered into prior to April 7, 1995.

If an annuity contract purchased before the effective date of the regulations is subject to the OID provisions, after the effective date the holder of the contract may account for pre- effective date accruals on the contract, on a prospective basis, in any reasonable manner.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Tuesday, August 8, 1995, at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments, an outline of topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by Tuesday, July 18, 1995.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information: The principal author of these regulations is Jeffrey W. Maddrey, Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1275–1 is amended by:

1. Redesignating the text of paragraph (d) following the heading as paragraph (d)(1) and adding a heading for newly designated paragraph (d)(1).

2. Adding paragraph (d)(2).

The additions read as follows:

§ 1.1275–1 Definitions.

* * * * *

(d) *Debt instrument*—(1) *In general.* * * *

(2) *Certain annuity contracts*—(i) *General rule.* An annuity contract qualifies for the exception described in section 1275(a)(1)(B)(i) only if all payments under the contract are periodic payments that—

(A) Are made at least annually for the life (or lives) of one or more individuals;

(B) Do not increase at any time during the term of the contract; and

(C) Are part of a series of payments that begins within one year of the date of the initial investment in the contract.

(ii) *Certain death benefits permissible.* An annuity contract that is otherwise described in paragraph (d)(2)(i) of this section does not fail to be described in that paragraph merely because it also provides for a payment (or payments) made by reason of the death of one or more individuals.

(iii) *Effective date.* This paragraph (d)(2) is effective for annuity contracts held on or after the date that is 30 days after final regulations are published in the **Federal Register**. However, this paragraph (d)(2) does not apply to an annuity contract that is purchased prior to April 7, 1995. For purposes of this paragraph (d)(2)(iii), any additional investment in a contract made on or after April 7, 1995, is treated as the purchase of a contract after April 7, 1995, unless the investment is required to be made under a binding contractual

obligation that was entered into prior to April 7, 1995.

* * * * *

Michael P. Dolan,

Commissioner of Internal Revenue.

[FR Doc. 95–8523 Filed 4–6 –95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Announcement of public comment period and opportunity for public hearing.

SUMMARY: OSM is requesting public comment that would be considered in deciding how to implement in Illinois underground coal mine subsidence control and water replacement provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the implementing Federal regulations, and/or counterpart State provisions. Recent amendments to SMCRA and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures. These provisions also require such operations to promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining.

OSM must decide if the Illinois regulatory program (hereinafter referred to as the ''Illinois program'') currently has adequate counterpart provisions in place to promptly implement the recent amendments to SMCRA and the Federal regulations. After consultation with Illinois and consideration of public comments, OSM will decide whether initial enforcement in Illinois will be accomplished through the State program amendment process or by State enforcement, by interim direct OSM enforcement, or by joint State and OSM enforcement.

DATES: Written comments must be received by 4 p.m., C.S.T. on May 8, 1995. If requested, OSM will hold a public hearing on May 2, 1995 concerning how the underground coal mine subsidence control and water replacement provisions of SMCRA and the implementing Federal regulations, or the counterpart State provisions, should be implemented in Illinois. Requests to speak at the hearing must be received by 4 p.m., C.S.T. on April 24, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand-delivered to James F. Fulton, Director, Springfield Field Office at the address listed below.

Copies of the applicable parts of the Illinois program, SMCRA, the implementing Federal regulations, information provided by Illinois concerning its authority to implement State counterparts to SMCRA and the implementing Federal regulations, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays: James F. Fulton, Director, Springfield Field Office, Office of Surface Mining Reclamation and Enforcement, 511 West Capitol, Suite 202, Springfield, Illinois 62704, Telephone: (217) 492–4495.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Director, Springfield Field Office, Telephone: (217) 492–4495.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Public Law 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 to implement the performance standards of sections 720(a) (1) and (2) of SMCRA (60 FR 16722–16751).

30 CFR 817.121(c)(2) requires in part that:

> The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

> The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed below, enforcement may be accomplished through the 30 CFR Part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements. OSM will decide which of the following enforcement approaches to pursue.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised

Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the States after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in item numbers (3) and (4) above, OSM would directly enforce in total or in part its Federal statutory or regulatory provisions until the State adopts and OSM approves, under 30 CFR part 732, the State's counterparts to the required provisions. However, as discussed in item number (1) above, OSM could decide not to initiate direct Federal enforcement and rely instead on the 30 CFR part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of ''drinking, domestic or residential water supply,'' ''material damage,'' ''non-commercial building,'' ''occupied dwelling and structures related thereto,'' and ''replacement of water supply'' that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c) (2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Illinois

By letter to Illinois dated December 14, 1994, OSM requested information from Illinois that would help OSM decide which approach to take in Illinois to implement the new requirements of section 720(a) of SMCRA and the implementing Federal regulations (Administrative Record No. IL–1530). By letter dated February 7, 1995, Illinois responded to this OSM request (Administrative Record No. IL–1531).

Illinois stated that 25 underground coal mines were active in Illinois after October 24, 1992. Illinois stated that the Illinois program does not fully authorize enforcement of the new structural repair and water replacement requirements of section 720(a) of SMCRA and the implementing Federal regulations. Specifically, Illinois indicated that the State program excludes water supplies, and Illinois believes no authority exists to retroactively apply a state regulation. Illinois has no formal regulation or policy on water replacement due to diminution or contamination from mine subsidence. Illinois also stated that it does not have authority to investigate citizen complaints of water loss caused by underground mining operations conducted after October 24, 1992.

Nevertheless, in the few instances where water loss was part of a citizen complaint, Illinois has investigated and worked with the citizen and company to address allegations of water loss or contamination if attributed to mine subsidence. Illinois has investigated two citizen complaints alleging subsidence-related water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992: (1) Complaint No. 1 alleged that a spring fed stream went dry, and the stream served the land owner by watering cattle. The mining may or may not have occurred after October 24, 1992. The spring fed stream crosses both pre- and post- October 24, 1992, mining panels. The coal company immediately provided a trough and trucked water for continued cattle watering. The coal company has since installed a waterline to a cattle watering device to maintain the water supply. (2) Complaint No. 2 alleged well water developed odor and different taste as a result of mining adjacent to but not under the well. Illinois sampled the water and found no quality problems that could be attributable to mining. This land owner is also connected to a public water supply in addition to the private well.

On February 3, 1995, Illinois proposed water replacement regulations.

Proposed 62 Ill. Adm. Code 1817.121(c)(3) requires the operator to:

> Promptly replace any drinking, domestic, or residential water supply from a well or spring in existence prior to the application for a surface coal mining and reclamation operations permit, which has been affected by contamination, dimuntion, or interruption resulting from underground coal mining operations.

Once passed and a date is established, the application form will be revised appropriately. Illinois' current rulemaking package should be finalized in a year or less. In addition to proposed

62 Ill. Adm. Code 1817.121(c)(3), an inventory of all drinking, domestic and residential water supplies in place at the time of permitting will be necessary to fully implement section 720(a)(2) of SMCRA. Based on this information, Illinois may require pre- and post-mining monitoring of certain planned subsidence operations. This will be determined on a case by case basis.

II. Public Comment Procedures

OSM is requesting public comment to assist OSM in making its decision on which approach to use in Illinois to implement the underground coal mine performance standards of section 720(a) of SMCRA, the implementing Federal regulations, and any counterpart State provisions.

A. Written Comments

Written comments should be specific, pertain only to the issues addressed in this notice, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Springfield Field Office will not necessarily be considered in OSM's final decision or included in the Administrative Record.

B. Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., C.S.T. on April 24, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

C. Public Meeting

If only a few persons request an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss recommendations on how OSM and Illinois should implement the provisions of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart State provisions, may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

Dated: March 31, 1995.

Richard J. Seibel,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 95–8639 Filed 4–6–95; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 914

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Announcement of public comment period and opportunity for public hearing.

SUMMARY: OSM is requesting public comment that would be considered in deciding how to implement in Indiana underground coal mine subsidence control and water replacement provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the implementing Federal regulations, and/or the counterpart State provisions. Recent amendments to SMCRA and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures. These provisions also require such operations to promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining.

OSM must decide if the Indiana regulatory program (hereinafter referred to as the ''Indiana program'') currently has adequate counterpart provisions in place to promptly implement the recent amendments to SMCRA and the Federal regulations. After consultation with Indiana and consideration of public comments, OSM will decide whether initial enforcement in Indiana will be accomplished through the State program amendment process or by State enforcement, by interim direct OSM enforcement, or by joint State and OSM enforcement.

DATES: Written comments must be received by 4:00 p.m., E.S.T. on May 8, 1995. If requested, OSM will hold a public hearing on concerning how the underground coal mine subsidence control and water replacement provisions of SMCRA and the implementing Federal regulations, or the counterpart State provisions, should be implemented in Indiana. Requests to speak at the hearing must be received by 4:00 p.m., E.S.T. on April 24, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand-delivered to Roger W. Calhoun, Director, Indianapolis Field Office at the address listed below.

Copies of the applicable parts of the Indiana program, SMCRA, the implementing Federal regulations, information provided by Indiana concerning its authority to implement State counterparts to SMCRA and the implementing Federal regulations, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays: Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, Room 301, Indianapolis, Indiana 46204, Telephone: (317) 226–6166.

FOR FURTHER INFORMATION CONTACT: Roger W. Calhoun, Director, Indianapolis Field Office, Telephone: (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the

full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 to implement the performance standards of sections 720(a) (1) and (2) of SMCRA (60 FR 16722–16751).

30 CFR 817.121(c)(2) requires in part that:

> The permittee must promptly repair, or compensate the owner for, materials damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

> The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed below, enforcement may be accomplished through the 30 CFR Part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements. OSM will decide which of the following enforcement approaches to pursue.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR Part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in item numbers (3) and (4) above, OSM would directly enforce in total or in part its Federal statutory or regulatory provisions until the State adopts and OSM approves, under 30 CFR Part 732, the State's counterparts to the required provisions. However, as discussed in item number (1) above, OSM could decide not to initiate direct Federal enforcement and rely instead on the 30 CFR Part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) and 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of ''drinking, domestic or residential water supply,'' ''material damage,'' ''non-commercial building,'' ''occupied dwelling and structures related thereto,'' and ''replacement of water supply'' that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j) and 817.121(c) (2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Indiana

By letter to Indiana dated December 13, 1994, OSM requested information from Indiana that would help OSM decide which approach to take in Indiana to implement the new requirements of section 720(a) of SMCRA and the implementing Federal regulations (Administrative Record No. IND–1428). By letter dated February [*sic*] 20, 1995, Indiana responded to this OSM request (Administrative Record No. IND–1429) (the letter was misdated; the correct date is January 20, 1995).

Indiana stated that six underground coal mines were active in Indiana between October 24, 1992, and July 1, 1994. Indiana also stated that Indiana statute IC 13–4.1–9–2.5 incorporates the substantive language of section 720 of SMCRA. Indiana noted that IC 13–4.1–9–2.5's requirements are expressly limited to operations conducted after June 30, 1994. Therefore, the Indiana Division of Reclamation (DOR) may not require structural repair (or compensation) or water replacement under the authority of IC 13–4.1–9–2.5 with respect to surface coal mining operations conducted on or before June 30, 1994. However, Indiana stated that pre-existing Indiana program provisions provide the DR with sufficient authority to impose the Energy Policy Act of 1992 requirements with respect to underground mining operations conducted on or before June 30, 1994.

With respect to structural damage caused by underground mine subsidence, Indiana cited the following provisions of Indiana's approved program as requiring the substantive equivalent of the Energy Policy Act of 1992 provisions:

IC 13–4.1–9–1 concerning the surface effect of underground coal mining operations. Based upon this broad grant of rulemaking authority, Indiana stated, Indiana adopted 310 IAC 12–3–87 and 12–5–130 through 133, each of which pertain to the control of underground mine subsidence and the protection of surface owners from the harms caused therefrom.

310 IAC 12–3–87 concerning underground mining permit applications—reclamation plan—subsidence control plan. This provision provides that if the [operator's premining] survey shows structures or renewable resource lands exist, or that subsidence could cause material damage to or foreseeable use of the land, or if the director determines that this damage could occur, the application shall include a subsidence control plan which contains the following information:

A detailed description of the measures to be taken to mitigate the effects of any material damage to foreseeable use of lands which may occur, including one or more of the following as required by 310 IAC 12–5–132:

Restoration or rehabilitation of structures and features, including approximate land-surface contours, to premining condition.

Replacement of structures destroyed by subsidence.

Purchase of structures prior to mining * * *

Purchase of noncancellable insurance policies payable to the surface owner in the full amount of the possible material damage or other comparable measures.

310 IAC 12–5–132 concerning underground mining—subsidence control—surface owner protection. 310 IAC 12–5–132 provides that:

Each person who conducts underground mining activities shall use all measures approved by the commission under 310 IAC 12–3–87 to * * * mitigate the effect of any damage or reduction [in value] which may occur.

Each person who conducts underground mining activities will complete the following:

Compensate the owner of any surface structure in the full amount of the diminution in value resulting from subsidence by purchase prior to mining of a noncancellable premium prepaid insurance policy or other means approved by the commission as assurance before mining begins that payment will occur.

Indemnify every person with an interest in the surface for all damages suffered as a result of the subsidence.

To the extent technologically feasible, fully restore the land to a condition capable of maintaining reasonably foreseeable uses which it could support before subsidence.

These provisions, Indiana stated, have been in operation in their present form since June of 1990, and provide coverage for the period between October 24, 1992, and June 30, 1994. Indiana concluded that Indiana SMCRA is no less effective than the Federal SMCRA with respect to structural repair and/or compensation caused by underground mine subsidence.

With respect to water replacement, Indiana stated, such obligations are set forth under 310 IAC 12–5–94 concerning underground mining—hydrologic balance—water rights and replacement. The question of water rights and water replacement obligations under 310 IAC 12–5–29 (hydrologic balance—water rights and replacement) was addressed by the Indiana Supreme Court in *Nat. Res. Comm'n* v. *AMAX* (1994), Ind. 638 N.E.2d 418. The Indiana Supreme Court held that the DOR was authorized under Indiana-SMCRA to mandate the replacement of water supplies adversely affected by surface coal mining operations. Indiana also stated that because the requirements of 310 IAC 12–5–94 are substantively identical to the provision affirmed by the Indiana Supreme Court, the result is identical: the DOR may require replacement of water supplies adversely affected by underground coal mining operations.

Indiana has received five citizen complaints alleging subsidence-caused structural damage as a result of underground mining operations conducted between October 24, 1992, and July 1, 1994. Indiana stated that three of the five complaints were not formal complaints. Of the two formal complaints, one involved no structural damage or water well complaint and the DOR issued a notice of violation for not mining according to plan. With the other formal complaint, the resolution process followed by the coal company is being monitored by the DOR to assure that appropriate mitigation measures are taken.

Indiana explained its enforcement procedures as follows:

Upon notification of subsidence related damages to structures and/or water supply alleged as a result of underground mining operations, an inspection of the area is conducted by the assigned reclamation specialist. Notifications of such damage may come from affected landowners, mine operators, industries in the area, or other sources. If imminent danger is found to inhabitants of the area, the Director shall suspend underground operations as required by 310 IAC 12–5–133(e). The mine plan as required by 310 IAC 12–5–133(f) is then examined by the operator and the Division specialists to determine compliance with the approved plan. Specific complaints with respect to the subsidence event are investigated on a case-by-case basis as received. In the event that problems arise with respect to water supplies as a result of the underground mining activities, the operator must act to replace such supply as required by 310 IAC 12–5–94. In addition, as required by 310 IAC 12–5–132, the operator is required to ''correct or compensate'' for damages which result from such subsidence.

After consulting with the affected parties in the area, and the operator, if the requirements of these sections are being met, the DOR acts as a mediator

between the affected parties and operator with respect to any problem which may arise. Enforcement action may be taken in the event that certain of these regulations are not followed.

II. Public Comment Procedures

OSM is requesting public comment to assist OSM in making its decision on which approach to use in Indiana to implement the underground coal mine performance standards of section 720(a) of SMCRA, the implementing Federal regulations, and any counterpart State provisions.

A. Written Comments

Written comments should be specific, pertain only to the issues addressed in this notice, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Indianapolis Field Office will not necessarily be considered in OSM's final decision or included in the Administrative Record.

B. Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., E.S.T. on April 24, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

C. Public Meeting

If only a few persons request an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss recommendations on how OSM and Indiana should implement the provisions of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart State provisions, may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

Dated; March 31, 1995.

Richard J. Seibel,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 95–8635 Filed 4–6–95; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 917

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Announcement of public comment period and opportunity for public hearing.

SUMMARY: OSM is requesting public comment that would be considered in deciding how to implement in Kentucky underground coal mine subsidence control and water replacement provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the implementing Federal regulations, and/or the counterpart State provisions. Recent amendments to SMCRA and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures. These provisions also require such operations to promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining.

OSM must decide if the Kentucky regulatory program (hereinafter referred to as the ''Kentucky program'') currently has adequate counterpart provisions in place to promptly implement the recent amendments to SMCRA and the Federal regulations. After consultation with Kentucky and consideration of public comments, OSM will decide whether initial enforcement in Kentucky will be accomplished through the State program amendment process or by State enforcement, by interim direct OSM enforcement, or by joint State and OSM enforcement.

DATES: Written comments must be received by 4 p.m., e.s.t. on May 8, 1955. If requested, OSM will hold a public hearing on May 2, 1995 concerning how the underground coal mine subsidence control and water replacement provisions of SMCRA and the implementing Federal regulations, or the counterpart State provisions, should be implemented in Kentucky. Requests to speak at the hearing must be received by 4 p.m., e.s.t. on April 24, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand-delivered to William J. Kovacic, Director, Lexington Field Office at the address listed below.

Copies of the applicable parts of the Kentucky program, SMCRA, the implementing Federal regulations, information provided by Kentucky concerning its authority to implement State counterparts to SMCRA and the implementing Federal regulations, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays: William J. Kovacic, Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Telephone: (606) 233–2894.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington, Field Office, Telephone: (606) 233–2894.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Public Law 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage include rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those

supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR part 817 to implement the performance standards of sections 720(a) (1) and (2) of SMCRA (60 FR 16722–16751).

30 CFR 817.121(c)(2) requires in part that:

> Permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

> The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed below, enforcement may be accomplished through the 30 CFR part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements. OSM will decide which of the following enforcement approaches to pursue.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation or subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in item numbers (3) and (4) above, OSM would directly enforce in total or in part its Federal statutory or regulatory provisions until the State adopts and OSM approves, under 30 CFR part 732, the State's counterparts to the required provisions. However, as discussed in item number (1) above, OSM could decide not to initiate direct Federal enforcement and rely instead on the 30 CFR part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of ''drinking, domestic or residential water supply,'' ''material damage,'' ''non-commercial building,'' ''occupied dwelling and structure related thereto,'' and ''replacement of water supply'' that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c) (2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Kentucky

By letter to Kentucky dated December 14, 1994, OSM requested information from Kentucky that would help OSM decide which approach to take in Kentucky to implement the new requirements of section 720(a) of

SMCRA and the implementing Federal regulations (Administrative Record No. KY–1336. By letter dated January 31, 1995, Kentucky responded to this OSM request (Administrative Record No. KY–1337).

Kentucky stated that 410 underground coal mines were active in Kentucky after October 24, 1992. Kentucky indicated that existing State program provisions at 405 Kentucky Administrative Regulations (KAR) 18:210 section 3 are adequate State counterparts to section 720(a)(1) of SMCRA and the implementing Federal regulations. Section 720(a)(1) of SMCRA requires prompt repair or compensation to the owner for subsidence-related material damage to non-commercial buildings or occupied dwellings and related structures. Kentucky explained that it will enforce this State program provision in accordance with 405 KAR 18:210 section 3.

Kentucky stated that the Kentucky program does not fully authorize enforcement of the new water replacement requirements of section 720(a)(2) of SMCRA and the implementing Federal regulations. Kentucky submitted a program amendment to OSM dated April 29, 1994, (Administrative Record No. KY–1279) which will modify language at Kentucky Revised Statutes (KRS) 350.421. KRS 350.421, as modified, will require replacement of water loss caused by underground mining operations. OSM is currently reviewing the Kentucky program amendment. Kentucky has stated that the effective date of the program amendment, when approved, will be July 16, 1994. Kentucky also stated that it does not have authority to issue enforcement actions for water loss caused by underground mining operations conducted after October 24, 1992, and before July 16, 1994.

Kentucky has investigated 115 citizen complaints alleging water supply loss or contaminations as a result of underground mining operations conducted after October 14, 1992, and before July 16, 1994. Of the 115 citizens complaints, 30 are pending resolution of currently outstanding ten-day notices; 29 have been satisfactorily resolved; and 47 will require further investigation.

II. Public Comment Procedures

OSM is requesting public comment to assist OSM in making its decision on which approach to use in Kentucky to implement the underground coal mine performance standards of section 720(a) of SMCRA, the implementing Federal regulations, and any counterpart State provisions.

A. Written Comments

Written comments should be specific, pertain only to the issues addressed in this notice, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Lexington Field Office will not necessarily be considered in OSM's final decision or included in the Administrative Record.

B. Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on April 24, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

C. Public Meeting

If only a few persons request an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss recommendations on how OSM and Kentucky should implement the provisions of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart State provisions, may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

Dated: March 31, 1995.

Richard J. Seibel,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 95–8638 Filed 4–6–95; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 935

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Announcement of public comment period and opportunity for public hearing.

SUMMARY: OSM is requesting public comment that would be considered in deciding how to implement in Ohio underground coal mine subsidence control and water replacement provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the implementing Federal regulations, and/or the counterpart State provisions. Recent amendments to SMCRA and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures. These provisions also require such operations to promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining.

OSM must decide if the Ohio regulatory program (hereinafter referred to as the ''Ohio program'') currently has adequate counterpart provisions in place to promptly implement the recent amendments to SMCRA and the Federal regulations. After consultation with Ohio and consideration of public comments, OSM will decide whether initial enforcement in Ohio will be accomplished through the State program amendment process or by State enforcement, by interim direct OSM enforcement, or by joint State and OSM enforcement.

DATES: Written comments must be received by 4:00 p.m., E.D.T. May 8, 1995. If requested, OSM will hold a public hearing on May 2, 1995 concerning how the underground coal mine subsidence control and water replacement provisions of SMCRA and the implementing Federal regulations, or the counterpart State provisions, should be implemented in Ohio. Requests to speak at the hearing must be

received by 4:00 p.m., E.D.T. on April 24, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand-delivered to Robert H. Mooney, Acting Director, Columbus Field Office at the address listed below.

Copies of the applicable parts of the Ohio program SMCRA, the implementing Federal regulations, information provided by Ohio concerning its authority to implement State counterparts to SMCRA and the implementing Federal regulations, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays: Robert H. Mooney, Acting Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Eastland Professional Plaza, 4480 Refugee Road, 2nd Floor, Columbus, Ohio 43232, Telephone: 614–866–0578

FOR FURTHER INFORMATION CONTACT: Robert H. Mooney, Acting Director, Columbus Field Office, Telephone: 614–866–0578

SUPPLEMENTARY INFORMATION:

I. Background

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Public Law 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damage structures as a result of subsidence. Section 702(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions require prompt repair or compensation for damage to structure, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 to implement the performance standards of sections 720(a) (1) and (2) of SMCRA (60 FR 16722–16751.

30 CFR 817.121(c)(2) requires in part that:

The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817. 41(j) requires in part that:

The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed below, enforcement may be accomplished through the 30 CFR Part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements. OSM will decide which of the following enforcement approaches to pursue.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR Part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in item numbers (3) and (b) above, OSM would directly enforce

in total or in part its Federal statutory or regulatory provisions until the State adopts and OSM approves, under 30 CFR Part 732, the State's counterparts to the required provisions. However, as discussed in item number (1) above, OSM could decide not to initiate direct Federal enforcement and rely instead on the 30 CFR Part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any under ground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of ''drinking, domestic or residential water supply,'' ''material damage,'' ''non-commercial building,'' ''occupied dwelling and structures related thereto,'' and ''replacement of water supply'' that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c) (2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Ohio

By letter to Ohio dated December 15, 1994, OSM requested information from Ohio that would help OSM decide which approach to take in Ohio to implement the new requirements of section 720(a) of SMCRA and the implementing Federal regulations (Administrative Record No. OH–2073). By letter dated January 18, 1995, Ohio responded to his OSM request (Administrative Record No. OH–2085).

Ohio provided a list of permitted underground coal mining operations. There are currently eight underground coal mines that are producing coal. The number of coal producing underground coal mines in Ohio has been less than fifteen at any given time since October 24, 1992. Ohio indicated that existing State program provisions at the Ohio Revised Code section 1513.152 and the Ohio Administrative Code sections 1501:13–1–02(S); 1501:13–9–04(P); and 1501:13–12–03(C), (D), (E), (F), (H), (I) are adequate State counterparts to section 720 of SMCRA and the implementing Federal regulations. Ohio explained that it has enforced these State program provisions requiring replacement of water supplies impacted by underground mining operations since 1977 and enforced State program provisions requiring repair or compensation for subsidence related structural damage since 1988. Ohio has investigated 26 citizen complaints alleging subsidence-caused structural damage or water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992. To date, Ohio has made a determination on six of the complaints that water loss was not mining related and on six of the complaints that water loss was mining related. Fourteen complaints are still being investigated. Twelve of the 14 are related to water supplies associated with one underground coal mining operation and are not subsidence related.

II. Public Comment Procedures

OSM is requesting public comment to assist OSM in making its decision on which approach to use in Ohio to implement the underground coal mine performance standards of section 720(a) of SMCRA, the implementing Federal regulations, and any counterpart State provisions.

A. Written Comments

Written comments should be specific, pertain only to the issues addressed in this notice, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Columbia Field Office will not necessarily be considered in OSM's final decision or included in the Administrative Record.

B. Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., [Eastern Time zone] on April 15, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

C. Public Meeting

If only a few persons request an opportunity to speak at a hearing, a public hearing, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss recommendations on how OSM and Ohio should implement the provisions of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart State provisions, may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

Dated: March 31, 1995.

Richard J. Seibel,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 95–8636 Filed 4–6–95; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 946

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement OSM), Interior.

ACTION: Announcement of; public comment period and opportunity for public hearing.

SUMMARY: OSM is requesting public comment that would be considered in deciding how to implement in Virginia underground coal mine subsidence control and water replacement provisions of the Surface Mining

Control and Reclamation Act of 1977 (SMCRA), the implementing Federal regulations, and/or the counterpart State provisions. Recent amendments to SMCRA and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures. These provisions also require such operations to promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining.

OSM must decide if the Virginia regulatory program (hereinafter referred to as the ''Virginia program'') currently has adequate counterpart provisions in place to promptly implement the recent amendments to SMCRA and the Federal regulations. After consultation with Virginia and consideration of public comments, OSM will decide whether initial enforcement in Virginia will be accomplished through the State program amendment process or by State enforcement, by interim direct OSM enforcement, or by joint State and OSM enforcement.

DATES: Written comments must be received by 4:00 p.m., e.s.t. on May 8, 1995. If requested, OSM will hold a public hearing on May 2, 1995 concerning how the underground coal mine subsidence control and water replacement provisions of SMCRA and the implementing Federal regulations, or the counterpart State provisions, should be implemented in Virginia. Requests to speak at the hearing must be received by 4:00 p.m., e.s.t. on April 24, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand-delivered to Robert A. Penn, Director, Big Stone Gap Field Office at the address listed below.

Copies of the applicable parts of the Virginia program, SMCRA, the implementing Federal regulations, information provided by Virginia concerning its authority to implement State counterparts to SMCRA and the implementing Federal regulations, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays: Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Drawer 1217, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303.

FOR FURTHER INFORMATION CONTACT: Robert A. Penn, Director, Big Stone Gap Field Office, Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Public Law 102-486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 to implement the performance standards of sections 720(a) (1) and (2) of SMCA (60 FR 16722-16751).

30 CFR 817.121 (c)(2) requires in part that:

> The permitted must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

> The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

30 CFR 843.25 provide that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed below, enforcement may be accomplished through the 30 CFR Part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements. OSM will decide which of the following enforcement approaches to pursue.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR Part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.42(j) 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory

provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in item numbers (3) and (4) above, OSM would directly enforce in total or in part its Federal statutory or regulatory provisions until the State adopts and OSM approves, under 30 CFR Part 732, the State's counterparts to the required provisions. However, as discussed in item number (1) above, OSM could decide not to initiate direct Federal enforcement and rely instead on the 30 CFR Part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) and 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permitee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of ''drinking, domestic or residential water supply,'' ''material damage,'' ''non-commercial building,'' ''occupied dwelling and structures related thereto,'' and ''replacement of water supply'' that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j) and 817.121(c) (2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Virginia

By letter to Virginia dated December 14, 1994, OSM requested information from Virginia that would help OSM decide which approach to take in Virginia to implement the new requirements of section 720(a) of SMCRA and the implementing Federal regulations (Administrative Record No. VA–850. By letter dated January 13, 1995, Virginia responded to this OSM request (Administrative Record No. VA–851).

Virginia indicated that existing State program provisions at Sections 45.1–243 and 45.1–258 of the Code of Virginia are adequate State counterparts to section 720(a) of SMCRA. Virginia explained that it will enforce these State program provisions effective October 24, 1992. Section 480–03–19.817.121(c)(2) of the Virginia Coal Surface Mining Reclamation Regulations concerning subsidence control has been used by Virginia since December 26, 1990. OSM records show that approximately 325 underground coal mines have been classified as active in Virginia since October 24, 1992. Between October 24, 1992, and January 13, 1995, Virginia investigated 262 citizen complaints alleging subsidence-caused structural damage or water supply loss or contamination as a result of underground mining operations. As of January 13, 1995, Virginia had found that no violation of the Act existed on 202 of the complaints, violations existed on 35 of the complaints, and technical reports and a final decision were pending on 25 complaints.

II. Public Comment Procedures

OSM is requesting public comment to assist OSM in making its decision on which approach to use in Virginia to implement the underground coal mine performance standards of section 720(a) of SMCRA, the implementing Federal regulations, and any counterpart State provisions.

A. Written Comments

Written comments should be specific, pertain only to the issues addressed in this notice, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Big Stone Gap Field Office will not necessarily be considered in OSM's final decision or included in the Administrative Record.

B. Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., E.S.T. om April 24, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

C. Public Meeting

If only a few persons request an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss recommendations on how OSM and Virginia should implement the provisions of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart State provisions, may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under

ADDRESSES. A written summary of each meeting will be made a part of the Administrative Record.

Dated: March 31, 1995.

Richard J. Seibel,

Acting Assistant Director, Easter Support Center.

[FR Doc. 95–8637 Filed 4–6–95; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA36–1–6922; FRL–5185–7]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia: Non-CTG Reasonably Available Control Technology for Philip Morris, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing conditional approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision establishes and requires the use of reasonably available control technology (RACT) to control volatile organic compound (VOC) emissions from the Philip Morris, Inc, (Philip Morris), Manufacturing Center, in Richmond, Virginia, which is part of the Richmond ozone nonattainment area. The SIP revision requires Philip Morris to meet RACT by installing thermal incinerators on process units that use ethanol-based flavorings. An exemption from this requirement is provided if the company eliminates use of ethanol-based flavorings and there is no net increase in VOC emissions. The intended effect of this action is to propose approval of the SIP revision on the condition that deficiencies in the exemption requirements are corrected and submitted within one year of this approval. If the State fails to do so, this approval will convert to a disapproval. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before May 8, 1995.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Kathleen Henry, (215) 597–0545.

SUPPLEMENTARY INFORMATION: On September 28, 1994, the Commonwealth of Virginia submitted a revision to its State Implementation Plan (SIP). The SIP revision consists of a Consent Order and Agreement (the Order) between the Department of Environmental Quality (DEQ) of the Commonwealth of Virginia and Philip Morris, Inc.. The Order was signed by Philip Morris' Senior Vice President of Manufacturing on June 14, 1994 and the Director of DEQ on June 27, 1994. The Order became effective on June 27, 1994.

In the **Federal Register** on November 24, 1987, EPA's Proposed Post-1987 Policy for Ozone and Carbon Monoxide stated that air quality monitors revealed continued exceedances of the National Ambient Air Quality Standards (NAAQS) for ozone and carbon monoxide in Virginia and that a SIP call would be issued. (See 52 FR 45044). On May 26, 1988, the Regional Administrator of EPA Region III notified the Governor of Virginia that the Commonwealth's SIP was substantially inadequate to achieve the ozone and carbon monoxide NAAQS for certain areas in Virginia, including Henrico County in the Richmond-Petersburg metropolitan statistical area, and therefore required a SIP revision. As prescribed by the SIP call, Virginia is required to develop reasonably available control technology (RACT) regulations in all its nonattainment areas for all VOC sources with the potential to emit 100 tons per year (TPY) or more for which EPA has not issued a Control Techniques Guidelines (CTG) document. Such sources are known as non-CTG sources. One of the non-CTG sources identified as requiring RACT is Philip Morris, Inc.'s Manufacturing Center in Richmond, Virginia. The City of Richmond is located in the Richmond area, which is currently designated nonattainment for ozone. Therefore, Virginia is submitting this Order as a SIP revision to fulfill part of its SIP call obligation.

In addition, this SIP revision serves to fulfill one of the RACT fix-up requirements of the Virginia SIP required by section 182(a)(2)(A) of the Clean Air Act as amended by the Clean Air Act Amendments of 1990, Public Law 101–549. Areas classified as marginal nonattainment areas for ozone pursuant to section 181(a) of the Clean Air Act, as amended, are required to meet the RACT fix-up requirements. Under section 182(a)(2)(A), a state is required to submit, within six months of such classification, a SIP revision to correct requirements in (or add requirements to) the plan concerning RACT, as interpreted in guidance issued by the Administrator under section 108 of the Act before November 15, 1990.

Summary of SIP Revision

The Philip Morris Manufacturing Center processes, flavors and blends various types of tobacco for the production of cigarettes. The operations include moisture addition, preflavoring, blending, cutting, flavoring and cigarette-making. VOC emissions result primarily from the application and evaporation of flavorings, particularly ethanol-based flavorings. Total uncontrolled stack and fugitive VOC emissions are estimated to be 1259 tons per year, based on 1990 throughput data.

To accommodate the number and diversity of stack emissions at the Manufacturing Center, RACT was determined by grouping exhaust streams in various combinations and evaluating the feasibility and cost of installing control technology on the combined exhaust streams. Virginia has determined that the only grouping amenable to control technology is the combination of exhausts from the unit processes associated with ethanol-based flavorings. These combined waste streams comprise 48% of the uncontrolled stack emissions from the Manufacturing Center and are made up of emissions from burley casing cylinders #1 and #2, aftercut flavor cylinders #1 through #8, and aftercut dryers #1 through #4.

The Order establishes RACT for these units as the installation and operation of two (2) 10,000 standard cubic feet per minute (scfm) thermal oxidation units having a VOC destruction efficiency of at least 95% on a mass basis. The thermal oxidation units are required to be operated at the three-hour average minimum temperature that demonstrates 95% destruction efficiency as determined by performance testing. Thermal oxidation units must be interlocked with process equipment and exhaust fans such that tobacco cannot be processed and VOC laden exhaust air cannot flow to the incineration units until the minimum temperature is achieved. In addition, the Order requires that a negative pressure be maintained in the exhaust system as demonstrated by continuous pressure monitors and reported as three-hour

rolling averages. Based on 1990 throughput data, stack emissions from the process lines using ethanol-based flavorings and aftercut dryers will be reduced from 606 tons/year to 30 tons per year.

The Order allows an exemption from meeting these control requirements if Philip Morris replaces the existing ethanol-based flavorings with non-ethanol-based flavorings, provided that the change does not result in a net increase in VOC emissions.

Virginia has determined that RACT for all other tobacco processing operations shall be the use of low-VOC, non-ethanol based flavorings.

For more information on Virginia's RACT determination and the specific provisions of the Order, please refer to the Technical Support Document (TSD) prepared for this notice. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the Addresses section of this notice.

EPA's review of this material indicates that the requirements to install, operate and maintain thermal oxidation units on the burley case flavoring cylinders, the aftercut flavoring cylinders and the aftercut dryers, and the use of low VOC flavorings on other tobacco processes established by the Consent Order and Agreement between the Virginia DEQ and Philip Morris, Inc. constitutes RACT for the facility's VOC emitting processes. EPA has also determined that the exemption from meeting the requirements of add-on controls through the use of non-ethanol based flavorings does not impose enforceable conditions that would ensure that there shall be no net increase in emissions above the level established by RACT.

EPA is proposing to conditionally approve the non-CTG RACT SIP revision for the Philip Morris Manufacturing Center pending corrections to the exemption provided in the Order that allows the use of reformulated flavorings in lieu of operating emission control technology. RACT has been defined for burley casing cylinders #1 and #2, aftercut flavor cylinders #1 through #8, and aftercut dryers #1 through #4 as 95% destruction efficiency of VOCs on a mass basis over a three hour averaging period. Alternatively, the exemption from operating add-on controls through the use of reformulated flavorings requires that there shall be no net increase in VOC emissions. The Order is deficient in that it does not require the facility to monitor or report emissions from the affected units when non-ethanol-based flavorings are used and the facility is exempt from operating the thermal incinerators. The Order also fails to require a baseline to be established for the purpose of measuring net increases or decreases in emissions. Consequently, the requirement that there be no net increase in emissions from the substitution of reformulated flavorings for add-on control is unenforceable and does not impose the same level of control that would be imposed by the Order as RACT without the exemption.

In order to correct this deficiency, Virginia must amend and resubmit the Order within one year of this conditional approval in one of the following ways: (1) eliminate the exemption to use non-ethanol-based flavorings in lieu of add-on controls; (2) restrict the applicability of the exemption to the use of non-VOC based flavorings; or (3) impose monitoring and reporting requirements sufficient to determine net increases or decreases in emissions on a mass basis relative to the emissions that would have occurred using add-on controls on an average not to exceed thirty days. If Virginia fails to revise and resubmit the Order within one year, the conditional approval will convert to a disapproval.

Proposed Action

Pursuant to section 110(k)(4) of the CAA, EPA is proposing to conditionally approve the Virginia SIP revision for the Philip Morris Manufacturing Center, which was submitted on September 28, 1994. Virginia must amend the Consent Order and Agreement with Philip Morris, Inc, according to one of the three options described in this notice and resubmit the Order to EPA. If Virginia fails to do so within one year of the final conditional approval, the approval will convert to a disapproval. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this notice.

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.

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 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.

Conditional approvals of SIP submittals 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 any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, 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, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)-(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 22, 1995.

Stanley Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 95–8607 Filed 4–6–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 55

[FRL–5185–8]

Outer Continental Shelf Air Regulations Consistency Update for California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking; consistency update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf (''OCS'') Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (''COA''), as mandated by section 328(a)(1) of the Clean Air Act (''the Act''), the Clean Air Act Amendments of 1990. The portion of the OCS air regulations being updated pertain to the operating permit requirements for OCS sources for which the Ventura County Air Pollution Control District (Ventura County APCD) is the designated COA. The OCS requirements for the above District, contained in the Technical Support Document, are proposed to be incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations.

DATES: Comments on the proposed update must be received on or before May 8, 1995.

ADDRESSES: Comments must be mailed (in duplicate if possible) to: EPA Air Docket (A–5), Attn: Docket No. A–93–16 Section VIII, Environmental Protection Agency, Air and Toxics Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

Docket: Supporting information used in developing the proposed notice and copies of the documents EPA is proposing to incorporate by reference are contained in Docket No. A–93–16 (Section VIII). This docket is available for public inspection and copying Monday–Friday during regular business hours at the following locations:

EPA Air Docket (A–5), Attn: Docket No. A–93–16 Section VIII, Environmental Protection Agency, Air and Toxics Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

EPA Air Docket (LE–6102), Attn: Air Docket No. A–93–16 Section VIII, Environmental Protection Agency, 401 M Street SW, Room M–1500, Washington, DC 20460.

A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Air and Toxics Division (A–5–3), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1197.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 1992, EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of Part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent (NOI) under § 55.4; and (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This NPR is being promulgated in response to the submittal of part 70 permit rules by a local air pollution control agency.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as Part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

EPA Evaluation and Proposed Action

On November 22, 1994 (59 FR 60104), EPA proposed interim approval of the Ventura County APCD Operating Permits Program (part 70 permits). EPA is now proposing to update 40 CFR part 55 by incorporating the requirements of this program, in response to Ventura County APCD's request and to maintain consistency with onshore requirements. These proposed requirements will apply to the extent that they are rationally related to the attainment or maintenance of Federal or State ambient air quality standards or Part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS, that they are applicable to OCS sources, and that they do not solely regulate pollutants or precursors to pollutants for which there is no Federal or State ambient air quality standard. These proposed Ventura County APCD part 70 permit requirements applicable to OCS sources will not be finalized in part 55 until EPA takes final action granting full or interim approval to the Ventura County APCD Operating Permits Program.

The following Ventura County APCD part 70 permit requirement were submitted for inclusion in part 55:

Rule 33 Part 70 Permits—General (Adopted 10/12/93)

Rule 33.1 Part 70 Permits—Definitions (Adopted 10/12/93)

Rule 33.2 Part 70 Permits—Application Contents (Adopted 10/12/93)

Rule 33.3 Part 70 Permits—Permit Content (Adopted 10/12/93)

Rule 33.4 Part 70 Permits—Operational Flexibility (Adopted 10/12/93)

Rule 33.5 Part 70 Permits—Timeframes for Applications, Review and Issuance (Adopted 10/12/93)

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

Rule 33.6 Part 70 Permits—Permit Term and Permit Reissuance (Adopted 10/12/93)
Rule 33.7 Part 70 Permits—Notification (Adopted 10/12/93)
Rule 33.8 Part 70 Permits—Reopening of Permits (Adopted 10/12/93)
Rule 33.9 Part 70 Permits—Compliance Provisions (Adopted 10/12/93)
Rule 33.10 Part 70 Permits—General Part 70 Permits (Adopted 10/12/93)

B. Regulatory Flexibility Act

As was stated in the final OCS regulation, the OCS rule does not apply to any small entities, and the structure of the rule averts direct impacts and mitigates indirect impacts on small entities. This consistency update merely incorporates onshore part 70 permit requirements into the OCS rule to maintain consistency with onshore regulations as required by section 328 of the Act and does not alter the structure of the OCS rule. Because this action does not create any new requirements, it does not have a significant impact on a substantial number of small entities.

C. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 55

Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer continental shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 27, 1995.

Felicia Marcus,

Regional Administrator.

Title 40 of the Code of Federal Regulations, part 55, is proposed to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is proposed to be amended by revising paragraph (e)(3)(ii)(H) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of states seaward boundaries, by state.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

4. Appendix A to part 55 is proposed to be amended by revising paragraph (b)(8) under the heading California to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State.

* * * * *

California

* * * * *

(b) Local requirements.

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(8) The following requirements are contained in *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 2 Definitions (Adopted 12/15/92)
Rule 5 Effective Date (Adopted 5/23/72)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 6/14/77)
Rule 10 Permits Required (Adopted 7/5/83)
Rule 11 Application Contents (Adopted 8/15/78)
Rule 12 Statement by Application Preparer (Adopted 6/16/87)
Rule 13 Statement by Applicant (Adopted 11/21/78)
Rule 14 Trial Test Runs (Adopted 5/23/72)
Rule 15.1 Sampling and Testing Facilities (Adopted 10/12/93)
Rule 16 Permit Contents (Adopted 12/2/80)
Rule 18 Permit to Operate Application (Adopted 8/17/76)
Rule 19 Posting of Permits (Adopted 5/23/72)
Rule 20 Transfer of Permit (Adopted 5/23/72)
Rule 21 Expiration of Applications and Permits (Adopted 6/23/81)
Rule 23 Exemptions from Permits (Adopted 3/22/94)
Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 9/15/92)
Rule 26 New Source Review (Adopted 10/22/91)
Rule 26.1 New Source Review—Definitions (Adopted 10/22/91)
Rule 26.2 New Source Review—Requirements (Adopted 10/22/91)
Rule 26.3 New Source Review—Exemptions (Adopted 10/22/91)
Rule 26.6 New Source Review—Calculations (Adopted 10/22/91)
Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10 New Source Review—PSD (Adopted 10/22/91)
Rule 28 Revocation of Permits (Adopted 7/18/72)
Rule 29 Conditions on Permits (Adopted 10/22/91)
Rule 30 Permit Renewal (Adopted 5/30/89)
Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)
Rule 33 Part 70 Permits—General (Adopted 10/12/93)
Rule 33.1 Part 70 Permits—Definitions (Adopted 10/12/93)
Rule 33.2 Part 70 Permits—Application Contents (Adopted 10/12/93)
Rule 33.3 Part 70 Permits—Permit Content (Adopted 10/12/93)
Rule 33.4 Part 70 Permits—Operational Flexibility (Adopted 10/12/93)
Rule 33.5 Part 70 Permits—Timeframes for Applications, Review and Issuance (Adopted 10/12/93)
Rule 33.6 Part 70 Permits—Permit Term and Permit Reissuance (Adopted 10/12/93)
Rule 33.7 Part 70 Permits—Notification (Adopted 10/12/93)
Rule 33.8 Part 70 Permits—Reopening of Permits (Adopted 10/12/93)
Rule 33.9 Part 70 Permits—Compliance Provisions (Adopted 10/12/93)
Rule 33.10 Part 70 Permits—General Part 70 Permits (Adopted 10/10/93)
Appendix II-A Information Required for Applications to the Air Pollution Control District (Adopted 12/86)
Appendix II-B Best Available Control Technology (BACT) Tables (Adopted 12/86)
Rule 42 Permit Fees (Adopted 12/22/92)
Rule 44 Exemption Evaluation Fee (Adopted 1/8/91)
Rule 45 Plan Fees (Adopted 6/19/90)
Rule 45.2 Asbestos Removal Fees (Adopted 8/4/92)
Rule 50 Opacity (Adopted 2/20/79)
Rule 52 Particulate Matter-Concentration (Adopted 5/23/72)
Rule 53 Particulate Matter-Process Weight (Adopted 7/18/72)
Rule 54 Sulfur Compounds (Adopted 6/14/94)
Rule 56 Open Fires (Adopted 3/29/94)
Rule 57 Combustion Contaminants-Specific (Adopted 6/14/77)
Rule 60 New Non-Mobile Equipment-Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted 7/8/72)
Rule 62.7 Asbestos—Demolition and Renovation (Adopted 6/16/92)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 6/14/94)
Rule 66 Organic Solvents (Adopted 11/24/87)
Rule 67 Vacuum Producing Devices (Adopted 7/5/83)
Rule 68 Carbon Monoxide (Adopted 6/14/77)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 6/8/93)
Rule 71.1 Crude Oil Production and Separation (Adopted 6/16/92)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)
Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 6/8/93)
Rule 72 New Source Performance Standards (NSPS) (Adopted 7/13/93)

Rule 74 Specific Source Standards (Adopted 7/6/76)
Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
Rule 74.2 Architectural Coatings (Adopted 08/11/92)
Rule 74.6 Surface Cleaning and Degreasing (Adopted 5/8/90)
Rule 74.6.1 Cold Cleaning Operations (Adopted 9/12/89)
Rule 74.6.2 Batch Loaded Vapor Degreasing Operations (Adopted 9/12/89)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 1/10/89)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 12/21/93)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 6/16/92)
Rule 74.11 Natural Gas-Fired Residential Water Heaters-Control of NO_x (Adopted 4/9/85)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 11/17/92)
Rule 74.15 Boilers, Steam Generators and Process Heaters (5MM BTUs and greater) (Adopted 12/3/91)
Rule 74.15.1 Boilers, Steam Generators and Process Heaters (1–5MM BTUs) (Adopted 5/11/93)
Rule 74.16 Oil Field Drilling Operations (Adopted 1/8/91)
Rule 74.20 Adhesives and Sealants (Adopted 6/8/93)
Rule 74.24 Marine Coating Operations (Adopted 3/8/94)
Rule 75 Circumvention (Adopted 11/27/78)
Appendix IV-A Soap Bubble Tests (Adopted 12/86)
Rule 100 Analytical Methods (Adopted 7/18/72)
Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)
Rule 102 Source Tests (Adopted 11/21/78)
Rule 103 Stack Monitoring (Adopted 6/4/91)
Rule 154 Stage 1 Episode Actions (Adopted 9/17/91)
Rule 155 Stage 2 Episode Actions (Adopted 9/17/91)
Rule 156 Stage 3 Episode Actions (Adopted 9/17/91)
Rule 158 Source Abatement Plans (Adopted 9/17/91)
Rule 159 Traffic Abatement Procedures (Adopted 9/17/91)

[FR Doc. 95–8604 Filed 4–6–95; 8:45 am]

BILLING CODE 6050–50–P

40 CFR Part 70

[LA–001; FRL–5185–4]

Clean Air Act Proposed Full Approval of Operating Permits Program; Louisiana Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed full approval.

SUMMARY: The EPA proposes to rescind the proposed interim approval of the Louisiana Operating Permits Program published in the **Federal Register** (see 59 FR 43797, August 25, 1994) (hereafter Interim Approval Notice) and propose full approval of the Operating Permits Program as revised by the State's November 16, 1994, submittal. The proposed interim approval in the Interim Approval Notice was based upon the Operating Permits Program submitted by the Governor of Louisiana for the Louisiana Department of Environmental Quality (LDEQ) and received by the EPA on November 15, 1993. On November 16, 1994, the State submitted material revisions adequately addressing the issues raised by the EPA in the Interim Approval Notice and adding insignificant activities criteria to the Louisiana Operating Permits Program. This revised Operating Permits Program will provide for the issuance of operating permits to all major stationary sources and to certain other sources with the exception of sources on Indian Lands, in compliance with the Federal requirements.

DATES: Comments on this proposed action must be received in writing by May 8, 1995.

ADDRESSES: Written comments on this action should be addressed to Ms. Jole C. Luehrs, Chief, New Source Review Section, at the EPA Region 6 Office listed below. Copies of the State's submittal and other supporting information used in developing the proposed full approval are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before visiting day.

Environmental Protection Agency, Region 6, Air Programs Branch (6T–AN), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Louisiana Department of Environmental Quality, Office of Air Quality, 7290 Bluebonnet Boulevard, P.O. Box 82135, Baton Rouge, Louisiana 70884–2135.

FOR FURTHER INFORMATION CONTACT: Joyce P. Stanton, New Source Review Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–7218.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the Clean Air Act as amended on November 15, 1990 (''the Act''), the EPA has promulgated rules which define the minimum elements of an approvable State Operating Permits Program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of a State Operating Permits Program (see 57 **Federal Register** 32250, July 21, 1992). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires States to develop, and submit to the EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these Operating Permits Programs to the EPA by November 15, 1993, and that the EPA act to approve or disapprove each Operating Permits Program within one year after receiving the submittal. The EPA's Operating Permits Program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval and disapproval. The EPA proposed interim approval in the Interim Approval Notice on August 25, 1994, for the Operating Permits Program submitted by the LDEQ on November 15, 1993. However, 40 CFR 70.4(e)(2) allows the Administrator to extend the review period of a State's submittal if the State's submission is materially altered during the one-year review period. This additional review period may not extend beyond one year following receipt of the revised submission. On November 16, 1994, the EPA received material changes to Louisiana's Operating Permits Program from the Governor of Louisiana on behalf of the LDEQ. These changes included regulations adopted to add insignificant activities criteria, and to address issues raised in the Interim Approval Notice. The EPA will act expeditiously to promulgate a final notice on the State's revised Operating Permits Program within one year of the November 16, 1994, revised submittal. The publication of this proposal allows the public the opportunity to review and comment on the changes contained in the revised submittal.

At this time, the EPA proposes to rescind the interim approval proposed

in the Interim Approval Notice and instead proposes full approval of the Operating Permits Program as revised by the November 16, 1994, submittal. The Interim Approval Notice had a 30-day comment period which was extended an additional 30 days to October 26, 1994 (see 59 FR 50537, October 4, 1994). The comments received on issues discussed in the Interim Approval Notice during that comment period are discussed in this notice together with a discussion of the revisions to the State's Operating Permits Program received on November 16, 1994.

II. Proposed Action and Implications

A. Analysis of State Submission

1. Confidentiality Provisions. In the Interim Approval Notice, the EPA stated that, while the State statute provided that certain environmental information such as air emissions data may not be held confidential, it was not clear whether these confidentiality provisions could be interpreted to protect the contents of the permit itself from disclosure. The Interim Approval Notice stated that the LDEQ must either submit an Attorney General's Opinion demonstrating that the State's statute is interpreted not to allow any portion of a permit to be held confidential, consistent with section 503(e) of the Act, or revise Louisiana Administrative Code (LAC) 33:III.Chapter 5, section 517.F (permit regulations) to clarify that no portion of the permit may be held confidential. In response to this statement in the Interim Approval Notice, the LDEQ commented that it did not currently protect from disclosure as confidential any permit issued under LAC 33.III.Chapter 5, and that the LDEQ has adopted a conservative policy in interpreting the reference to ''emissions data'' in a manner which limits the grant of confidentiality under the Louisiana statute. The LDEQ stated, however, that in the interest of cooperation, it would revise its regulations. The November 16, 1994, submittal contained a revision to LAC 33:III.517.F which requires that no permit or portion of a permit issued to a source in accordance with Louisiana's Operating Permits Program shall be held confidential. This regulatory revision has adequately addressed the EPA's concern regarding confidentiality and is no longer an interim approval issue.

2. Requirement that No Major Source be Exempt from Part 70 Requirements Because a Research and Development (R&D) Facility is Co-located with the Source. In the Interim Approval Notice, the EPA explained that LAC 33:III.501.B.7 allows the permitting authority to consider a certain complex within a facility as a source separate from the facility with which it is co-located, provided that the complex is used solely for R&D of new processes and/or products, and is not engaged in the manufacture of products for commercial sale. The EPA noted that this regulation was inconsistent with 40 CFR 70.3 which requires that a State's Operating Permits Program provide for the permitting of all major sources, and 40 CFR 70.4(b)(3)(i) which requires that the State demonstrate adequate legal authority to issue permits and assure compliance with each applicable requirement by all part 70 sources.

The Interim Approval Notice explained that 40 CFR 70.2 requires all sources located on contiguous or adjacent properties, under common control, and belonging to a single major industrial grouping, to be considered as the same source. The EPA concluded that the Louisiana permit regulations could cause certain part 70 major sources, as defined in 40 CFR 70.2, or portions of such sources with the same Standard Industrial Classification (SIC) code, to be treated as separate sources. This could cause some part 70 sources to be exempted from coverage by part 70 permits which must ensure that all part 70 requirements for those sources are met.

The Interim Approval Notice went on to state that for full part 70 approval, the LDEQ would be required to revise its permit regulations and demonstrate that no source, or portion of a source, which would be defined as major under 40 CFR 70.2 would be exempted from part 70 requirements because an R&D facility is co-located with the source.

One commenter objected to the EPA's proposed action related to the R&D issue and stated that by limiting the scope of the exemption to R&D facilities with different SIC codes, the EPA has virtually eliminated any relief for R&D facilities. The commenter stated that, since R&D activities are so limited in time, scale, and actual production, subjecting these activities to the Operating Permits Program requirements unnecessarily burdened research by companies as well as the State's Operating Permits Programs. This commenter also requested that any guidance concerning R&D facilities be published for public comment as part of future part 70 rulemakings. The EPA's position continues to be that 40 CFR part 70 allows R&D facilities to be treated separately in cases where the R&D facility has a different two-digit SIC code and is not a support facility.

The LDEQ commented that its regulatory provision cited as deficient on this point had been incorporated into the State's Operating Permits Program based on the State's understanding of guidance provided by the EPA in the preamble to the part 70 regulations. In the Interim Approval Notice, the EPA explained that the preamble language was intended to clarify the flexibility in 40 CFR part 70 for allowing R&D facilities to be treated separately from the manufacturing facilities with which they are co-located where the R&D facility has a different two-digit SIC code and is not a support facility. This approach is consistent with the treatment of R&D facilities in the New Source Review program. In response to the Interim Approval Notice and in an effort to receive full approval of Louisiana's Operating Permits Program, the LDEQ has revised LAC 33:III.501.B.7 to include a provision that an R&D facility may be considered separately provided the facility has a different two-digit SIC code from, and is not a support facility of, the source with which it is co-located. This revision was included in the November 16, 1994, submittal. This change adequately addresses the EPA's concern and the State's treatment of R&D facilities is no longer an interim approval issue.

3. Acid Rain Application Deadlines. In the Interim Approval Notice, the EPA discussed LAC 33.III.507.C.1.b which contained the deadlines for submittal of acid rain permit applications. Although this section purported to cover all relevant dates for submittal of acid rain permit applications, this section did not contain the deadlines required by 40 CFR 72.30(b)(2)(iii) for new units and for units that did not serve a generator with a name plate capacity greater than 25 Megawatts electrical on November 15, 1990, but which served such a generator after November 15, 1990. In the Interim Approval Notice, the EPA noted that LAC 33:III.505.D.2 contains the deadlines for submittal of acid rain permit applications consistent with those required by title IV of the Act, but that it contradicted LAC 33.III.507.C.1.b. The Interim Approval Notice explained that, even though LAC 33.III.505.A.4 provides that Federal acid rain requirements applicable to an affected source shall supersede LAC 33:III.Chapter 5 of the Louisiana Regulations where the two are inconsistent, the inconsistency between LAC 33.III.505.D.2, 507.C.1.b and the Federal acid rain regulations created a lack of clarity and should be eliminated. The Interim Approval Notice required that, for full part 70 approval, LAC 33.III.507.C.1.b be revised to require the

affected sources to conform with the deadlines in LAC 33.III.505.D.2.

The LDEQ commented that the provisions of LAC 33.III.507.C.1.b cited by the EPA in the Interim Approval Notice as creating an interim approval issue were incorporated by the LDEQ in response to an earlier EPA comment on the LDEQ's proposed Air Quality regulations. The State responded by stating that, despite the error in LAC 33.III.507.C.1.b, LAC 33.III.505.A.4 and 505.D.2 would still require sources to comply with all Federal acid rain deadlines. However, the November 16, 1994, Operating Permits Program submittal included a revision to LAC 33.III.507.C.1.b to clarify the acid rain permit application submittal deadlines as requested by the EPA. This revision adequately addresses the EPA's concern and, therefore, this is no longer an interim approval issue.

4. Provision for Administrative Amendments. In the Interim Approval Notice, the EPA stated its concern that LAC 33.III.521.A.6 could be interpreted to allow administrative amendments to permits to incorporate changes authorized by 40 CFR 70.4(b)(14). These ''off-permit'' changes, which are not addressed or prohibited by the permit, may be made under part 70 without permit revisions. However, the Interim Approval Notice explained that the part 70 rule contains no authority for such changes to be incorporated into operating permits except through the appropriate part 70 permit procedures for minor or significant modifications. In the Interim Approval Notice, the EPA stated that, for full part 70 approval, section 521.A.6 of the permit regulations must be revised to eliminate administrative amendments for this type of change.

LAC 33.III.521.A.6 also allows changes to be made to operating permits by administrative amendment where the State's permitting authority has determined they are similar to the changes listed in LAC 33.III.521.A. The Interim Approval Notice explained that part 70 allows changes submitted as part of a State's part 70 program, in addition to those specified in 40 CFR 70.7(d)(1), to be made as administrative amendments where the EPA Administrator determines those changes to be similar to the changes listed in 40 CFR 70.7(d)(1)(i)–(iv). However, no such proposed changes were submitted by the State as part of its Operating Permits Program, and part 70 does not allow for the substitution of the State permitting authority's approval for the Administrator's approval, which is required by 40 CFR 70.7(d)(1)(vi). The Interim Approval Notice required that, for full part 70 approval, this defect in LAC 33.III.521.A.6 of the permit regulations must be corrected.

The LDEQ commented that the cited provision was intended by the State to allow the LDEQ discretion in revising permits for terms and conditions altogether outside the scope of 40 CFR part 70 and would not circumscribe 40 CFR part 70. However, to receive full approval, LAC 33.III.521.A.6 has been revised to clarify that this provision can be used solely for State-only changes involving terms and conditions which are not federally enforceable. These revisions were included in the November 16, 1994, submittal and adequately address the EPA's concerns. Therefore, this is no longer an interim approval issue.

5. Requirement to Keep Records for Five Years. In the Interim Approval Notice, the EPA cited the 40 CFR 70.8(a)(3) requirement that each State permitting authority keep for five years such records as the Administrator may reasonably require to ascertain whether the State program complies with the requirements of the Act and 40 CFR part 70. While 44 Louisiana Revised Statute (L.R.S.) section 1 contains a very broad definition of ''public records,'' 44 L.R.S. section 36 requires the records to be kept for only three years unless a longer formal retention schedule has been developed. The Interim Approval Notice required as a condition of full part 70 approval, a statutory change or a supplemental Attorney General's Opinion demonstrating how the current statute ensures that the required records will be kept for at least five years.

The LDEQ commented that it intended to keep records for five years, and that it believed that 40 CFR part 70 did not require a permit rule ensuring that records be retained for five years. It remains the EPA's position that because the language in the Louisiana Statute does not appear to ensure that records be retained for five years, 40 CFR 70.8(a)(3) requires either an Attorney General's Opinion demonstrating how this statute ensures a five-year retention of these records or a statutory or regulatory change. In the interest of obtaining full approval, the LDEQ revised LAC 33.III.533.B.5. As revised, LAC 33.III.533.B.5 provides that the permitting authority shall keep for five years such records and submit to the EPA such information as the Administrator may reasonably require to ascertain whether the State Operating Permits Program complies with the requirements of part 70 and the Act. This revision, which was included in the November 16, 1994, submittal, adequately addresses the EPA's concern, and records retention is no longer an interim approval issue.

6. Significant Modification Procedures. In the Interim Approval Notice the EPA stated its concern about the lack of clarity of LAC 33.III.527.A.3. This provision allowed certain changes that rendered existing compliance terms irrelevant to be incorporated through minor modification procedures. The changes cited appeared to be of the type described in 40 CFR 70.4(b)(14), ''off-permit'' changes. However, the State's provision was unclear, and the Interim Approval Notice explained that, to remedy this ambiguity, the State should add language clarifying that the modification is one which would qualify as a change under 40 CFR 70.4(b)(14), because it is not addressed or prohibited by the permit and would otherwise qualify for treatment as a minor modification under 40 CFR 70.7(e)(2)(i)(A).

The LDEQ commented that the cited State provision was meant only to clarify that obsolete compliance measures could be removed from the permit without requiring a significant permit modification. In the interest of obtaining full approval, however, the LDEQ deleted LAC 33.III.527.A.3 in its entirety. This revision, which was included in the November 16, 1994, submittal, has adequately addressed the EPA's concern, and the previously noted ambiguity is no longer an interim approval issue.

7. Permit Conditions. In the Interim Approval Notice, the EPA explained that even though the permit content requirements of 40 CFR 70.6(a) are met by the model permit submitted in Volume III of the State's original part 70 submittal, 40 CFR 70.4(b)(16) also requires regulatory provisions in the State's program to implement the requirements of 40 CFR 70.6 and 70.7. The EPA noted that LAC 33.III.501.C.5 and 6 speak generally to permit terms and conditions, but do not set out all requirements for each operating permit as required.

Specifically, the EPA noted that these State provisions did not include a requirement that the permit specify the origin of and reference the authority for each term or condition, nor did they identify differences in form from the applicable requirements upon which the terms were based or contain various other elements required by 40 CFR 70.6. The Interim Approval Notice explained that 40 CFR 70.6(a) includes requirements for emission limitations, monitoring, and recordkeeping, and specifies that the regulation must state that no permit revision shall be required under any approved economic

incentive, marketable permits, or similar program. The Interim Approval Notice stated that a severability clause is also required to ensure the continued validity of the various permit requirements in the event of a challenge to any portion of the permit. The EPA stated that these elements must be addressed in the permit regulations in order to afford citizens the opportunity to legally challenge permits. The Interim Approval Notice stated that, although some of these elements are contained in the State's model operating permit, one condition of full part 70 approval would be that the permit regulations be revised to require that all permit elements of 40 CFR 70.6(a) be included in each permit.

In its comments, the LDEQ stated its belief that the model permit forms and applications submitted with the original Operating Permits Program submittal adequately addressed this issue. However, in an effort to obtain full approval, the LDEQ has revised LAC 33.III.507.B.2 to incorporate by reference the provisions of 40 CFR 70.6 as in effect on July 21, 1992. This revision was submitted with the November 16, 1994, submittal and adequately addresses the EPA's concern. Therefore, this is no longer an interim approval issue.

8. Title I Modifications and Case-by-case Determinations. In the Interim Approval Notice, the EPA discussed the State's definition of the phrase ''title I modification.'' At the time of the Interim Approval Notice, the EPA believed that for a State's program to be fully approvable, it would be necessary for the State's definition of ''title I modification'' to be interpreted to include literally any change at a source that would trigger permitting authority review under regulations approved or promulgated under title I of the Act. This would include State preconstruction review programs approved into the State Implementation Plan under section 110(a)(2)(C) of the Act and regulations addressing source changes that trigger National Emission Standards for Hazardous Air Pollutants established pursuant to section 112 of the Act prior to the 1990 amendments. LAC 33.III.502 defines ''title I modification'' as a change at a site that qualifies as a modification under section 111 of the Act or section 112(g) of the Act, or that results in a significant net emissions increase under part C or part D of the Act. In the Interim Approval Notice, the EPA required that the LDEQ revise the definition of ''title I modification'' in order to receive full approval.

The LDEQ commented that it believed the part 70 regulations clearly allowed ''minor'' preconstruction changes to be processed as minor permit modifications under part 70. The LDEQ further stated its belief that States which allowed minor preconstruction changes to be processed as minor operating permit modifications should be approved, and to do otherwise, would cause the States to suffer significant negative impact.

The American Forest and Paper Association (AF & PA) stated that the EPA's interpretation set out in the Interim Approval Notice was without legal basis, and that such an interpretation failed to take into account the numbers of additional source modifications which would be required to be processed under the significant modification procedures of title V of the Act. The AF & PA stated its belief that such an interpretation would further have potentially devastating consequences on the AF & PA's members doing business in Louisiana.

The Louisiana Chemical Association disagreed with the EPA's position that Louisiana's definition of ''title I modification'' must be revised for full approval, and provided legislative history excerpts in support of its interpretation of the term ''title I modification.''

On August 29, 1994, the EPA proposed revisions to the interim approval criteria in 40 CFR 70.4(d) to allow State Operating Permits Programs with a narrower definition of ''title I modification'' to receive interim approval (See 59 FR 44572, August 29, 1994). Following is a discussion of points noted in that publication.

The EPA intended to finalize its revisions to the interim approval criteria under 40 CFR 70.4(d) before taking action on part 70 Operating Permits Programs submitted by the States. However, publication of the proposed revision was delayed until August 29, 1994, and several requests to the EPA to extend the public comment period further delayed final action on the revisions. Given the importance of the issues in that rulemaking to States, sources, and the public, but mindful of the need to take action quickly, the EPA agreed to extend the comment period until October 28, 1994 (see 59 FR 52122, October 14, 1994). Consequently, final action to revise the interim approval criteria will not occur before the deadline for EPA action on State programs that were submitted on or before November 15, 1993. The EPA believes it would be inappropriate to delay action on these States' Operating Permits Programs until final action is taken on the interim approval revisions. The EPA also believes it would be inappropriate to grant interim approval to Louisiana's Operating Permits Program on this issue before final action is taken to revise the current interim approval criteria of 40 CFR 70.4(d) in a manner which would provide a legal basis for such an interim approval. Prior to the EPA's final promulgation of interim approval criteria, Louisiana may maintain and implement the narrower definition of ''title I modification.'' Upon the EPA's final decision of what constitutes a ''title I modification,'' if the EPA's definition differs from Louisiana's current definition, the State will be required to revise its definition in accordance with the EPA's final definition.

The EPA is allowing this approach to ''title I modification'' for a number of reasons. First, the EPA has not yet conclusively determined that a narrower definition of ''title I modification'' is incorrect and thus a basis for disapproval (or even interim approval). The EPA has received numerous comments on this issue as a result of the August 29, 1994, FR notice, and the EPA cannot and will not make a final decision on this issue until it has evaluated all of the comments. Second, the EPA believes that the Louisiana Operating Permits Program should not be disapproved because the EPA itself has not yet been able to resolve this issue through rulemaking. Moreover, disapproving Operating Permits Programs from States such as Louisiana that submitted their Operating Permits Program to the EPA on or before the November 15, 1993, statutory deadline could lead to the unfair result that States which were late in submitting Operating Permits Programs could take advantage of revised interim approval criteria if and when these criteria become final. In effect, States would be severely penalized for having made timely program submissions to the EPA. Finally, disapproval for a State's Operating Permits Program for a potential problem that primarily affects permit revision procedures would delay the issuance of part 70 permits, hampering State/Federal efforts to improve environmental protection through the operating permits system.

For the reasons mentioned above, the EPA is approving the Louisiana Operating Permits Program's use of a narrower definition of ''title I modification'' at this time. However, should the EPA in the interim approval criteria rulemaking make the final determination that such a narrow definition of ''title I modification'' is incorrect and that a revision of the interim approval criteria is warranted, the EPA will propose further action on

Louisiana's Operating Permits Program so that the State's definition of ''title I modification'' could become grounds for interim approval. A State Operating Permits Program like the one in Louisiana, which receives full approval of its narrower definition pending completion of the EPA's rulemaking, must ultimately be placed on an equal footing with States which receive interim approval in later months under revised interim approval criteria based on the same issue. Converting the full approval on this issue to an interim approval after the EPA completes its rulemaking will avoid this inequity. The EPA anticipates that an action to convert the full approval on the ''title I modification'' issue to an interim approval would be effected through an additional rulemaking, so as to ensure that there is adequate notice of the change in approval status.

Questions have been raised on a national level concerning whether the 40 CFR 70.7(e)(2)(i)(A)(3) provisions prohibiting minor modifications for changes in ''case-by-case'' determinations would apply in the instance of a preconstruction permit in which the permitting authority, through a minor modification procedure, changes a source-specific control technology requirement not required under part C or D or section 111 or 112 of the Act, or an emission limitation determination established on a source-specific basis. At the time of the Interim Approval Notice, the EPA believed the better interpretation of 40 CFR 70.7(e)(2)(i)(A)(3) required that any requirement imposed on a source-specific basis, such as one in which the permitting authority has discretion in setting the requirement for the particular source, must be considered to be a ''case-by-case'' determination. Therefore, the EPA believed that a change involving a source-specific requirement in a preconstruction permit would be considered a ''case-by-case determination of an emission limitation'' under 40 CFR 70.7(e)(2)(i)(A)(3), ineligible for processing as a minor permit modification.

LAC 33.III.525.A.2.d allows the use of minor modification procedures for some changes which would be considered ''case-by-case'' emission limits under the EPA's narrower interpretation. The EPA is taking comment on whether a less narrow interpretation of ''case-by-case'' is acceptable.

Therefore, the EPA will not at this time construe 40 CFR 70.7(e)(2)(i)(A)(3) to prohibit Louisiana from allowing minor preconstruction changes to be processed as minor permit modifications. Should the EPA's final interpretation be inconsistent with Louisiana's current regulations, the definition of ''case-by-case'' will also be an interim approval issue. The EPA anticipates that an action to convert the full approval on the ''case-by-case'' issue to an interim approval would be effected through an additional rulemaking, so as to ensure that there is adequate notice of the change in approval status.

9. Insignificant Activities. As the Interim Approval Notice indicated, provisions to determine insignificant activities were not included with the State's original submittal. The State's later, November 16, 1994, submittal contained a list of insignificant activities and criteria for determining which activities were sufficiently insignificant to be exempt from the requirement to obtain a permit, or from inclusion in a permit (for a part 70 source engaged in other activities which must appear in permits), unless the LDEQ determines on a site-specific basis that such exemption is not appropriate. These insignificant activities were divided into four categories. The first category consisted of activities based on size or production rate that were required to be included in the application but not the permit. This is consistent with 40 CFR 70.5(c) which provides that, if approved by the EPA, a list of insignificant activities based on size or production rate may be exempted from inclusion in a part 70 permit, although they must still be included in the application. LAC 33.III.501.B.5 provides that any activity to which a State or Federal applicable requirement applies is not insignificant even if the activity meets the criteria of the ''Insignificant Activities List.'' Therefore such an activity must be included in the permit. The LDEQ has clarified in a letter that insignificant activities may not be exempted from major source applicability determinations. This is consistent with 40 CFR 70.3(c) and 70.5(c) which requires that the permitting authority include in the permit all applicable requirements for all relevant emissions units.

As allowed by 40 CFR 70.5(c), LAC 33.III.501.B.5 contains a second category based on activities that do not need to be included in a permit application. This list includes activities such as maintenance of grounds, general repairs, lawn care, steam cleaning, certain painting activities, use of adhesives, office activities, vehicle emissions, etc. The third category of insignificant activities is based on type of pollutant. LAC 33.III.501.B.5 allows water vapor, oxygen, carbon dioxide, nitrogen, and hydrogen to be exempt from the permit application.

The last category of insignificant activities is based on emissions levels. In order to use this category, the source must receive prior approval from the LDEQ, and all of the criteria must be met. These criteria include: (a) The emissions unit emits and has the potential to emit no more than five tons per year of any regulated air pollutant; (b) the emissions unit emits and has the potential to emit less than the minimum emission rate listed in Table 51.1, LAC 33.III.Chapter 51, for each Louisiana toxic air pollutant; (c) the emissions unit emits and has the potential to emit less than the de minimis rate established pursuant to section 112(g) of the Federal Act for each hazardous air pollutant; and (d) no enforceable permit conditions are necessary to ensure compliance with any applicable requirement.

The EPA believes that these insignificant criteria are sufficient to ensure that every application contains the information needed to determine the applicability of, and to impose, any applicable requirement, or to evaluate the fee amount as required by 40 CFR 70.5(c). The list and its criteria meet the requirements of 40 CFR part 70 and therefore are approvable. The EPA will accept comments on the insignificant activities discussed herein, as well as other provisions of the State's revised submittal.

B. Discussion of Other Comments

1. Section 112(g) Comments. Louisiana Mid-Continent Oil and Gas Association (LAMOGA) was concerned that the Louisiana Operating Permits Program was being approved prior to the finalization of Federal requirements regarding section 112(g) of the Act on modification of sources of hazardous air pollutants. The AF & PA commented that it believes the EPA's delegation to Louisiana of section 112(g) authority is unlawful and confusing to the regulated community, because the EPA has not issued any regulation to implement this statutory language and does not expect to finally adopt such a regulation for many months. The AF & PA opposes the approval of the Louisiana preconstruction permit rules for the implementation of section 112(g), because it believes that these rules were never intended to define or otherwise address issues such as ''de minimis'' and offsets. The AF & PA is concerned that sources would have no way to determine whether and when they are subject to the program until a final

Federal section 112(g) rule is promulgated.

In the Interim Approval Notice, the EPA also proposed to approve Louisiana's preconstruction program for the purpose of implementing section 112(g) during the transition period before a Federal rule had been promulgated implementing section 112(g). This proposal was based in part on an interpretation of the Act that would require sources to comply with section 112(g) beginning on the date of approval of the Operating Permits Program, regardless whether the EPA had completed its section 112(g) rulemaking. The EPA has since revised this interpretation of the Act in the **Federal Register** (see 60 FR 8333, February 14, 1995) (hereafter Interpretive Notice). The Interpretive Notice postpones the effective date of section 112(g) until after the EPA has promulgated a final rule addressing that provision. The rationale for the revised interpretation was explained in detail in the Interpretive Notice. The EPA's new position of not requiring the implementation of section 112(g) until the Federal 112(g) rule is promulgated renders moot the AF & PA comment regarding section 112(g).

The Interpretive Notice explains that the EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule to allow States time to adopt rules implementing the Federal rule. If a decision is made to allow such additional delay in the implementation of section 112(g), the EPA will announce that decision in the final section 112(g) rulemaking.

2. Natural Resources Defense Council (NRDC) Comments. The NRDC objected to the approval of the Louisiana Operating Permits Program for the same reasons the NRDC objected to the EPA's part 70 regulation upon which the approval was based. The NRDC's earlier comments on the national proposed part 70 rulemaking were attached to its comments on the proposed approval of the Louisiana Operating Permits Program. The EPA believes the appropriate forum for pursuing objections to the legal validity of the part 70 rule is through a petition for review of the rule in the D.C. Circuit Court of Appeals; therefore, those part 70 comments will not be addressed in this notice. Unless and until the part 70 rule is revised, the EPA must evaluate proposed part 70 programs according to the rule currently in effect.

3. Enhanced Monitoring. The LAMOGA expressed concern that the Louisiana Operating Permits Program was being approved prior to the finalization of Federal enhanced monitoring requirements. The LDEQ will implement the enhanced monitoring requirements of the Act and provide appropriate permit conditions after the Federal enhanced monitoring rules are finalized. The EPA will not delay approval of Louisiana's Operating Permits Program based on the fact that the Federal enhanced monitoring rule is not yet finalized.

4. General Comments. The EPA received comments from Citizens for a Clean Environment and some comments from LAMOGA favorable to the Louisiana Operating Permits Program and requesting full approval for the program.

C. Provisions Implementing the Requirements of Other Titles of the Act

By submitting the State's Operating Permits Program for approval, Louisiana commits to appropriately implementing and enforcing the existing and future requirements of sections 111, 112, and 129 of the Act, and all maximum achievable control technology (MACT) standards promulgated in the future, in a timely manner.

Requirements for title V approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of Federal section 112 standards as they apply to part 70 sources. The State of Louisiana acknowledges that its request for approval of a part 70 program is also a request for approval of a program for delegation of unchanged section 112 standards under the authority of section 112(l) as they apply to part 70 sources.

Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under 40 CFR part 70. Therefore, as part of this proposal for full approval, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. At this time, the State plans to use the mechanism of incorporation by reference to adopt unchanged Federal section 112 requirements into its regulations. After this approval is made final, in cases where the State utilizes the mechanism of incorporation by reference, no additional Federal public comment period will occur prior to the transfer of authority for unchanged section 112 standards to the State. This approval for delegation of unchanged Federal section 112 standards applies to existing and future standards as they apply to sources covered by the part 70 program. The State retains the option at any time to promulgate the full text of the Federal standard unchanged or to request delegation of section 112 standards in the form of State regulations which the State demonstrates are equivalent to the corresponding section 112 provisions promulgated by the EPA instead of using the mechanism of incorporation by reference. If the State chooses either of these options, an approval under 40 CFR part 63 subpart E will be required.

D. Summary

The State of Louisiana submitted to the EPA, under cover letters from the Governor dated November 4, 1993, and November 10, 1994, the State's Operating Permits Program and the State's revised Operating Permits Program, respectively. The original and revised submittals have been reviewed for adequacy under the requirements of title V of the Act and the 40 CFR part 70 regulations which together outline criteria for approval and disapproval. The results of this review are included in the technical support document. The EPA believes that the LDEQ, in its revised submittal, has adequately addressed all issues discussed in the Interim Approval Notice which proposed interim approval. The EPA believes the insignificant activities list and criteria are fully approvable. Therefore, at this time the EPA is proposing to grant full approval to the Louisiana Operating Permits Program. The EPA is soliciting comments on all aspects of this proposed full approval.

E. Options for Approval/Disapproval

The EPA proposes to withdraw the proposed interim approval announced in the Interim Approval Notice and to fully approve the Operating Permits Program submitted to the EPA from the State of Louisiana on November 15, 1993, and revised on November 16, 1994. Louisiana has demonstrated that the program meets the minimum elements of a State Operating Permits Program as specified in 40 CFR part 70.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on Louisiana's revised submittal as discussed in this proposed full approval. Copies of the State's submittal and other information relied upon for the proposed full approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the

information submitted to, or otherwise considered by, the EPA in the development of this proposed interim approval. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) To serve as the record in case of judicial review. The EPA will consider any comments received by May 8, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address Operating Permits Programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Environmental protection, Air pollution control, Intergovernmental relations, Operating permits, Administrative practice and procedure, Reporting and recordkeeping requirements.

V. Miscellaneous

A. Proposed Full Approval

Proposed full approval of the part 70 Operating Permits Program for the State of Louisiana.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 30, 1995.

Jane N. Saginaw,

Regional Administrator (6A).

[FR Doc. 95–8608 Filed 4–6–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 81

[NM–25–1–6908; FRL–5185–5]

Designation of Area for Air Quality Planning Purposes; New Mexico; Designation of Sunland Park Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Clean Air Act (CAA), as amended in 1990, the EPA is authorized to promulgate new designations of areas (or portions thereof) as nonattainment for the ozone National Ambient Air Quality Standards (NAAQS). In this action, the EPA is proposing to revise the ozone designation for a portion of Dona Ana County, New Mexico (i.e. the Sunland Park area). Previously, consistent with the CAA, the EPA notified the Governor of New Mexico that the Sunland Park area should be redesignated from unclassifiable/attainment to nonattainment for ozone. The redesignation is based upon violations of the ozone NAAQS which were monitored from 1992–1994.

DATES: All written comments must be received by May 8, 1995.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the addresses listed below. The interested persons wanting to examine these documents should make an appointment at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–A), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733.

New Mexico Environment Department, Air Monitoring & Control Strategy Bureau, 1190 St. Francis Drive, room So. 2100, Santa Fe, New Mexico 87503.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather, Planning Section (6T–AP), Air Programs Branch (6T–A), USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7258.

SUPPLEMENTARY INFORMATION:

Background

By operation of law upon enactment of the 1990 amendments to the CAA (Public Law 101–549, 104 Statute 2399), all areas of the country were designated either nonattainment or unclassifiable/attainment for the ozone NAAQS [see section 107(d)(4)(A) of the CAA; 56 FR 56694–56858 (November 6, 1991), 57 FR 56762–56778 (November 30, 1992), and 59 FR 18967–18971 (April 21, 1994)]. The amended CAA also authorizes the EPA to revise the designation of current ozone areas from unclassifiable/attainment to nonattainment on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the EPA deems appropriate [see section 107(d)(3) of the CAA].

Following the process outlined in section 107(d)(3), on December 16, 1994, the Regional Administrator of the EPA Region 6 notified the Governor of New Mexico that the EPA believed the Sunland Park area should be redesignated as nonattainment for ozone. Under section 107(d)(3)(B) of the CAA, the Governor of New Mexico was required to submit to the EPA the designation considered appropriate for the Sunland Park area within 120 days after the EPA's notification. The EPA received the State's response for the Sunland Park area on February 6, 1995 (letter dated January 30, 1995). Now, the EPA must promulgate the redesignation that it deems necessary and appropriate, consistent with section 107(d)(3)(C) of the CAA.

Based upon the EPA's review of the State's January 30, 1995, letter for the Sunland Park area, the EPA is proposing a redesignation to nonattainment which is consistent with the request submitted by the Governor of New Mexico. The EPA is requesting comments on this action and will consider any relevant comments before taking final action.

Section 107(d)(1)(A) of the CAA sets out definitions of nonattainment, attainment, and unclassifiable. The EPA has proposed that the Sunland Park area in Dona Ana County, New Mexico, addressed in this action, be redesignated nonattainment for the ozone NAAQS. A nonattainment area is defined as any area that does not meet (or that significantly contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for ozone [see section 107(d)(1)(A)(i) of the CAA].[1] Thus, in determining the appropriate boundaries for the nonattainment area proposed in this action, the EPA has considered not only the area where the violations of the ozone NAAQS are occurring, but nearby areas which significantly contribute to such violations.

Proposed Action

As noted above, pursuant to section 107(d)(3) of the CAA, the EPA is authorized to initiate the redesignation of areas as nonattainment for ozone. Based on the ozone air quality monitoring data for the Sunland Park monitoring station, the EPA notified the Governor of New Mexico on December 16, 1994, that the Sunland Park area should be redesignated from unclassifiable/attainment to nonattainment for the ozone NAAQS. Ozone monitoring began in Sunland Park on June 15, 1992. Seven measured

[1] The EPA has construed the definition of nonattainment area to require some material or significant contribution to a violation in a nearby area. The Agency believes it is reasonable to conclude that something greater than a molecular impact is required.

exceedances of the ozone NAAQS have been recorded at the monitoring site, ranging from a low of .126 parts per million (ppm) to a high of .140 ppm. The seven exceedances represent a violation of the ozone NAAQS [see 40 Code of Federal Regulations (CFR) 50.9]. Since less than three years of data have been collected at the Sunland Park monitoring site, the EPA design value (used to determine ozone attainment status) for the site is the third highest ozone value recorded—.136 ppm. Therefore, the Sunland Park ozone nonattainment area would be classified as a marginal ozone nonattainment area according to the classification scheme set forth in section 181 of the CAA. Due to the marginal classification, the attainment date for the Sunland Park ozone nonattainment area would be three years from the effective date of the **Federal Register** final action establishing the nonattainment designation and classification.

In response to the EPA's December 16, 1994, letter, on January 30, 1995, the Governor of New Mexico concurred with the EPA that a small area of southern Dona Ana County, including Sunland Park, be redesignated as nonattainment for the ozone NAAQS. However, the Governor did not concur with the proposed nonattainment boundaries in one respect, proposing an alternate western boundary for the nonattainment area. Based on the information provided by the Governor, including monitoring data, the EPA believes that the nonattainment boundaries submitted by the Governor are appropriate. The table below indicates how the EPA is proposing to revise the ozone designation for a portion of Dona Ana County, New Mexico in 40 CFR 81.332 from unclassifiable/attainment to nonattainment.

NEW MEXICO—OZONE

Designated area	Designation		Classification	
	Date	Type	Date	Type
Dona Ana County (part)—The area bounded by the New Mexico-Texas State line on the east, the New Mexico-Mexico international line on the south, the Range 3E-Range 2E line on the west, and the N3200 latitude line on the north.	Proposing	Nonattainment	Proposing	Marginal.

The technical information supporting the redesignation request and the boundary selections are available for public review at the address indicated above.

Significance of Proposed Action for the Sunland Park Area, New Mexico

If the Sunland Park area of southern Dona Ana County, New Mexico, is redesignated nonattainment, such area will be classified as a marginal ozone nonattainment area at the time of the designation (see section 181(b)(1) of the CAA). Within 24 months after the effective date of the final action on this proposal of the nonattainment redesignation, New Mexico must submit an implementation plan meeting the requirements of part D, title I of the CAA (see section 182(a) of the CAA).

The CAA provides that the plan for the area must contain, among other things, the following items:

1. A comprehensive, accurate, current inventory of actual emissions from all sources, as described in section 172(c)(3) of the CAA, in accordance with guidance provided by the EPA. The pollutants inventoried must include volatile organic compounds (VOC), nitrogen oxides (NO_x) and carbon monoxide. No later than the end of each three year period after submission of the initial inventory, until the area is redesignated to attainment, the State must submit a revised inventory meeting all EPA requirements (see section 182(a)(1) of the CAA).

2. Requirements that the owner or operator of each stationary source of NO_x or VOC provide the State with a statement, in such form as the EPA may prescribe, for classes or categories of sources, showing the actual emissions of NO_x and VOC from that source. The first such statement must be submitted to the State within three years after the date of publication of the action establishing the nonattainment designation. Subsequent statements shall be submitted at least every year thereafter. The statement shall contain a certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement. The State may waive the emission statement requirement for any class or category of stationary sources which emits less than 25 tons per year of VOC or NO_x, if the State, in its initial and periodic emission inventories, provides an inventory of emissions from such class or category of sources, based on the use of the emission factors established by the EPA, or other methods acceptable to the EPA (see section 182(a)(3)(B) of the CAA).

3. A revised nonattainment new source review permitting program meeting the requirements of sections 172(c)(5) and 173 of the CAA, including the requirement that the ratio of total emission reductions of VOC to total increased emissions of such air pollutant shall be at least 1.1 to 1 (see section 182(a)(4) of the CAA).

4. Revised conformity rules (Regulations 20 NMAC 2.98 and 20 NMAC 2.99) if necessary (see sections 176 and 182 of the CAA).

Request for Public Comments

The EPA is, by this action, proposing that the ozone designation for a portion of Dona Ana County, New Mexico, be revised. The EPA is requesting public comments on all aspects of this proposal including the appropriateness of the proposed designation and the scope of the proposed boundaries. Public comments must be submitted to the EPA at the address identified in **ADDRESSES** by May 8, 1995.

Miscellaneous

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 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.

Redesignation of an area to nonattainment under section 107(d)(3) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the planning status of a geographical area and does not, in itself, impose any regulatory requirements on sources. To the extent that the area must adopt new regulations, based on its nonattainment status, the EPA will review, as

appropriate, the effect of those actions on small entities at the time the State submits those regulations. I certify that approval of the redesignation request will not affect a substantial number of small entities.

Executive Order

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7407, 7501–7515, 7601.

Dated: March 30, 1995.

Jane N. Saginaw,

Regional Administrator.

[FR Doc. 95–8603 Filed 4–6–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

RIN 3067–AC34

Standard Hazard Determination Form

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: FEMA is developing a standard form for determining whether a structure is located within an identified Special Flood Hazard Area (SFHA) and whether flood insurance may be required and is available. Use of this form will ensure that required flood insurance coverage is purchased for buildings located in an SFHA, and will assist federal entities for lending regulation in assuring compliance with these purchase requirements.

DATES: We invite your comments on this proposed form, which should be submitted on or before May 8, 1995.

ADDRESSES: Send written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (facsimile) (202) 646–4536.

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, or by facsimile at (202) 646–4596 (not toll-free calls).

SUPPLEMENTARY INFORMATION: Section 102(b) of the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994 (NFIRA) (42 U.S.C. 4012a(b)), requires that federally regulated lending institutions and federal agency lenders review the National Flood Insurance Program map for the community in which they are contemplating making, increasing, extending, or renewing any loan secured by improved real estate to determine whether the property is located in an identified Special Flood Hazard Area, and if so, require the purchase of flood insurance for the building or mobile home. Section 528 of the NFIRA (42 U.S.C. 1365(a)) directs that FEMA ''shall develop a standard form for determining, in the case of a loan secured by improved real estate or a mobile home, whether the building or mobile home is located in an area identified by the Director [of FEMA] as an area having special flood hazards and in which flood insurance under this title is available.'' The purpose of the form is to determine whether a structure is located within an identified Special Flood Hazard Area (SFHA) and whether flood insurance may be required and is available. Use of this form will ensure that required flood insurance coverage is purchased for buildings located in an SFHA, and will assist federal entities for lending regulation in assuring compliance with these purchase requirements.

Section 528(c) of the NFIRA (42 U.S.C. 1365(c)) requires that federal entities for lending regulation shall by regulation require the use of this form by regulated lending institutions. Each federal agency lender shall also, by regulation, provide for the use of the form with respect to any loan made by such federal agency lender. The Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation and the Government National Mortgage Association shall require the use of the form with respect to any loan purchased by such entities. Rules specifying the use of this form will be published separately by these federal agencies. However, as required by the NFIRA, FEMA is presenting the form itself in this proposed rule to provide an opportunity for review and comment.

The NFIRA also directs FEMA to consult with representatives of the mortgage and lending industry, the federal entities for lending regulation, the federal agency lenders and any other appropriate individuals in developing this form. Before publishing this proposed rule, FEMA held an informal 30-day review period. We provided a copy of a two-page draft standard hazard determination form to over 400 individuals, agencies and groups representing the following interests: Federal entities for lending regulation, federal agency lenders, government-sponsored enterprises for housing, lenders, insurance agents, flood zone determination companies, attorneys, trade associations, professional surveyors and engineers, and floodplain managers. We received a total of 74 comments by February 16, 1995. The breakdown of respondents is as follows: Seven federal entities for lending regulation, federal agency lenders, and government-sponsored entities for housing; 10 lenders; 14 insurance agents; 12 flood zone determination companies; nine associations representing bankers, credit unions, floodplain managers, and surveyors; one engineering firm; one software corporation; five state/local floodplain managers; and 15 other individuals.

There were several recurring themes in the comments, which have been addressed in the current version of the form. The focus of the form has been significantly narrowed. Much extraneous information has been deleted and the form has been shortened to one page. We prepared a one-page set of instructions to accompany the form. The instructions refer to the source for obtaining information needed to complete the form. All references to ''property'' have been replaced with ''building/mobile home.'' An entry for the amount of flood insurance required by the lender has been included. The amount of space available for the property address has been enlarged. The sections of the form have been streamlined, and the lender information is clearly separated from the determination section. Some sections of the form may be left blank, depending on the determination. Additional space was provided for comments and for the preparer's information.

We received many comments regarding the availability of the form in an electronic format. The NFIRA states that the form may be used in a printed, computerized, or electronic manner. Once finalized, the form will be made available by FEMA in an electronic format. We anticipate that a standard format common to all potential users will be employed for this electronic version.

Some of the questions we received during the informal review period related to use of the form, for example: will the form content be mandatory or will the use of the form be mandatory? Section 528(c) of the NFIRA (42 U.S.C. 1365(c)) mandates that

''Federal entities for lending regulation shall by regulation require the use of the form under this section by regulated lending institutions. Each

Federal agency lender shall by regulation provide for the use of the form with respect to any loan made by such Federal agency lender. The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation and the Government National Mortgage Association shall require the use of the form with respect to any loan purchased by such entities.'' The federal entities for lending regulation, federal agency lenders, and government-sponsored entities for housing will establish the regulations and guidelines regarding the use of the form later.

We also received comments regarding review of determinations by FEMA, outlined in Section 524 of the NFIRA. We anticipate publishing a proposed rule for these procedures soon.

National Environmental Policy Act

This proposed rule would be 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 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 it would not be expected (1) to have significant secondary or incidental effects on a substantial number of small entities, nor (2) to create any additional burden on small entities. Moreover, establishing the Standard Hazard Determination Form is required by the National Flood Insurance Reform Act of 1994, 42 U.S.C. 4012a. A regulatory flexibility analysis has not been prepared.

Regulatory Planning and Review

This proposed rule would not be a significant regulatory action under Executive Order 12866 of September 30, 1994, Regulatory Planning and Review, 58 FR 51735. To the extent possible this proposed rule adheres to the principles of regulation as set forth in Executive Order 12866. This proposed rule has not been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866.

Executive Order 12612, Federalism

This proposed rule would involve no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987. Executive Order 12778, Civil Justice Reform. This proposed rule would meet the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is proposed to be amended as follows:

PART 65—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

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

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Section 65.16 is added to read as follows:

§ 65.16 Standard Hazard Determination (Flood Hazards) Form and Instructions.

Section 528 of the National Flood Insurance Reform Act of 1994 (42 U.S.C. 1365(a)) directs that FEMA ''shall develop a standard form for determining, in the case of a loan secured by improved real estate or a mobile home, whether the building or mobile home is located in an area identified by the Director as an area having special flood hazards and in which flood insurance under this title is available.'' The purpose of the form is to determine whether a structure is located within an identified Special Flood Hazard Area (SFHA) and whether flood insurance may be required and is available. Use of this form will ensure that required flood insurance coverage is purchased for buildings located in an SFHA, and will assist federal entities for lending regulation in assuring compliance with these purchase requirements. The Standard Hazard Determination (Flood Hazards) form and accompanying instructions are found below in Appendix A to Part 65.

3. Appendix A to Part 65 is added at the end of Part 65 as follows:

Appendix A to Part 65—Federal Emergency Management Agency, Standard Hazard Determination (Flood Hazards) Form and Instructions.

BILLING CODE 6718–03–P

FEDERAL EMERGENCY MANAGEMENT AGENCY **STANDARD HAZARD DETERMINATION (FLOOD HAZARDS)**	*See The Reverse Side For Instructions*	*O.M.B. No. 3067-XXXX Expires*

PAPERWORK BURDEN DISCLOSURE NOTICE

Public reporting burden for this form is estimated to average 20 minutes per response. The burden estimate 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 the accuracy of the burden estimate and any suggestions for reducing the burden to: Information Collections Management, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20742; and to the Office of Management and Budget, Paperwork Reduction Project (30676- XXXX), Washington, DC 20503.

SAMPLE FORM

NOTE: This form meets the requirements of Section 1365 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4012a.
Exceptions: This form is not required for loans for which either the outstanding principal balance or the value of the building is $5000 or less, and the repayment term is 1 year or less.

SECTION I - TO BE COMPLETED BY LENDER

1. LENDER NAME	2. LENDER ID. NO.	3. LOAN NO.	4. DATE OF LOAN

5. COLLATERAL *(Building/Mobile Home)* PROPERTY ADDRESS OR LEGAL DESCRIPTION	6. AMOUNT OF REQUIRED FLOOD INSURANCE *(The lesser of the principal balance of the loan or the value of the building)*

SECTION II - TO BE COMPLETED BY PERSON MAKING DETERMINATION

A. DETERMINATION

IS BUILDING/MOBILE HOME IN SPECIAL FLOOD HAZARD AREA (ZONES BEGINNING WITH LETTERS "A" OR "V")? ☐ **YES** ☐ **NO**

If yes, flood insurance may be required by the Flood Disaster Protection Act of 1973. Parts B-F must be completed.
If no, flood insurance is not required. Parts B, C, F must be completed.

B. COMMUNITY JURISDICTION

Community Name	County(ies)	State	Community Number

C. NATIONAL FLOOD INSURANCE PROGRAM (NFIP) DATA AFFECTING BUILDING/MOBILE HOME

Map Number or Community-Panel Number (Community name, if not the same as "B")	Map Panel Effective/Revised Date	LOMA/LOMR	Flood Zone	No NFIP Map
		___Yes ___No Date:		

SAMPLE FORM

D. FEDERAL FLOOD INSURANCE AVAILABILITY

☐ Federal Flood insurance is available *(community participates in NFIP)*.
☐ Federal Flood insurance is not available because
- ☐ Community is not participating in the NFIP
- ☐ Building/Mobile Home is in a Coastal Barrier Resources Area (CBRA) and was built or substantially improved after the CBRA designation date.

E. COMMENTS *(Optional)*:

This determination is based on examining the NFIP map, any Federal Emergency Management Agency revisions to it, and any other information affecting this building as necessary to locate the building/mobile home on the NFIP map.

F. PREPARER'S INFORMATION

DETERMINATION PERFORMED BY	DATE PREPARED
COMPANY NAME AND ADDRESS	TELEPHONE NUMBER

FEMA Form 81-93, FEB 95

BILLING CODE 6718–03–C

Standard Hazard Determination (Flood Hazards) Instructions

Section I

2. Lender ID. No.: FDIC-ensured lenders should indicate their FDIC Insurance Certificate Number; Federally-insured credit unions should indicate their charter/insurance number; Farm Credit institutions should indicate their UNINUM number.

5. The lender should attach legal property description only if space provided is insufficient. Describe the property in sufficient detail to locate the specific building or mobile home accurately; a postal address in a rural area may be sufficient.

Section II

A. Determination: Self-explanatory.

B. Community Jurisdiction. The 6-digit National Flood Insurance Program (NFIP) community number can be determined by consulting the NFIP Community Status Book or can be found on the NFIP map; copies of either can be obtained by calling 1–800–xxx–xxxx. For areas that may have been annexed by one community but are shown on another community's NFIP map, the Community Number for the community with land-use jurisdiction over the area should be used.

C. NFIP Data Affecting Building/Mobile Home. The information in this section (excluding the LOMA/LOMR information) is obtained by reviewing the NFIP map on which the building/mobile home is located. If no NFIP map exists, check the box under ''No NFIP Map''.

NFIP Maps. The current NFIP map, and a pamphlet titled ''Guide to Flood Maps'' (FEMA–258) may be obtained by calling 1–800–xxx–xxxx.

LOMAs and LOMRs. If a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) has been issued by FEMA since the current Map Panel Effective/Revised Date that revises the flood hazards affecting the building or mobile home, check ''yes'' and specify the date of the letter; otherwise, check ''no''. Information on LOMAs and LOMRs is available from the following sources:

1. The community's official copy of its NFIP map should have a copy of all subsequently-issued LOMAs and LOMRs attached to it.

2. For LOMAs and LOMRs issued on or after October 1, 1994, FEMA publishes a list of these letters twice a year as a compendium in the **Federal Register;** a subscription service providing actual copies of these letters semi-monthly is also available. To inquire about these two services, all 1–800–xxx–xxxx.

3. Information about most LOMAs and LOMRs issued since 1983 nationwide is contained in FEMA's Community Information System. An electronic listing may be requested, and may be limited to specific communities or states, if desired. For information on this service, call 1–800–xxx–xxxx.

D. Federal Flood Insurance Availability. To obtain Federal flood insurance, provide a copy of this completed form to an insurance agent. Federal flood insurance is available to all residents of a community that participates in the NFIP. Community participation status can be determined by consulting the NFIP Community Status Book. Federal flood insurance is prohibited in designed Coastal Barrier Resources Areas (CBRAs) for buildings or mobile homes built or substantially improved after the date of the CBRA designation. An information sheet explaining CBRAs may be obtained by calling 1–800–xxx–xxxx.

E. Comments. This form only requires a determination regarding a single building's or mobile home's relation to a specific Flood Hazard Area. If the person making the determination wishes to add additional information regarding flood hazards (such as the property's location with respect to floodways, etc.), he or she may do here.

F. Preparer's Information. Self-explanatory.

Other Information

Multiple Buildings. Use a separate form for each building or mobile home. A separate flood insurance policy is required for each building or mobile home.

Guarantees regarding information. Determinations on this form made by persons other than the lender are acceptable only to the extent that the accuracy of the information is guaranteed.

Dated: March 30, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–8343 Filed 4–6–95; 8:45 am]

BILLING CODE 6718–03–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2544

Solicitation and Acceptance of Donated Property and Services

AGENCY: Corporation for National and Community Service.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Corporation for National Service (the Corporation) is issuing uniform rules and regulations regarding the solicitation and acceptance or rejection of property and services. Pursuant to the National and Community Service Act of 1990, as amended, the Corporation has the authority to solicit and accept donations. The Corporation is adopting these rules and regulations to eliminate the possibility of confusion for individuals who wish to donate property or services to the Corporation. In addition, the Corporation wants to insure that no situations arise involving a real or apparent conflict of interest with respect to a donation or an individual or group who offers a donation.

DATES: Comments on the proposed regulations must be received no later than May 8, 1995.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Stewart Davis, Office of the General Counsel, The Corporation for National Service, 1201 New York Ave., N.W., Washington D.C., 20525

FOR FURTHER INFORMATION CONTACT: Stewart Davis, Office of the General Counsel, The Corporation for National Service, 1201 New York Ave., N.W., Washington D.C., 20525. (202) 606–5000 x. 265.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

The Corporation invites written comments on the text of the proposed regulations and requests that the comments identify the specific regulatory provisions to which they relate.

Miscellaneous Requirements

The Corporation has determined that this is not a ''significant regulatory action'' within the meaning of Executive Order 12866 and accordingly this rule has not been reviewed by the Office of Management and Budget. This rule will not have a substantial impact on a significant number of small entities, thus a regulatory flexibility analysis has not been prepared pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Because this rule does not involve collection of information or impose record keeping requirements, the Paperwork Reduction Act of 1980 does not apply. The agency has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment pursuant to Executive Order 12612. In addition, the Agency has determined that implementation of this action will not have any significant impact on the quality of the human environment pursuant to the National Environmental Policy Act.

List of Subjects in 45 CFR Part 2544

Administrative practice and procedure, Gifts to government, Government property.

Dated: April 3, 1995.

Terry Russell,

General Counsel, Corporation for National Service.

Accordingly, as set forth in the preamble, the Corporation proposes to amend title 45, chapter XXV of the Code of Federal Regulations by adding part 2544 to read as follows:

PART 2544—SOLICITATION AND ACCEPTANCE OF DONATIONS

Sec.

Authority: 42 U.S.C. 12501 *et seq.*

§ 2544.100 What is the purpose of this part?

This part establishes rules to ensure that the solicitation, acceptance, holding, administration, and use of property and services donated to the Corporation:

(a) Will not reflect unfavorably upon the ability of the Corporation or its officers and employees, to carry out their official duties and responsibilities in a fair and objective manner; and

(b) Will not compromise the integrity of the Corporation's programs or its officers and employees involved in such programs.

§ 2544.105 What is the legal authority for soliciting and accepting donations to the Corporation?

Section 196(a) of the National and Community Service Act of 1990, as amended (42 U.S.C. 12651g(a)).

§ 2544.110 What definitions apply to terms used in this part?

(a) *Donation* means a transfer of money, property, or services to or for the use of the Corporation by gift, devise, bequest, or other means.

(b) *Solicitation* means a request for a donation.

(c) *Volunteer* means an individual who donates his/her personal service to the Corporation to assist the Corporation in carrying out its duties under the national service laws, but who is not a participant in a program funded or sponsored by the Corporation under the National and Community Service Act of 1990, as amended. Such individual is not subject to provisions of law related to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation and Federal employee benefits, except that—

(1) Volunteers will be considered Federal employees for the purpose of the tort claims provisions of 28 U.S.C. chapter 171;

(2) Volunteers will be considered Federal employees for the purposes of 5 U.S.C. chapter 81, subchapter I, relating to compensation to Federal employees for work injuries; and

(3) Volunteers will be considered special Government employees for the purpose of ethics and public integrity under the provisions of 18 U.S.C. chapter 11, part I, and 5 CFR chapter XVI, subchapter B.

(d) *Inherently governmental function* means any activity that is so intimately related to the public interest as to mandate performance by an officer or employee of the Federal Government, including an activity that requires either the exercise of discretion in applying the authority of the Government or the use of value judgment in making a decision for the Government.

§ 2544.115 Who may offer a donation?

Anyone, including an individual, group of individuals, organization, corporation, or association may offer a donation to the Corporation.

§ 2544.120 What personal services from a volunteer may be solicited and accepted?

A donation in the form of personal services from a volunteer may be solicited and accepted to assist the Corporation in carrying out its duties. However, volunteers may not perform an inherently governmental function.

§ 2544.125 Who has the authority to solicit and accept or reject a donation?

The Chief Executive Officer (CEO) of the Corporation has the authority to solicit, accept, or reject a donation offered to the Corporation and to make the determinations described in § 2544.130 (c) and (d). The CEO may delegate this authority in writing to other officials of the Corporation.

§ 2544.130 How will the Corporation determine whether to solicit or accept a donation?

(a) The Corporation will solicit and accept a donation only for the purpose of furthering the mission and goals of the Corporation.

(b) In order to be accepted, the donation must be economically advantageous to the Corporation, considering foreseeable expenditures for matters such as storage, transportation, maintenance, and distribution.

(c) An official or employee of the Corporation will not solicit or accept a donation if the solicitation or acceptance would present a real or apparent conflict of interest. An apparent conflict of interest is presented if the solicitation or acceptance would raise a question in the mind of a reasonable person, with knowledge of the relevant facts, about the integrity of the Corporation's programs or operations.

(d) The Corporation will determine whether a conflict of interest exists by considering any business relationship, financial interest, litigation, or other factors that may indicate such a conflict. Donations of property or voluntary services may not be solicited or accepted from a source which:

(1) Is a party to a grant or contract with the Corporation or is seeking to do business with the Corporation;

(2) Has pecuniary interests that may be substantially affected by performance or nonperformance of the Corporation; or

(3) Is an organization a majority of whose members are described in paragraphs (d) (1) and (2) of this section.

(e) Any solicitation or offer of a donation that raises a question or concern of a potential, real, or apparent conflict of interest will be forwarded to the Corporation's Designated Ethics Official for an opinion.

§ 2544.135 How should an offer of a donation be made?

(a) In general, an offer of donation should be made by providing a letter of tender that offers a donation. The letter should be directed to an official authorized to accept donations, describe the property or service offered, and specify any purpose for, or condition on, the use of the donation.

(b) If an offer is made orally, the Corporation will send a letter of acknowledgment to the offeror. If the donor is anonymous, the Corporation will prepare a memorandum to the file acknowledging receipt of a tendered donation and describing the donation including any special terms or conditions.

(c) Only those employees or officials with expressed notice of authority may accept donations on behalf of the Corporation. If an offer is directed to an unauthorized employee or official of the Corporation, that person must immediately forward the offer to an appropriate official for disposition.

§ 2544.140 How will the Corporation accept or reject an offer?

(a) In general, the Corporation will respond to an offer of a donation in writing and include in the response:

(1) An acknowledgment of receipt of the offer;

(2) A brief description of the offer and any purpose or condition that the offeror specified for the use of the donation;

(3) A statement either accepting or rejecting the donation; and

(4) A statement informing the donor that any acceptance of services or property can not be used in any manner, directly or indirectly, that endorses the donor's products or services or appears to benefit the financial interests or business goals of the donor.

(b) If a purpose or condition for the use of the donation specified by the offeror can not be accommodated, the Corporation may request the offeror to modify the terms of the donation.

§ 2544.145 What will be done with property that is not accepted?

In general, property offered to the Corporation but not accepted will be returned to the offeror. If the offeror is unknown or the donation would spoil if returned, the property will either be disposed of in accordance with Federal Property Management regulations or given to local charities determined by the Corporation.

§ 2544.150 How will accepted donations be recorded and used?

(a) All accepted donations of money and other property will be reported to the Chief Financial Officer (CFO) of the Corporation for recording and appropriate disposition.

(b) All donations of personal services of a volunteer will be reported to the CFO and to the Personnel Division of the Corporation for processing and documentation.

(c) Donations not designated for a particular purpose will be used for an authorized purpose described in § 2544.125(a).

(d) Property will be used as nearly as possible in accordance with the terms of the donation. If no terms are specified, or the property can no longer be used for its original purpose, the property will be converted to another authorized use or sold in accordance with Federal regulations. The proceeds of the sale will be used for an authorized purpose described in § 2544.125(a).

[FR Doc. 95–8517 Filed 4–6–95; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Chapter II

[Docket No. R–159]

Presidential Review of Regulations

AGENCY: Maritime Administration, DOT.

ACTION: Notice of public meetings; request for comments.

SUMMARY: The Maritime Administration (MARAD) will conduct two public meetings, in New Orleans, Louisiana, and Norfolk, Virginia, to provide the public an opportunity to comment on MARAD's regulations and regulatory process. Comments are sought concerning proposed changes to MARAD's regulations that would make them more precise, less burdensome or more flexible.

DATES: The meeting in New Orleans will be held on April 26, 1995, from 1:00 p.m. to 4:00 p.m. The meeting in Norfolk will be held on April 27, 1995, from 1:00 p.m. to 4:00 p.m. Written material may be submitted either at the meeting or at a later date. Anyone wishing to submit material prior to either meeting, for discussion at that meeting, should deliver that material to MARAD no later than three days before the meeting. Written comments must, in any event, be submitted not later than April 27, 1995.

ADDRESSES: The New Orleans, Louisiana, meeting will be held in the Elmwood Tower, Room 115, Elmwood Park Boulevard, Jefferson, LA. The Norfolk, Virginia, meeting will be held in the Virginia Port Authority, Board Room, 600 World Trade Center, 6th Floor. Written comments may be mailed to the Secretary, Maritime Administration, Department of Transportation, Room 7210, 400 7th Street, S.W., Washington, DC 20590, or may be delivered to the same address between 8:30 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. Comments will become part of this Docket and will be available for inspection or copying at the above address during the specified time period.

FOR FURTHER INFORMATION CONTACT: Joan M. Bandareff, Chief Counsel, Maritime Administration, Department of Transportation, Room 7230, 400 7th Street, S.W., Washington, DC 20590. Telephone Number: (202) 366–5711.

SUPPLEMENTARY INFORMATION: The President recently announced a Regulatory Reinvention initiative. Under this initiative, agencies are directed to review their regulations, improve their enforcement efforts to focus on results, not punishment; meet with the people affected by their regulations; and substantially increase their efforts to promote consensual rulemaking.

In reviewing its existing regulations, MARAD will be focusing primarily on regulations implementing the administration of its financial assistance and other promotional programs to identify those that may be obsolete, require clarification or should be revised to reduce the economic impact on the affected public, while allowing MARAD to effectuate the intended purpose of the programs in the most efficient manner. Attendance at each meeting is open to the public, who may make oral presentations during the meeting.

Dated: April 4, 1995.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 95–8663 Filed 4–6–95; 8:45 am]

BILLING CODE 4910–81–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[CC Docket No. 87–266; FCC 94–269]

Telephone Company-Cable Television Cross-Ownership Rules

AGENCY: Federal Communications Commission.

ACTION: Public Notice seeking comment in connection with the Fourth Further Notice of Proposed Rulemaking.

SUMMARY: In a Public Notice in Common Carrier Docket 87–266, the Common Carrier Bureau and the Cable Services Bureau requested information and comment on the possible grant of blanket Section 214 authorizations.

DATES: Comments must be submitted on or before April 21, 1995. Reply comments are due on May 1, 1995.

ADDRESSES: Comments and reply comments may be mailed to the Office of the Secretary, Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554. A copy of each filing should also be filed with Peggy Reitzel of the Common Carrier Bureau, and James Yancey of the Cable Services Bureau.

FOR FURTHER INFORMATION CONTACT: Mindy J. Ginsburg, (202) 418–1591, Common Carrier Bureau, Policy and Program Planning Division, and Larry

Walke, (202) 416–0847, Cable Services Bureau.

SUPPLEMENTARY INFORMATION: This is Public Notice, DA 95–665, in Common Carrier Docket 87–266: Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54–63.58, released April 3, 1995. The complete text of this Public Notice is available for inspection and copying, Monday through Friday, 9:00 a.m.–4:30 p.m., in the FCC Reference Room (Room 239), 1919 M Street NW., Washington, D.C. 20554. The complete text of the Public Notice may also be purchased from the Commission's copy contractor, International Transcription Services, 2100 M Street NW., Suite 140, Washington D.C. 20037, (202) 857–3800.

Supplemental Comments Sought on Possible Grant of Blanket Section 214 Authorization

Released: April 3, 1995.

As announced on March 17, 1995, any telephone company against whom the Commission is not enforcing the cable television/telephone company cross-ownership ban need not obtain a waiver of the ban from the Commission in order to construct or acquire a cable television system within its local service area. See Public Notice, DA 95–520, March 17, 1995; and Correction, DA 95–722, April 3, 1995. See also 47 U.S.C. 533(b). A telephone company must, however, continue to obtain from the Commission a certificate of public convenience and necessity under Section 214 of the Communications Act before constructing or acquiring a cable television system within its local service area. See C.F.R. §§ 63.01, 63.08, and 63.09. See generally *General Telephone Company of the Southwest* v. *United States*, 449 F.2d 846 (5th Cir. 1971).

This Public Notice seeks supplemental comments to assist the Commission in reviewing the record in response to the Fourth Further Notice of Proposed Rulemaking, FCC 95–20, CC Docket No. 87–266 (released January 20, 1995) (60 FR 8996, February 16, 1995). By this Public Notice, the Common Carrier Bureau and the Cable Services Bureau seek supplemental comment on whether any telephone company against whom the Commission is not enforcing the cable television/telephone company cross-ownership ban should be granted blanket Section 214 authorization to construct or acquire a cable television system within its local service area, and, if so, how the relevant rules should be amended. The Bureaus also seek supplemental comment on whether such blanket Section 214 authorization should apply both when the cable television facility is used also to provide telephone services, and when the facility is used to provide only cable television services. Furthermore, comment is sought on what, if any, other circumstances warrant granting consideration of such blanket Section 214 authorization when a telephone company provides video programming in its service area, on any other methods for streamlining the Section 214 applications process, and on how the relevant rules should be amended. See, e.g., Blanket Section 214 Authorization for Provision by a Telephone Common Carrier of Lines for its Cable Television and Other Non-Common Carrier Services Outside its Telephone Service Area, 49 FR. 21333 (1984). While comments may already have been filed on these issues, we believe that the record would be enhanced by providing an opportunity for supplemental comment.

Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. 1.415 and 1.419, inserted parties may file comments on or before April 21, 1995 and reply comments on or before May 1, 1995. To file formally in this proceeding, parties must file an original and four copies of all comments, reply comments, and supporting comments. Parties wanting each Commissioner to receive a personal copy of their comments must file an original plus nine copies. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. In addition, parties should file two copies of any such pleadings, one with the Policy and Program Planning Division, Common Carrier Bureau, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and the other with the Policy and Rules Division, Cable Services Bureau, Room 408C, 2033 M Street, N.W., Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 (202/857–3800). Comments and reply comments will be available for public inspection regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C.

By the Chief, Common Carrier Bureau, and Chief, Cable Services Bureau.

For further information contact: Mindy J. Ginsburg (202) 418–1580 (Common Carrier Bureau) or Larry Walke (202) 416–0800 (Cable Services Bureau).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–8701 Filed 4–6–95; 8:45 am]

BILLING CODE 6712–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Chapter 5

RIN 3090–AF68

Implementation Plan for Section 1555 of the Federal Acquisition Streamlining Act of 1994; Cooperative Purchasing

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice and request for comments.

SUMMARY: The General Services Administration (GSA) requests comments on its proposed plan for implementing Section 1555 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) which deals with Cooperative Purchasing. GSA is particularly interested in receiving comments on the level of interest on the part of State and local governments in using Federal supply schedules and in identifying the schedules which are of greatest interest. Any comments on or suggestions regarding the determination not to make FSC 65 I B, Drugs and pharmaceutical products and FSC 65 VII, Medical equipment and supplies available for use by non-Federal users or other aspects of the proposed implementation plan are also welcome. Section 1555 amends subsection (b) of section 201 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481) to authorize the Administrator of General Services to provide for use of Federal supply schedules of the GSA upon request by a State, any department or agency of a State, and any political subdivision of a State, including a local government, the Commonwealth of Puerto Rico, and the government of an Indian tribe (as defined in section 4(e) of the Indian self-determined and Education Assistance Act (25 U.S.C. 450b(e)). The Administrator is also authorized to require the authorized entities to reimburse the Federal Government for any administrative costs of using the schedules.

DATES: Comments on the proposed implementation plan shall be submitted June 6, 1995, to be considered in the formulation of the final implementation plan.

ADDRESSES: Interested parties should submit written comments to Ms. Marjorie Ashby, General Services Administration, Office of GSA Acquisition Policy, 18th and F Streets N.W., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Les Davison, Office of GSA Acquisition Policy, (202) 501–1224.

SUPPLEMENTARY INFORMATION:

Proposed Cooperative Purchasing Program Implementation Plan

1. *Purpose.* This plan outlines the General Services Administration's plan for implementing Section 1555 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) which authorizes cooperative purchasing.

2. *Background.* Section 1555 amends subsection (b) of section 201 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481) to authorize the Administrator of General Services to provide for use of Federal supply schedules of the GSA upon request by a State, any department or agency of a State, and any political subdivision of a State, including a local government, the Commonwealth of Puerto Rico, and the government of an Indian Tribe (as defined in section 4(e) of the Indian self-determination and Education Assistance Act (25 U.S.C. 450b(e)). The Administrator is also authorized to require the authorized entities to reimburse the Federal Government for any administrative costs of using the schedules.

The Federal supply schedule program, which is directed and managed by GSA, provides Federal agencies with a simplified process of acquiring commonly used supplies and services in varying quantities while obtaining discounts associated with volume buying. Using competitive procedures, indefinite delivery contracts are awarded under the program to commercial firms to provide supplies and services at stated prices for given periods of time. The contracting office makes publications entitled Federal supply schedules available in either printed or electronic form. These schedules contain the information needed by ordering activities for obtaining catalogs and price lists from contractors and placing orders with the contractors. Contractors publish and distribute contract pricelists to ordering activities that contain detailed marketing information regarding the products or services offered by the contractor, ordering information, service, warranties, etc. Under the schedules program, ordering activities issue delivery orders directly to the contractors, receive shipments, and provide contract administration on their individual orders. Although GSA awards most Federal supply schedule contracts, GSA may authorize other agencies to award schedule contracts and publish schedules; e.g., the Department of Veterans Affairs awards schedule contracts for certain medical and non-perishable subsistence items.

3. *Definition.* ''Federal supply schedule'', as used in this plan, means both single award and multiple award schedules awarded by GSA's Federal Supply Service and Information Technology Service as well as schedules awarded by other Federal agencies pursuant to a delegation of authority from GSA (e.g., Department of Veterans Affairs).

4. *Description of various types of schedules.*

a. *Single-award schedules.* These schedules cover specific products at stated prices under contracts with one supplier for delivery to a geographical area as defined in the schedule. The majority of items included in this type of schedule are commercial items described by Federal specifications or Commercial Item Descriptions. Most of these schedules contain all information necessary for placing orders. Some specify that contractors prepare brochures containing additional ordering information, usually dealing with choices of fabric, colors, and similar variables.

b. *Multiple-award schedules.* These schedules cover contracts awarded to more than one supplier for the same generic types of supplies or services at varying prices, terms and conditions for delivery directly to the ordering activity. Schedule users are provided the opportunity to fill their requirements with the item having the features which meet their needs and that represents the best value at the lowest overall cost. Many of the schedules are established for a multi-year period. All multiple award schedule contractors are required to prepare and distribute catalogs/price lists which must be used with the schedule when preparing orders.

Multiple award schedules are awarded in accordance with the Competition in Contracting Act and are competitive in that participation in the program has been open to all responsible sources. Orders are placed under contracts using procedures designed to result in the acquisition of the lowest overall cost alternative to meet the users needs.

5. *Supplies and services available through Federal supply schedule program.* A wide variety of commercial items are available on Federal supply schedules. Federal agencies place approximately 1.9 million orders valued at approximately $5.4 billion under approximately 7,000 schedule contracts each year. While many of the largest corporations hold schedule contracts, 75 percent of the schedule contracts are with small business concerns. Exhibit 1 provides a listing which identifies current Federal supply schedules and states whether the schedule is a single or multiple award schedule.

6. *Policy.* The General Services Administration intends to make schedules (except FSC 65 I B, Drugs and pharmaceutical products and FSC 65 VII, Medical equipment and supplies—invitro diagnostic substances, reagents, test kits and sets) available for use by a State, any department or agency of a State, and any political subdivision of a State, including a local government, the Commonwealth of Puerto Rico, and the government of an Indian tribe (as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) upon their request unless a determination is made by the Contracting Officer responsible for the applicable schedule that it is not appropriate to do so. Schedule contracts will only be established to meet the needs of Federal agencies. To the extent that eligible non-Federal users have a need for the same items or services, they will be authorized to use the schedule contracts. Individual schedule contractors will be able to elect whether or not to make the products or services on schedule available to non-Federal users such as State and local governments.

The Administrator of General Services has made a determination that it would not be in the interest of the Federal Government to make FSC 65 I B, Drugs and pharmaceutical products and FSC 65 VII, Medical equipment and supplies—invitro diagnostic substances, reagents, test kits and sets, available for use by non-Federal users. Certain unique statutory requirements (Pub. L. 102–585, Veterans Health Care Act of 1992) impacting the pricing and availability of products apply to FSC 65 I B and FSC 65 VII. These unique statutory requirements when combined with the cooperative purchasing provisions would have the unintended effect of increasing costs to the Federal users of the schedules. Therefore, these schedules will not be made available to non-Federal users.

7. *Procedure for requesting authorization to use Federal supply schedules.* GSA will ask each State and the Commonwealth of Puerto Rico to establish a point of contact for local

governments to work through in requesting authorization to use schedule contracts. This contact will serve as a clearinghouse to verify that the entity making the request is indeed either a department or agency of the State or Commonwealth or a political subdivision of the State (including local governments) or Commonwealth. GSA will use the list of entities recognized and eligible for funding and services from the Bureau of Indian Affairs which is published pursuant to 25 CFR part 83 to confirm eligibility of Indian tribes for purposes of providing authorization to use schedule contracts. (See 58 FR 54364–54369, October 21, 1993, for the list of entities.)

8. *Conditions for use of Federal supply schedules.* Organizations that are authorized to use schedule contracts will be required to agree to comply with all terms and conditions of the applicable schedule contract.

9. *Ordering.* Initially, authorized ordering activities will place orders directly with schedule contractors in accordance with ordering instructions provided in the schedule. In the future (within the next 3–5 years), GSA envisions all ordering activities, including State and local governments, placing orders electronically through an on-line system that will provide an electronic catalog of available products and prices and permit schedule users to actually place orders once they have selected the item(s) to be acquired. GSA will then electronically transmit the orders to schedule contracts with direct delivery of the items to the ordering activity.

10. *Standard terms and conditions of Federal supply schedule contracts.* GSA does not intend to establish special terms and conditions for individual States or local governments. The terms and conditions currently used in schedule contracts will only be revised to the extent necessary to recognize the potential for State and local governments, the Commonwealth of Puerto Rico and Indian tribes to use the schedule contracts. Use of schedule contracts will be optional for eligible non-Federal users. Interested parties may obtain a copy of typical terms and conditions included in schedule contracts by contacting the Office of GSA Acquisition Policy on (202) 501–1224 or submitting a written request to the address identified above. In addition, ordering activities should note that there may be some variations among the terms and conditions of different schedule contracts, to address concerns or issues that are unique to a particular schedule or an individual contract.

11. *Disputes.* All contracts under GSA's schedule program are subject to the Contract Disputes Act of 1978. Therefore, any disputes regarding orders placed by non-Federal entities will ultimately have to be resolved and/or litigated by the Federal agency awarding the schedule contract. In order to promote resolution of disputes early and without litigation, GSA intends to include a provision in schedule contracts that will require authorized ordering activities to agree to (a) attempt to use Alternative Dispute Resolution (ADR) procedures to resolve disputes with schedule contractors before referring the matter to the responsible Schedule Contracting Officer for issuance of a final decision which may be appealed to either the GSA Board of Contract Appeals or the U.S. Court of Federal Claims, (b) reimburse the GSA for any payments made on behalf of authorized users, whether by settlement agreement or by judgment, and (c) set-off against other Federal funds due to the non-federal entity to reimburse GSA for payments made to the permanent indefinite judgment fund.

Should GSA, for whatever reason, find itself in a position where a non-Federal entity will not pay GSA, GSA has additional controls. The first such control is the right of setoff. GSA would issue several demand letters to the non-Federal entity. If the entity refuses to pay GSA after the demand letters GSA would forward the matter to its finance office which would determine if GSA had other assets owing to the non-Federal entity. If so, GSA would offset the other amounts owed to the entity. If GSA did not have other funds owing to the non-Federal entity GSA would request other Federal entities to offset the amount owed GSA from the amount, for example, at the Department of Transportation (DOT) would owe the non-Federal entity. If the other agency, i.e., DOT was not willing to offset such funds, GSA could request that the General Accounting Office (GAO) look into the matter to determine whether GSA is correct and GAO would direct the Treasury Department's Financial Management Service to reprogram the funds accordingly.

If setoff is not a viable option, GSA will require, as a condition of a non-Federal entity's use of the schedule program, that the non-Federal entity agree to reimburse GSA for losses incurred by the entity or its subordinate entities. The effect of this agreement would be that the entity would in effect ''confess judgment'' for any amounts found by our Board of Contract Appeals (or the Court of Federal Claims or a settlement agreement) to be owing a contractor, including the cost of litigation. GSA would then press a collection action in state court based upon its agreement with the non-Federal plus the relevant board or court decision or settlement agreement. Pursuit of a collection/indemnification action in the State Claims Court would be performed by attorneys from the U.S. Department of Justice, or by GSA counsel, properly appointed as special assistants under the authority of 28 U.S.C. 515 and 543.

Both setoff and the ''confessed judgment'' arrangement would require that GSA have an agreement with the non-Federal entity to reimburse GSA for any costs incurred by GSA in trying, settling, or defending a case brought against GSA for breach of the terms of the schedule contract (such as payment of the contractor) caused by the non-Federal entity.

12. *Administrative fee for use of Schedules.* The Federal Acquisition Streamlining Act of 1994 authorizes the Administrator of GSA to require the authorized non-federal users of the schedule contracts reimburse GSA for any administrative cost for using the schedules. GSA is in the process of converting the Federal Supply Schedule Program which is currently funded through Congressional appropriations to an industrially funded operation. GSA will be converting all schedules to a full cost recovery program within the next 3 years. As schedules are converted to industrial funding the contracts will provide for recovery of an administrative charge or industrial funding fee. Schedule contractors price lists will reflect the administrative fee.

13. *Providing information on Cooperative Purchasing and on use of Federal supply schedules.* GSA will make information available for State and local governments interested in Cooperative Purchasing, and will work with professional associations to ensure widespread dissemination of that information. Training classes at the GSA Interagency Training Center will be available for employees of State and local governments to learn more about the GSA schedule program.

14. *Implementation dates.* Necessary changes in the GSA Acquisition Regulations (48 CFR Chapter 5) regarding the award of schedule contracts will also be made after notice and public comment. Existing schedule contracts will only be modified by mutual agreement of the parties to permit state and local governments and other authorized entities to begin placing orders. The necessary changes will be made and implementing regulations will be in place no later than

October 1, 1995, and may be issued earlier. GSA is also considering a phased implementation process which would bring the newly authorized non-Federal users on in stages. This will allow GSA to better manage the process to ensure a smooth transition for both schedule contractors and for the newly authorized users. GSA would welcome comments and/or suggestions on approaches to phasing the implementation process.

Dated: February 28, 1995.

Ida M. Ustad,

Associate Administrator for Acquisition Policy.

EXHIBIT 1

Schedule identification	Schedule title	Type of schedule
19 I	Small craft and marine equipment and floating marine barriers—boats, motors, and accessories ...	Multiple Award.
26 II A	Pneumatic highway tires, new and retread—passenger, emergency/pursuit, light truck, truck-bus ..	Single Award.
32 & 34	Woodworking and metalworking machinery and equipment—electric	Multiple Award.
36 II	Special industry machinery—lithographic printing plates, solutions and masters; printing, duplicating, and book-binding equipment; pulverizing, pulping, and shredding machines.	Multiple Award.
36 IV	Special Industry Machinery—copying equipment, supplies and services	Multiple Award.
37 II A	Lawn and garden equipment & cattle guards—lawn mowers, shredders, edgers, trimmers, rototillers, broadcasters, spreaders, sprayers, vacuums, sweepers, tractors, snow blowers/snow throwers, accessories, cattle guards.	Multiple Award.
38 I A	Road maintenance—clearing and cleaning equipment	Multiple Award.
39 II A	Material handling equipment—conveyors, hand-lift trucks and carts, warehouse trucks and tractors, pallets and pallet stacking frames.	Multiple Award.
39 II B	Material handling equipment—forklifts: electric, gasoline, diesel	Multiple Award.
42 I B	Fire fighting and rescue equipment—urban and wild land	Multiple Award.
42 IV	Fire fighting vehicles and waste disposal vehicles	Multiple Award.
49 I B	Maintenance and repair shop equipment—motor vehicle and miscellaneous maintenance and specialized repair shop equipment.	Multiple Award.
49 II	Maintenance and repair shop equipment—cleaning equipment	Multiple Award.
54 II A	Scaffolding, work and service platforms	Multiple Award.
56 IV A	Construction and building materials—stripdoors, wall covering, roof coverings, and storm windows	Multiple Award.
58 III B	Communications equipment—recording and reproducing video and audio equipment purchase, repair parts and repair service.	Multiple Award.
58 V A	ADP/telecommunications media supplies—video and audio recording tape, electronic data tape, magnetic cards, cassettes and cartridges, diskettes, disk packs, and disk cartridges.	Multiple Award.
58 VI & VII	Telephone equipment, videoconferencing equipment, facsimile equipment, pagers, non-tactical two-way radio transmitters, radio receivers and antennas.	Multiple Award.
58 IX	Telecommunications equipment—telemetry, underwater sound radar (except airborne), visible and invisible light communications, signal data, night vision.	Multiple Award.
61 III	Batteries—dry cell and heavy duty electric storage, stationary, marine, railway, alkaline, and nickle cadmium.	Multiple Award.
61 V A	Portable generators and generator sets, electrical power and distribution equipment load banks and load bank accessories.	Multiple Award.
61 V B	Power and distribution equipment—non-rotating battery chargers, and surge suppression devices	Multiple Award.
62 I	Lighting fixtures and lamps—household and quarters use	Multiple Award.
62 II	Energy efficient products—lighting sensors (switches), solar electric power systems, fluorescent lighting fixtures, lighting reflectors, lighting louvers, and lighting ballasts.	Multiple Award.
63 I	Alarm and signal systems/facility management systems—miscellaneous alarms and systems, facility management/energy management systems.	Multiple Award.
65 I B	Drugs and Pharmaceutical products	Multiple Award.
65 I C	Antiseptic liquid skin cleansing detergents & soaps	Multiple Award.
65 II B	Medical and veterinary equipment—supplies surgical instruments and supplies	Multiple Award.
65 II C	Dental equipment and supplies—operator and laboratory	Multiple Award.
65 II D	Medical equipment and supplies—medical equipment supplies, and replacement parts	Multiple Award.
65 II E	Mecical equipment—pacemakers and related analyzing systems	Multiple Award.
65 II F	Medical equipment and supplies—wheel-chairs, manual (including sports) and powered; motorized three-wheeled scooters.	Multiple Award.
65 III A	Medical equipment and supplies—soap, stretcher, and sphygmomanometers	Single Award.
65 V A	Medical X-ray equipment supplies—including medical and dental x-ray film	Multiple Award.
65 VII	Medical equipment and supplies—invitro diagnostic substances, reagents, test kits and sets	Multiple Award.
65 IX	Chemical and chemical products—bulk oxygen	Single Award.
65 II A	Laboratory instruments and equipment	Multiple Award.
66 II B	Instruments and laboratory supplies—glass, plastic, ceramic, metal and other laboratory ware; support apparatus; laboratory distillation and demineralization apparatus, waste solvent recovery systems; tissue culture apparatus.	Multiple Award.
66 II C	Clinical and biological equipment—microscopes, centrifuges, PH meters, microtomes, stirrers, titrators/titration systems.	Multiple Award.
65 II E	Instruments and laboratory equipment—laboratory balances, precision scales and accessories	Multiple Award.
66 II G	Instruments and laboratory equipment—graphic recording instruments	Multiple Award.
66 II H	Instruments and laboratory equipment—electrical and electronic components and test equipment .	Multiple Award.
66 II J	Instruments and laboratory equipment—electronic signal, communication, and component test and analysis instruments (oscilloscopes, analyzers, generators, testers, counters, meters and bridges).	Multiple Award.

EXHIBIT 1—Continued

Schedule identification	Schedule title	Type of schedule
66 II L	Instruments and laboratory equipment—transducers; transducer amplifiers, and panel meters; temperature/heat instruments; material and machine (vibration) testing equipment; cable/pipe locators; and accessories.	Multiple Award.
66 II M	Instruments and laboratory equipment—spectrophotometers, spectrometers, densito-meters, liquid scintillation systems, multichannel pulse height analyzers, photo-meter, and polarograph analysis equipment, various options/accessories and maintenance and repair service.	Multiple Award.
66 II N	Instruments and laboratory equipment—analyzers, chromatographs, colony counters, blood analysis systems, dilutors, pipettes, electrophoresis equipment, and image analysis systems.	Multiple Award.
66 II O	Instruments and laboratory equipment—animal cages, bath, dryers (glassware), environmental and plant growth chambers, freeze drying equipment, fume hoods, furnaces, incubators, membrane bacterial filter, ovens, pumps, refrigerators and freezers, sterilizers, thermoneters, washers.	Multiple Award.
66 II P	Laboratory/pharmacy furniture	Multiple Award.
66 II Q	Instruments and laboratory equipment—environmental analysis equipment, oceanographic, weather and water quality.	Multiple Award.
66 II R	Instruments and laboratory equipment—environmental analysis, pollution control, air hazard detecting equipment; liquid or gas flow/level and water velocity measuring instruments and accessories.	Multiple Award.
66 II T	Biological safety cabinets—vertical, laminar airflow cabinetry	Multiple Award.
66 III	Cost per test—clinical analyzers, laboratory, chemistry, hematology, coagulation urinalysis, microbiology.	Multiple Award.
67 II & III	Photographic equipment and supplies—camera, projectors, developing and finishing equipment, rear screen projectors, photographic paper and miscellaneous supplies.	Multiple Award.
67 IV B	Microphotograph equipment and supplies—cameras, projectors, and printers, developing and duplicating equipment, and chemicals, film, and paper.	Multiple Award.
68 I A	Chemical and chemical products—calcium chloride, deicing compounds, sodium chloride and bulk sodium chloride.	Single Award.
68 III C	Chemical and chemical products—dry ice	Single Award.
68 III D	Chemical and chemical products—propane	Single Award.
68 III E	Chemical and chemical products—sulphur hexaflouride	Single Award.
68 III F	Chemical and chemical products—refrigerant fluorocarbons	Single Award.
68 III G	Chemical and chemical products—helium	Single Award.
68 III K	Chemical and chemical products—oxygen: aviator's breathing	Single Award.
68 III L	Chemical and chemical products—industrial gases in high pressure cylinders	Single Award.
68 III M	Chemical and chemical products—industrial gases, liquid, in bulk and in low-pressure cylinders	Single Award.
68 III N	Chemical and chemical products—industrial gases, chlorine and ammonia	Single Award.
68 V B & C	Chemical and chemical products—water treatment chemicals for heating and cooling systems, and boiler fuel oil additives.	Multiple Award.
68 VI A	Chemical and chemical products—disinfectants	Multiple Award.
68 VI B	Chemical and chemical products—deodorants	Multiple Award.
69	Training aids and devices—programmed learning materials	Multiple Award.
70 I A	General purpose commercial automatic data processing equipment (used primarily on-line) and software.	Multiple Award.
70 I B & C	General purpose commercial automatic data processing equipment, end-user computers (normally microcomputers) and equipment used primarily off-line, and software.	Multiple Award.
71 I E	Household and quarters furniture—upholstered (performance tested) furniture	Multiple Award.
71 I H	Household and quarters furniture—wall units, loft groups and unaccompanied personnel furniture	Multiple Award.
71 II E	Furniture systems—systems and modular furniture, workstations clusters, leased furniture systems and clusters.	Multiple Award.
71 III A	Miscellaneous furniture—classroom, auditorium and theater seating	Multiple Award.
71 III B	Miscellaneous furniture—library, wood or metal	Multiple Award.
71 III C	Miscellaneous furniture—storage cabinets for forms and flammable liquids	Multiple Award.
71 III D	Miscellaneous furniture—mail sorting and distribution equipment, modular storage cabinets, and molded plastic/corrugated storage bins.	Multiple Award.
71 III E	Miscellaneous furniture—safes, vault doors, map and plan files and accessories, COMSEC containers, and special access control containers.	Multiple Award.
71 III F	Miscellaneous furniture—hospital patient room furniture	Multiple Award.
71 III H	Miscellaneous furniture—multipurpose seating, rotary ergonomic chairs, clothing lockers, drafting stools and intensive use task chairs.	Multiple Award.
71 III J	Miscellaneous furniture—vertical blue-print filing cabinets, roll drawing files, and high density movable shelf filing cabinet systems.	Multiple Award.
71 III L	Miscellaneous furniture— cafeteria and food service	Multiple Award.
71 III M	Miscellaneous furniture—acoustical partitions, speech privacy partitions, and vertical surface panels.	Multiple Award.
71 III N	ADP furniture—storage and transportation items	Multiple Award.
71 III T	Display and communication boards	Multiple Award.
71 III Y	Special purpose furniture—drafting stools, clothing lockers, and locker benches	Multiple Award.
71 III Z	Miscellaneous furniture—partitions	Single Award.
71 X	Miscellaneous tables—conference room and multi-purpose tables	Multiple Award.
71 XIV B	Industrial furniture—tables, benches, and cabinets	Multiple Award.
72 I A	Household and commercial furnishing—carpet, rugs, carpet tiles, and carpet cushions	Multiple Award.
72 I B	Resilient flooring—vinyl and rubber tile and sheet goods	Multiple Award.

EXHIBIT 1—Continued

Schedule identification	Schedule title	Type of schedule
72 I E	Household and commercial furnishings—mats and matting (with and without logos)	Multiple Award.
72 V	Household and commercial furnishings—draperies, coordinating bedspreads, and drapery hardware, cubical curtains, cubicle hardware, venetian blinds, window shades, and measuring and installation.	Multiple Award.
72 VIII B	Recycling collection containers & specialty waste receptacles	Multiple Award.
72 VIII	Household and office accessories—wall art, artificial trees, plants, planters, ash urns, and smoking stands.	Multiple Award.
73 III	Food service, handling, refrigeration and storage equipment—cooking equipment, dish-washing equipment, food preparation equipment, food service equipment, refrigeration and other miscellaneous items.	Multiple Award.
74 I A	Office machines—anti-theft devices, electronic typewriters, visual display preparation devices, sound reduction enclosures, central dictation systems, rental, repair and maintenance.	Multiple Award.
74 II & III	Office machines—adding, calculating, cash registers, time measuring instruments, and miscellaneous office machines.	Multiple Award.
74 IV	Visible record equipment—frames for pockets and cards, posting and ledger trays, cabinets and tub files.	Multiple Award.
75 I D	Office supplies—plotting, facsimile, chart, recording paper and supplies	Multiple Award.
75 II A	Office supplies—drawing pencils, label marking and identification tape, chart supplies, desk sorters (plastic and metal), typewriter correction material, price marking equipment, data and loose leaf binders, computer printout ruler, typist copy holder, adhesive backed note pads and roll, fine tip markers, printwheels, typing elements, ribbons for: typewriters, computers, word processors, calculators, time recorders, and time stamps, electronic cash registers, ink rolls for electronic calculators and electronic cash registers.	Multiple Award.
75 V	Office supplies—envelopes: mailing, printed and plain	Single Award.
75 VIII A	Office supplies—cards: tabulating, aperture, and copy	Single Award.
75 XI	Office supplies—xerographic paper and thermal copy paper	Multiple Award.
76 I	Publications—dictionaries, encyclopedias, other reference books and pamphlets, maps, atlases, charts, and globes.	Multiple Award.
76 II	Publications—law books, tax and reporting periodicals, and microfilmed library systems	Multiple Award.
77 II N	Musical instruments—instruments, amplifiers, accessories, and spare parts	Multiple Award.
77 III	Audio and video equipment—televisions, radios, phonographs, and VCR/VCP	Multiple Award.
78 I A	Athletic and recreational equipment—outdoor equipment	Multiple Award.
78 I C	Park and outdoor recreational equipment—outdoor recreational equipment	Multiple Award.
79 I B	Cleaning equipment and supplies—vacuum cleaners, carpet shampooers, floor polishing and scrubbing machines.	Multiple Award.
79 II A	Ware washing compounds and laundry detergent—liquid and powdered dish washing compounds (contractor's standard commercial supplies of detergents, rinse additives, and related supplies) with contractor supplied, installed, and maintained accessory dispensing systems.	Multiple Award.
79 V	Sorbents—marine and non-marine	Multiple Award.
80 VI A	Latex base paint (interior & exterior)—latex paint, gloss, semi-gloss, and flat, tint bases and ready mixed colors and latex primer sealer.	Multiple Award.
81 I B	Shipping, packaging & packing supplies—bags, sacks, boxes, cartons, crates, packaging and packing bulk materials.	Multiple Award.
84 II B	Clothing and furnishings—special purpose clothing	Multiple Award.
84 V A	Clothing and footwear—athetic and recreational	Multiple Award.
84 VI A	Law enforcement equipment—personal, canine, vehicle, and related items	Multiple Award.
89 I	Subsistence—cereals, cookies, crackers, individual condiments and granola snacks	Multiple Award.
89 II	Subsistence—dietary supplement, therapeutic	Multiple Award.
99 IV A	Signs—signs, display systems, traffic, road and boundary signs, markers and related components and fixtures.	Multiple Award.
99 V A	Services—recruiting aid promotional material	Multiple Award.
99 VI A	Trophies and awards—trophies, awards, plaques, pins and ribbons	Multiple Award.
653	Nationwide Government relocation services	Single Award.
732 I A	Factual data reports—consumer and commercial credit	Multiple Award.
732 I B	Professional debt collection services	Single Award.
738 X	Investigation of discrimination complaints and preparation of investigative reports	Single Award.
751 II	Automobiles and light truck vehicles—closed-end lease, without maintenance	Single Award.
751 III	Leasing of surveillance and law enforcement vehicles	Single Award.
781 I & II	Professional film processing and videotape processing services—motion picture, filmstrips, slides, audio tapes, and related materials.	Multiple Award.
782	Distribution of audiovisual materials (free loan)—motion picture films, video tapes, cassettes, filmstrips, slides, audio tapes, and related materials.	Multiple Award.
823	Services—lending library	Multiple Award.
872	Prepayment audit of Government transportation billing documents	Single Award.
874	Total quality management implementation—service—consulting services, conducted formal training and training aids and materials for agency training purposes.	Multiple Award.

[FR Doc. 95–8473 Filed 4–6–95; 8:45 am]

BILLING CODE 6820–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 234

[FRA Docket No. RSGC–6; Notice No. 2]

RIN 2130–AA92

Selection and Installation of Grade Crossing Warning Systems; Notice of Proposed Rulemaking

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Change of hearing date.

SUMMARY: On March 2, 1995, FRA published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) (60 FR 11649) regarding the selection and installation of grade crossing warning systems. A public hearing was scheduled for May 9, 1995.

Due to scheduling constraints, FRA must change the date of the public hearing. As a consequence, FRA is rescheduling the public hearing to April 24, 1995. The hearing location remains the same and will be held in room 2230 of the Nassif Building, DOT Headquarters Building, 400 Seventh Street, S.W., Washington, DC. We apologize for any inconvenience this rescheduling may cause.

DATES: A public hearing will be held at 9:30 a.m. on April 24, 1995.

ADDRESSES: A public hearing will be held in room 2230 of the Nassif Building, 400 Seventh Street, S.W., Washington, D.C. Persons desiring to speak at the hearing should notify the Docket Clerk by telephone (202–366–0628) or by writing to the Docket Clerk at the address above.

FOR FURTHER INFORMATION CONTACT:

Bruce F. George, Chief, Highway-Rail Crossing and Trespasser Programs Division, Office of Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–366–0533), or Mark Tessler, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–366–0628).

Issued in Washington, DC on March 31, 1995.

Donald M. Itzkoff,

Deputy Administrator.

[FR Doc. 95–8627 Filed 4–6–95; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Chapter VI

[Docket No. 950316075–5075–01; I.D. 022895C]

RIN 0648–AH86

Golden Crab Fishery off the Southern Atlantic States; Control Date

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; consideration of a control date.

SUMMARY: This notice announces that the South Atlantic Fishery Management Council (Council) is considering whether there is a need to impose management measures in the golden crab fishery in the exclusive economic zone (EEZ) off the southern Atlantic states, and if there is a need, what management measures should be imposed. If it is determined that there is a need to impose management measures, the Council may initiate a rulemaking to do so. Possible measures include the establishment of a limited entry program to control participation or effort in the fishery. If a limited entry program is established, the Council is considering April 7, 1995, as a possible control date. Consideration of a control date is intended to discourage new entry into the fishery based on economic speculation during the Council's deliberation on the issues.

DATES: Comments must be submitted by May 8, 1995.

ADDRESSES: Comments should be directed to the South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813–570–5305.

SUPPLEMENTARY INFORMATION: The golden crab fishery is not currently managed under a fishery management plan (FMP) prepared under the authority of the Magnuson Fishery Conservation and Management Act. However, there is a small scale trap fishery for golden crabs (*Chaceon fenneri*) in the EEZ off the southern Atlantic states. The fishery is prosecuted primarily in depths of 110 to 220 fathoms (approximately 200 to 400 m) on sand, mud, and clay bottoms. The fishery has operated sporadically off North and South Carolina and off the east coast of Florida. The fishery is currently operating 8 to 10 miles (15 to 19 km) off Miami, FL. Information on the fishery is limited—the number of fishermen, number of traps, and current production are unknown.

In February 1995, the Council held a scoping meeting to solicit input from the industry and public on the need for management of the golden crab fishery. Based on the results of the meeting, the Council began development of management options for the fishery. The range of options the Council will consider include data collection, area restrictions, seasons, size limits, trap escape panel requirements, prohibition on harvest of females, and limited entry or access. Implementation of any management measures for the fishery would require preparation by the Council of a new FMP or amendment to an existing FMP to include golden crab. The Council will discuss these issues at its April 10–14, 1995, meeting in Savannah, GA. In either event, publication of a proposed rule with a public comment period, NMFS' approval of the FMP or amendment, and publication of a final rule would be required.

As the Council considers management options, including limited entry or access-controlled management regimes, some fishermen who do not currently harvest golden crab, and have never done so, may decide to enter the fishery for the sole purpose of establishing a record of making commercial landings of golden crab. When management authorities begin to consider use of a limited access management regime, this kind of speculative entry often is responsible for a rapid increase in fishing effort in fisheries that are already fully developed or overdeveloped. The original fishery problems, such as overcapitalization or overfishing, may be exacerbated by the entry of new participants. If management measures to limit participation or effort in the fishery are determined to be necessary, the Council is considering April 7, 1995 as the control date. After that date, anyone entering the fishery may not be assured of future participation in the fishery if a management regime is developed and implemented that limits the number of participants in the fishery.

Consideration of a control date does not commit the Council or NMFS to any particular management regime or criteria for entry into the golden crab fishery. Fishermen are not guaranteed future participation in the golden crab fishery regardless of their date of entry or intensity of participation in the fishery before or after the control date

under consideration. The Council may subsequently choose a different control date, or it may choose a management regime that does not make use of such a date. The Council may choose to give variably weighted consideration to fishermen in the fishery before and after the control date. Other qualifying criteria, such as documentation of commercial landings and sales, may be applied for entry. The Council may choose also to take no further action to control entry or access to the fishery, in which case the control date may be rescinded.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 3, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–8623 Filed 4–6–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 60, No. 67

Friday, April 7, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

White Pine Creek EIS, Vegetation Management Analysis; Clearwater National Forest, Benewah and Latah Counties, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice; Intent to prepare an environmental impact statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service, Clearwater National Forest, will prepare an environmental impact statement (EIS) to disclose effects of alternative decisions it may make to manage vegetation, restore watersheds, and analyze access management in the vicinity of White Pine, Blakes Fork and Meadow Creek drainages. The area is located approximately 25 miles northeast of the town of Potlatch Idaho, near North-South Ski Bowl. The purpose of the project is to implement the Clearwater Forest Plan within the context of ecosystem management principles; conserve biological diversity and integrity; restore fire's role within fire dependent communities; reduce the chance of spread of large fires; and, provide timber from suitable lands in response to human demands for wood products.

This project will tier to the Clearwater National Forest Environmental Impact Statement Land and Resource Management Plan and Forest Plan (1987), which provides overall guidance of land management activities on the Clearwater National Forest. Analysis will also be conducted in compliance with the Stipulation of Dismissal agreed to in the settlement of the lawsuit between the Forest Service and the Sierra Club, et. al. (Signed September 13, 1993).

The agency invites written comments and suggestions on the issues and management opportunities for the area being analyzed.

DATES: Written comments concerning the scope of the analysis should be received on or before May 22, 1995.

ADDRESSES: Send written comments to Carmine Lockwood, District Ranger, Palouse Ranger District, Route 2, Box 4, Potlatch, Idaho 83855.

FOR FURTHER INFORMATION CONTACT: Suzanne Lay, Team Leader, at the same address, (208) 875–1131.

SUPPLEMENTARY INFORMATION: The proposed action is designed to restore terrestrial and aquatic ecosystem health and to provide benefits to people within the capabilities of ecosystems. A significant factor in the decline of the health of the White Pine Creek project area ecosystem is the reduction of western white pine abundance caused by white pine blister rust. The blister rust has created large areas with heavy concentrations of standing dead and down fuels. Vegetation treatments designed to reintroduce western white pine in the forest cover type will be analyzed. Regeneration and intermediate harvest treatments intended to improve the structure composition and function of the forest matrix will be analyzed, along with the use of prescribed fire and mechanical methods to treat excessive fuel loadings. Intermediate treatments will be designed to improve forest health conditions by treating overstocked stressed sites while maintaining desirable seral species such as western white pine, ponderosa pine and western larch. These overstocked stands are highly susceptible to root rot pathogens, bark beetles, defoliators, and dwarf mistletoe. Restoration of the aquatic component will focus on eliminating sediment delivery sources to aquatic and riparian habitats, as well as improving the structural components in riparian areas by installing large woody debris where it is lacking. Other fish habitat improvement projects are also included in this analysis.

The Clearwater National Forest Plan provides guidance to management activities within the potentially affected area through its goals, objectives, standards and guidelines, and management direction. The areas of proposed timber harvest and reforestation would occur only on suitable timber land, Management Areas E1, A4, A5 and M2. Below is a brief description of applicable management direction.

Management Area E1—Timber Management—Provide optimum sustained production of timber products in a cost effective manner while protecting soil and water quality.

Management Area A4—Visual Travel Corridor—Maintain or enhance an aesthetically pleasing, natural appearing Forest setting surrounding designated roads, trails, and other areas considered important for recreational travel use.

Management Area M5—Developed Recreation Sites—Manage developed recreation sites to meet public demands for facilities for camping and picnicking.

Management Area M2—Riparian Areas—Manage as areas of special consideration with distinctive values, and integrate with adjacent management areas to the extent that water and other riparian resources are protected.

The White Pine Creek study area lies along the divide between the Palouse River drainage and the Spokane River drainage. It is a roaded area with intermingled ownership on the interface between forest and farmland in the panhandle of Idaho. The planning area consists of approximately 8,000 acres located in T.42N., R.3W, T.43N., R3W., and T.44N., R.3W. The decision to be made is what, if anything, should be done in the White Pine Creek project area to (1) Restore terrestrial and aquatic ecosystem components, (2) provide multiple benefits to people within the capabilities of ecosystems. An environmental assessment for the White Pine Creek project area was prepared in 1994, and a Decision Notice and Finding of No Significant Impact was signed in July of 1994. This Decision was appealed and reversed back to the District in October of 1994 with instructions to prepare an EIS if the project were to proceed. The recommendations included in the reversal related to: (a) cumulative effects for water and wildlife, (b) old growth, and (c) range of alternatives considered. All of these issues will be analyzed in the proposed EIS with an ecosystem management approach.

Public participation will be fully incorporated into preparation of the EIS. The first step is the scoping process, during which the Forest Service will be seeking information, comments, and assistance from Federal, State, and local

agencies, the Nez Perce and Coeur D'Alene Tribes,and other individuals or groups who may be interested or affected by the proposed action. This information will be used in preparing the EIS. Interested individuals and organizations should contact the Palouse Ranger District and request to be placed on the project mailing list. Those doing so will receive future newsletters related to this project and notification of public meetings. Scoping will include: inviting participation, determining the project's scope and potential issues, eliminating from detailed study those issues which are not significant, and determining potential cooperating agencies and task assignments. The public will also be invited to participate in developing alternatives, and identifying and/or reviewing the potential environmental effects of the proposed action and its alternatives.

Public meetings will be held in the Potlatch Idaho area in the spring of 1995. Field trips will also be available if the public requests them. The exact dates and locations of these meetings will be published in local newspapers at least two weeks in advance.

Preliminary issues highlight the need to maintain biodiversity and biological integrity by providing habitat for a broad range of terrestrial and aquatic species. Management activities, primarily logging and road building and the introduction of white pine blister rust, have changed some of the natural disturbance processes such as insect and disease outbreaks and have altered the ecosystem composition, structure, and resiliency in the White Pine Creek project area. Management activities have affected the function and productivity of some riparian systems in the Meadow Creek area.

Aquatic ecosystem issues include sediment, temperature and peak flows. Human needs and desires and their effects on the ecosystem will also be a driving factor in the formulation of issues. The need for shelter, employment, aesthetics recreation, cultural, and spiritual revitalization all play a major role in the forest ecosystem. The direct, indirect, cumulative, short-term, and long-term, aspects of impacts on national forest lands and resources, and those of connected or related effects off-site, will be fully disclosed.

Preliminary alternatives will likely include a range from a more passive approach of managing non-consumptive uses to a more active consumptive use approach to meet social demands. All alternatives will focus on maintaining or restoring ecological functions. This will involve proposals with and without roads, different intensities and types of timber harvest, and various approaches to access management including motorized and non-motorized recreation. Most action alternatives will analyze riparian and aquatic habitat improvement.

Permits and licenses required to implement the proposed action may include the following: consultation with the U.S. Fish and Wildlife Service for compliance with Section 7 of the Threatened & Endangered Species Act; a permit from the Idaho Department of Water Resources for water removal for dust abatement; and clearance from the Idaho State Historic Preservation Office.

The Forest Service predicts the Draft EIS will be filed in August of 1995 and the Final EIS in December of 1995.

The Forest Service will seek comments on the Draft EIS for a period of 45 days after its publication. Comments will then be summarized and responded to in the Final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action or the effects disclosure, comments on the DEIS 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 DEIS 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 1503.3 in addressing these points.)

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of DEIS'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 DEIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *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 45 day 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.

As Forest Supervisor, I am the Responsible Official for this project. My address is Clearwater National Forest, 12730 U.S. Highway 12, Orofino, ID 83544 (208–476–4541).

Dated: March 28, 1995.

James L. Caswell,

Forest Supervisor.

[FR Doc. 95–8530 Filed 4–6–95; 8:45 am]

BILLING CODE 3410–11–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

ADAAG Review Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) gives notice, as required by the Federal Advisory Committee Act (5 U.S.C. App. 2), of the dates and location of the meetings of its ADAAG Review Advisory Committee.

DATES: The ADAAG Review Advisory Committee will meet on April 26, 27, 28, and 29, 1995. The schedule of events is as follows:

Wednesday, April 26, 1995

9:00 a.m.–3:00 p.m.—Communications Subcommittee
4:00 p.m.–6:00 p.m.—Editorial Subcommittee

Thursday, April 27, 1995

9:00 a.m.–3:00 p.m.—Plumbing Subcommittee
4:00 p.m.–8:00 p.m.—Accessible Routes Subcommittee

Friday, April 28, 1995

9:00 a.m.–11:00 a.m.—Accessible Routes Subcommittee
12 Noon–6:00 p.m.—Special Occupancies Subcommittee

Saturday, April 29, 1995

9:00 a.m.–12 Noon—Full Committee

ADDRESSES: The meetings on April 26, 27, and 28, 1995 will be held at the Paralyzed Veterans of America, 801 18th Street, NW., Washington, DC. The meeting on April 29, 1995 will be held at the Washington Vista Hotel, 1400 M Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Marsha Mazz,

Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone (202) 272–5434 ext. 21 (voice); (202) 272–5449 ext. 21 (TTY). This document is available in alternate formats (cassette tape, braille, large print, or computer disk) upon request.

SUPPLEMENTARY INFORMATION: The Access Board has established an advisory committee to review the Americans with Disabilities Act Accessibility Guidelines (ADAAG) for buildings and facilities. 36 CFR part 1191, appendix A. The advisory committee will make recommendations to the Access Board for updating ADAAG to ensure that the guidelines remain a state-of-the-art document which is generally consistent with technological developments and changes in national standards and model codes, and meets the needs of individuals with disabilities. The advisory committee is composed of organizations representing individuals with disabilities, model code organizations, professional associations, State and local governments, building owners and operators, and other organizations.

The advisory committee has formed the following subcommittees to assist in its work: Editorial, Accessible Routes, Plumbing, Communications, and Special Occupancies.

Subcommittee and full committee meetings are open to the public. The meeting sites are accessible to individuals with disabilities. Sign language interpreters and assistive listening systems will be available for individuals with hearing impairments.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 95–8573 Filed 4–6–95; 8:45 am]

BILLING CODE 8150–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–809]

Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 7, 1995.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Julie Anne Osgood, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2815 or 482–0167, respectively.

Amended Final Determination

We are amending the final determination of sales at less than fair value of certain carbon steel butt-weld pipe fittings (pipe fittings) from Thailand to reflect the correction of ministerial errors made in the margin calculation in the final determination.

Case History

In accordance with section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act), on February 27, 1995, the Department of Commerce (the Department) published its final determination that pipe fittings from Thailand were being sold at less than fair value (60 FR 10552). On March 13, 1995, respondent, Awaji Sangyo (Thailand) Co., Ltd. (AST), alleged that the Department made several clerical errors in its final determination regarding the margin calculations and requested that the Department correct these errors.

Scope of the Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed of forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (*e.g.*, threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include ''elbows,'' ''tees,'' ''caps,'' and ''reducers.'' The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the ''bead'' of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Amended Final Determination

On March 13, 1995, respondent alleged that the Department had made three ministerial errors in the final calculations performed to determine the dumping margin for AST in accordance with section 353.28 of the Department's regulations. Each alleged error is discussed below.

Comment 1

Upon exportation of finished pipe fitting, AST received drawback of import duties on imported pipe used to produce the pipe fittings. AST alleges that the Department incorrectly added the drawback amount to the foreign market value (FMV), rather than to the United States price (USP).

DOC Position

We agree with respondent. Section 772(d)(1)(B) of the Act provides that the U.S. price shall be increased by the amount of any import duties imposed in the country of exportation which have been rebated, or not collected, by reason of exportation of the merchandise to the United States. In the final determination, we inadvertently added drawback to FMV rather than to USP. We have recalculated FMV and USP to correct this error.

Comment 2

AST alleges that in allocating indirect selling expenses to the home market, the Department used an incorrect value for home market shipments during the period of investigation (POI).

DOC Position

We agree with respondent. We have now reallocated home market selling expenses using the correct value.

Comment 3

AST alleges the Department erroneously included a quantity of seamless pipe in its calculation of total welded pipe consumed. AST contends that this quantity of seamless pipe should be excluded from the Department's welded pipe consumption calculation.

DOC Position

We agree with AST that the Department erroneously included some seamless pipe quantities in its calculation of per unit welded pipe consumed. We intended to include only welded pipe in our welded pipe consumption calculation. Thus, we have recomputed per unit welded pipe consumed based solely on AST's welded pipe consumption.

Accordingly, pursuant to section 735(e) of the Act, we have corrected the ministerial errors in the final determination of sales at less than fair value. The final estimated margin

changes from 38.41 percent to 17.13 percent.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of butt-weld pipe fittings from Thailand, as defined in the ''Scope of Investigation'' section of this notice, that are produced and sold by AST and that are entered, or withdrawn from warehouse, for consumption on or after October 4, 1994.

The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of AST's subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice. The amended weighted-average dumping margin is as follows:

Manufacturer/producer/ exporter	Margin percent	De-posit percent
Awaji Sangyo (Thailand) Co., Ltd.	17.13	16.39

We did not determine an ''all others'' rate in this investigation, because all other producers and exporters of butt-weld pipe fittings from Thailand are already subject to an antidumping duty order on this merchandise, which was published in the **Federal Register** on July 6, 1992 (57 FR 29702).

Adjustment of Deposit Rate for Countervailing Duties

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that ''[no] product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation for dumping or export subsidization.'' This provision is implemented by section 772(d)(1)(D) of the Act. Because antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no basis to require a cash deposit or bond for that amount.

Accordingly, the level of export subsidies as determined in the most recent administrative review of the countervailing duty order, Carbon Steel Butt-Weld Pipe Fittings From Thailand; Final Results of Countervailing Duty Administrative Review, (57 FR 5248, February 13, 1992), which was 0.74 percent, will be subtracted from the margin for cash deposit or bonding purposes. This results in a deposit rate of 16.39 percent for AST.

This amended final determination is published in accordance with section 735(e) of the Act and 19 CFR 353.21.

Dated: March 29, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–8629 Filed 4–6–95; 8:45 am]

BILLING CODE 3510–WS–M

National Oceanic and Atmospheric Administration

[I.D. 033195B]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Coastal Pelagic Species Plan Development Team and Advisory Subpanel will hold a public meeting on April 27, 1995, beginning at 10 a.m. at the NMFS Southwest Regional Office, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA.

FOR FURTHER INFORMATION CONTACT: Jim Morgan, NMFS Southwest Regional Office at (310) 980–4036, or Larry Jacobson, NMFS Southwest Fisheries Science Center at (619) 546-7117.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review the draft Coastal Pelagic Species Fishery Management Plan (FMP), compile the preferred alternatives into a more concise document, review any problems identified at the Council's March 1995 meeting, and address any new concerns identified during the interim. The Council has scheduled final action on the draft FMP for its June 1995 meeting.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: April 3, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–8622 Filed 4–6–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

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 commodity to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: May 8, 1995.

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 February 3, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (60 FR 6702) of proposed addition to the Procurement List.

Comments were received from a cup manufacturer which has not been a Government contractor for the cup at issue in this addition to the Procurement List. The commenter indicated that it considered the cup not to be suitable for production by blind individuals because it requires visual inspection during production and allowing blind people to work in close proximity to high speed machinery would be dangerous. The commenter also indicated that the Committee should meet its goal of creating employment for people with severe disabilities by giving private manufacturers an opportunity to hire such people rather than by adding commodities to the Procurement List. The commenter stated that the Committee's method of assessing impact on contractors is biased against larger companies because it looks at impact on the total company rather than a single plant or product line. The commenter indicated that the Committee should not add items to the Procurement List on an open-ended basis, but should allow occasional competitive bidding to ensure that the nonprofit agencies maintain their ability to produce effectively.

The Committee's determination that the nonprofit agency is capable of producing this cup was based on capability determinations by the Government agency which procures the

cup and the central nonprofit agency concerned in this action. The Government agency performed an extensive inspection of the nonprofit agency's plant and plans and concluded that it is fully capable of performing in accordance with all specifications, drawings, terms, and conditions of the contract. The Government agency specifically approved, among other things, the production and inspection arrangements that will be used.

The nonprofit agency is one of the largest manufacturers participating in the Committee's program. It produces, among other things, several other paper and plastic utensils which involve high speed or otherwise dangerous machinery, and has taken steps to structure its use of blind labor and to provide safeguards on its machinery to avoid the dangers which the commenter implies blind people would face. While the Committee requires the use of a high percentage of blind direct labor in the production of the cup, the requirement does not extend to indirect labor, such as inspection, which may be performed by sighted individuals.

The Committee appreciates the commenter's assertion that private manufacturers should be encouraged to hire people who are blind or have other severe disabilities, however, it does not believe that such encouragement should replace the Committee's mandatory source procurement program as a way of creating jobs. The Committee's program guarantees Federal contracts and requires that people with severe disabilities perform the majority of the direct labor on those contracts. This approach is intended to assure stable work for such individuals. Private manufacturers have no such guarantees of Federal (or other) business and no requirement to use people with severe disabilities on whatever work they do have. The Committee also notes that the majority of the individuals working on contracts under its program are not currently capable of competitive employment. Consequently, many would not be able to hold jobs with private manufacturers even if positions were available. For those who are capable, the Committee encourages them to seek jobs in the competitive marketplace by requiring that participating nonprofit agencies help them do so. In many cases, this help includes working with private firms to develop employment opportunities. Thus, the commenter's proposed alternative to Procurement List additions does not represent an acceptable alternative and, where possible, is already being accomplished.

The Committee does not agree that its method of assessing contractor impact is biased against large companies. Such companies are usually free to allocate their resources in a way that will alleviate impact on a single facility, if the companies desire, in a way that smaller companies are not. The Committee accordingly believes that its method of treating all contractors equally, by assessing impact based on all factors relevant to the contractor's business as a whole, is the fairest method of assessing the impact of a Procurement List addition.

Nonprofit agencies producing for the Committee's program are required to continue to produce efficiently because their goods must be sold to the Government at a fair market price. If a nonprofit agency is unable to produce efficiently enough to meet Government requirements, the Committee can transfer production authority to another nonprofit agency, suspend the mandatory source requirement, or take the item in question off the Procurement List.

Accordingly, there is no need to allow competitive procurements of items in the Committee's program to keep nonprofit agency production standards on a par with competitive industry.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity 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 commodity to the Government.

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

3. The action will result in authorizing small entities to furnish the commodity 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 commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List:

Cup, Disposable, Paper
7350–01–359–9524

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. 95–8587 Filed 4–6–95; 8:45 am]

BILLING CODE 6820–33–P

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: May 8, 1995.

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 February 24, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (60 FR 10373) of proposed addition to the Procurement List. 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
Jack Brooks Federal Building, U.S. Post Office and Courthouse
Willow and Broadway Streets
Beaumont, Texas

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. 95–8588 Filed 4–6–95; 8:45 am]

BILLING CODE 6820–33–P

Proposed Additions to the Procurement List; Correction

In the document appearing on page 11958, F.R. Doc. 95–5290, in the issue of March 3, 1995, in the second column, the NSN shown as 6515–01–225–8497 should read 6515–01–135–8497.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–8589 Filed 4–6–95; 8:45 am]

BILLING CODE 6820–33–P

COMMODITY FUTURES TRADING COMMISSION

Chairman's Roundtable on Past Performance Disclosure

This is to give notice that the Chairman of the Commodity Futures Trading Commission will conduct a public meeting on Tuesday, April 25, 1995 from 2:00 p.m. to 5:00 p.m. in the lower-level hearing room of the Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. The agenda will consist of:

Roundtable—Rethinking Past Performance Disclosure

A. Opening Statement—Mary L. Schapiro, Chairman
B. Presentation by CFTC Staff
Past performance disclosure—current and proposed regulations
C. Tour De Table—Potential Issues for Discussion
- What are the purposes for requiring past performance disclosure?

—information as to competence of CTA
—information as to program
—volatility
—leverage
—rate of return
—costs
—ability to compare CTAs, types of investments
—other
- How is it used by:

—customers; and,
—CTAs?
- What are the problems with using past performance disclosure to evaluate CTA performance?
- What customer protection considerations are addressed or raised by past performance disclosure?
- How can current performance presentations be made more meaningful?

D. Identification of Specific Proposals for Discussion
What are the implications of the answers to the above questions on:
—Presentation of partially-funded (''national'') programs
—Benchmarking performance
—Proprietary performance
—Hypothetical performance
—Multimedia investments

The purpose of the meeting is to explore performance issues with a diverse group of industry experts, regulators, academics and market users toward the goal of more meaningful performance disclosures.

The meeting is open to the public. The Chairman of the Commodity Futures Trading Commission, Mary L. Schapiro, is empowered to conduct the meeting in a fashion that will, in her judgment, facilitate the orderly conduct of business.

Issued in Washington, DC on April 4, 1995.

Andrea M. Corcoran,

Director, Division of Trading & Markets.

[FR Doc. 95–8647 Filed 4–6–95; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 95–C0008]

Toy Wonders, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20 (e)–(h). Published below is a provisionally-accepted Settlement Agreement with Toy Wonders, Inc., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by April 24, 1995.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 95–C0008, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT:

Dennis C. Kacoyanis, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: April 3, 1995.

Sadye E. Dunn,

Secretary.

Settlement Agreement and Order

1. Toy Wonders, Inc. (hereinafter, ''Toy Wonders''), a corporation, enters into this Settlement Agreement (hereinafter, ''Agreement'') with the staff of the Consumer Product Safety Commission, and agrees to the entry of the Order described herein. The purpose of the Agreement and Order is to settle the staff's allegations that Toy Wonders knowingly introduced or caused to be introduced into interstate commerce; or received in interstate commerce and delivered or proffered delivery thereof, certain banned hazardous toys and misbranded hazardous art materials, in violation of sections 4 (a) and (c) of the Federal Hazardous Substances Act, 15 U.S.C. 1263 (a) and (c).

I. Jurisdiction

2. The Commission has jurisdiction over Toy Wonders and the subject matter of this Settlement Agreement pursuant to sections 3(a)(1) and 30(a) of the Consumer Product Safety Act (hereinafter, ''CPSA''), 15 U.S.C. 2051(a)(1) and 2079(a); and sections 2 (f)(1)(D), and (q)(1)(A), 3(b), 4 (a) and (c), 5(c), and 23(a) of the Federal Hazardous Substances Act (hereinafter, ''FHSA''), 15 U.S.C. 1261 (f)(1)(D) and (q)(1)(A), 1262(b), 1263 (a) and (c), 1264(c), and 1277(a).

II. The Parties

3. The ''staff'' is the staff of the Consumer Product Safety Commission, an independent regulatory commission of the United States established pursuant to section 4 of the CPSA, 15 U.S.C. 2053.

4. Toy Wonders is a corporation organized and existing under the laws of the State of New York, since 1983, with its principal corporate offices located at 234 Moonachie Road, Moonachie, NJ 07074. Toy Wonders is an importer and distributor of toys.

III. Allegations of the Staff

A. Toys

5. On six occasions between September 8, 1991, and January 13, 1994, Toy Wonders introduced or caused to be introduced into interstate commerce; or received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, 11 kinds of toys (36,693 units) intended for use by children under 3 years of age. These toys are identified and described below:

Sample No.	Product	Collect date* entry date	Expt./Mfg.	Quantity
M–800–8664	Cartoon Police Car	09/08/91	Chiang Kiang Trading Co	1,200
M–800–8665	Cartoon Train	09/08/91	Chiang Kiang Trading Co	1,200
M–800–8666	Cartoon Car	09/08/91	Chiang Kiang Trading Co	1,200
R–800–1031	Musical Instruments	*06/16/93	Lian Huat Hang	1,920
R–800–1032	Action Sound Instruments	*06/16/93	Lian Huat Hang	2,160
R–800–1033	Musical Set	*06/16/93	Lian Huat Hang	1,440
R–800–1034	Alphabet Frame	*06/16/93	Lian Huat Hang	5,133
R–800–1035	Alphabet Frame	*06/16/93	Lian Huat Hang	11,592
R–800–3050	Riding Pets	*01/22/93	Toy Wonders	7,200
R–800–1122	(Bear and Cat)	*07/27/93		
S–800–2504	Elephant Piano	10/03/93	Ching Enterprises	1,200
S–800–1017	Airplane	01/13/94	Unknown	2,448

6. The toys identified in paragraph 5 above are subject to, but failed to comply with, the Commission's Small Parts Regulation, 16 CFR part 1501, in that when tested under the ''use and abuse'' test methods specified in 16 CFR 1500.51 and 1500.52, (a) one or more parts of each tested toy separated and (b) one or more of the separated parts from each of the tested toys fit completely within the small parts test cylinder, as set forth in 16 CFR 1501.4.

7. Because the separated parts fit completely within the test cylinder as described in paragraph 6 above, each of the toys identified in paragraph 5 above presents a ''mechanical hazard'' within the meaning of section 2(s) of the FHSA, 15 U.S.C. 1261(s) (choking, aspiration and/or ingestion of small parts).

8. Each of the toys identified in paragraph 5 above is a ''hazardous substance'' pursuant to section 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D).

9. Each of the toys identified in paragraph 5 above is a ''banned hazardous substance'' pursuant to section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A) and 16 CFR 1500.18(a)(9) because it is intended for use by children under three years of age and bears or contains a hazardous substance; and because it presents a mechanical hazard as described in paragraph 7 above.

10. Toy Wonders knowingly introduced or caused to be introduced into interstate commerce; or received in interstate commerce and delivered or proffered delivery therof for pay or otherwise, the aforesaid banned hazardous toys, identified in paragraph 5 above, in violation of sections 4 (a) and (c) of the FHSA, 15 U.S.C. 1263 (a) and (c), for which a civil penalty may be imposed pursuant to section 5(c)(1) of the FHSA, 15 U.S.C. 1264(c)(1).

B. Art Materials

11. On two occasions between June 16, 1993, and January 13, 1994, Toy Wonders introduced or caused to be introduced into interstate commerce; or received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, two different types of art materials (4,020 units). These art materials are identified and described below:

Sample No.	Product	Collect. date* entry date	Expt./Mfg.	Quantity
R–800–1036	Paint and Crayon Set	*06/16/93	Lian Huat Hang	2,580
S–800–1016	Stationary Gift	*01/13/94	Unknown	1,440

12. The art materials identified in paragraph 11 above are subject to, but failed to comply with the requirements for the Labeling of Art Materials Act in that (a) Toy Wonders did not submit those art materials for review by a toxicologist as required by section 23(a) of the FHSA, 15 U.S.C. 1277(a) and 16 CFR 1500.14(b)(8)(C)(1); and (b) those art materials did not bear the statement of conformance with ASTM D–4236, as required by section 23(a) of the FHSA, 15 U.S.C. 1277(a) and 16 CFR 1500.14(b)(8)(C)(7).

13. Each of these art materials identified in paragraph 11 above is a ''misbranded hazardous substance pursuant to section 3(b) of the FHSA, 15 U.S.C. 1262(b) and 16 CFR 1500.14(b)(8)(C) (1) and (7).

14. Toy Wonders knowingly introduced or caused to be introduced into interstate commerce; or received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, the aforesaid misbranded hazardous art materials identified in paragraph 11 above, in violation of sections 4 (a) and (c) of the FHSA, 15 U.S.C. 1263 (a) and (c), for which a civil penalty may be imposed pursuant to section 5(c)(1) of the FHSA, 15 U.S.C. 1264(c)(1).

IV. Response of Toy Wonders, Inc.

15. Toy Wonders denies the allegations of the staff set forth in paragraphs 5 through 14 above that it has knowingly introduced or caused to be introduced into interstate commerce; or received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, the banned hazardous toys and misbranded hazardous art materials, identified in paragraphs 5 and 11 above, in violation of the FHSA.

V. Agreement of the Parties

16. The Consumer Product Safety Commission has jurisdiction over Toy Wonders and the subject matter of this Settlement Agreement and Order under the following acts: Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*, and the Federal Hazardous Substances Act, 15 U.S.C. 1261 *et seq.*

17. Upon final acceptance by the Commission of this Settlement Agreement and Order, the Commission shall issue the attached Order incorporated herein by this reference.

18. The Commission does not make any determination that Toy Wonders knowingly violated the FHSA. The Commission and Toy Wonders agree that this Agreement is entered into for the purposes of settlement only.

19. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, Toy Wonders knowingly, voluntarily and completely waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Toy Wonders failed to comply with the FHSA as aforesaid, (4) to a statement of findings of fact and conclusions of law, and (5) to any claims under the Equal Access to Justice Act.

20. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had issued; and the Commission may publicize the terms of the Settlement Agreement and Order.

21. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e)–(h). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**.

22. The parties further agree that the Commission shall issue the attached Order; and that a violation of the Order shall subject Toy Wonders to appropriate legal action.

23. Agreements, understandings, representations, or interpretations made outside of this Settlement Agreement and Order may not be used to vary or to contradict its terms.

24. The provisions of the Settlement Agreement and Order shall apply to Toy Wonders, Inc. and each of its successors and assigns.

Respondent Toy Wonders, Inc.

Dated March 16, 1995.

Samuel Su,

President Toy Wonders, Inc.

Dated: March 16, 1995.

Lu Su,

Manager, Toy Wonders, Inc.

Commission Staff

David Schmeltzer,

Assistant Executive Director, Office of Compliance and Enforcement.

Eric L. Stone,

Acting Director, Division of Administrative Litigation, Office of Compliance and Enforcement.

Dated: March 17, 1995.

Earl A. Gershenow,

Trial Attorney, Division of Administrative Litigation, Office of Compliance and Enforcement.

Dated March 17, 1995.

Dennis C. Kacoyanis,

Trial Attorney, Division of Administrative Litigation, Office of Compliance and Enforcement.

Order

Under consideration of the Settlement Agreement entered into between respondent Toy Wonders, Inc., a corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Toy Wonders, Inc.; and it appearing that the Settlement Agreement and Order is in the public interest, it is

Ordered, that the Settlement Agreement and Order be and hereby is accepted, as indicated below; and it is

Further Ordered, that upon final acceptance of the Settlement Agreement and Order, Toy Wonders, Inc. shall pay to the Commission a civil penalty in the amount of SEVENTY-FIVE THOUSAND AND 00/100 DOLLARS ($75,000.00) in three payments consisting of TWENTY-FIVE THOUSAND AND 00/100 DOLLARS ($25,000.00) each. The first payment of TWENTY-FIVE THOUSAND AND 00/100 DOLLARS ($25,000.00) shall be due within twenty (20) days after service of the Final Order accepting the Settlement Agreement and Order (hereinafter, the anniversary date). The second payment of TWENTY-FIVE THOUSAND AND 00/100 DOLLARS ($25,000.00) shall be paid within one year of the anniversary date. The third payment of TWENTY-FIVE THOUSAND AND 00/100 DOLLARS ($25,000.00) shall be paid within two years of the anniversary date. Payment of the full amount of the civil penalty shall settle fully the staff's allegations set forth in paragraphs 5 through 14 of the Settlement Agreement and Order that Toy Wonders, Inc. violated the FHSA. Upon failure by Toy Wonders, Inc. to make payment or upon the making of a late payment by Toy Wonders, Inc. (a) The entire amount of the civil penalty shall be due and payable, and (b) interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. 1961 (a) and (b).

Provisionally accepted and Provisional Order issued on the 3rd day of April, 1995.

By order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 95–8521 Filed 4–6–95; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Notification of Proposed Terminations or Substantial Reductions of Major Defense Programs

Section 4471 of the FY93 Defense Authorization Act, as amended by section 1372 of the FY94 Defense Authorization Act and section 1142 of the FY95 Defense Authorization Act, requires that each prime contractor under a major defense program be notified if the program is proposed for substantial reductions or terminations as forwarded to Congress in the Presidents Budget.

The following Air Force prime contractor is hereby notified the program listed below has been proposed to be terminated by the Fiscal Year 96 President's budget:

Program	Prime Contractor	Contract No.
EF–111A System Improvement Program	Grumman Aerospace Corporation, 609 South Oyster Bay Rd Bethpage, NY 11714–3582.	F33657–90–C–0001

Note: This is not a notice of termination, but a notice of proposed termination that was submitted in the FY96 President Budget to Congress.

The Air Force point of contact for this notice is Maj Pete Knudsen. He can be contacted at (703)695–2656.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–8586 Filed 4–6–95; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity; Meeting

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Education.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the proposed agenda of the National Advisory Committee on Institutional Quality and Integrity. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of its opportunity to attend this public meeting.

DATES AND TIMES: May 24–26, 1995, 8:00 a.m. until 5:00 p.m.

ADDRESS: The Dupont Plaza Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Carol F. Sperry, Executive Director, National Advisory Committee on Institutional Quality and Integrity, U.S. Department of Education, 600 Independence Avenue, SW., room 3905, ROB 3, Washington, DC 20202–7592. Telephone: (202) 260–3636. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The National Advisory Committee on Institutional Quality and Integrity is established under Section 1205 of the Higher Education Act (HEA) as amended by Public Law 102–325 (20 U.S.C. 1145). The Committee advises the Secretary of Education with respect to the establishment and enforcement of the standards of accrediting agencies or associations under subpart 2 of part H of Title IV, HEA, the recognition of a specific accrediting agency or association, the preparation and publication of the list of nationally recognized accrediting agencies and associations, the eligibility and certification process for institutions of higher education under Title IV, HEA, and the functions of the Secretary under subpart 1 part H of Title IV, HEA, relating to the State Postsecondary Review Program. The Committee also develops and recommends to the Secretary standards and criteria for specific categories of vocational training institutions and institutions of higher education for which there are no recognized accrediting agencies, associations, or State agencies, in order to establish eligibility for such institutions on an interim basis for participation in federally funded programs.

Agenda

The meeting on May 24–26, 1995 is open to the public. The Advisory Committee will review petitions of accrediting and State approval bodies relative to initial or continued recognition by the Secretary of Education. It also will review a petition by a Federal agency for bachelor's degree-granting authority. In addition, the Committee will hear presentations by representatives of these petitioning agencies and any third parties who have requested to be heard.

The following petitions are scheduled for review:

Nationally Recognized Accrediting Agencies and Associations

Petitions for Initial Recognition

1. American Academy for Liberal Education (requested scope of recognition: The accreditation and preaccreditation of institutions and programs in the liberal arts).

2. Montessori Accreditation Council for Teacher Education (requested scope of recognition: The accreditation of institutions and programs for Montessori teacher education).

Petitions for Renewal of Recognition

1. American Academy of Microbiology, Committee on Postdoctoral Educational Programs (requested scope of recognition: The accreditation of postdoctoral programs in medical and public health laboratory microbiology).

2. American Association for Marriage and Family Therapy, Commission on Accreditation for Marriage and Family Education (requested scope of recognition: The accreditation of graduate degree programs and clinical training programs in marriage and family therapy education).

3. Accrediting Commission on Education for Health Services Administration (requested scope of recognition: The accreditation of graduate programs in health services administration).

4. American Osteopathic Association, Bureau of Professional Education (requested scope of recognition: The accreditation and preaccreditation of programs leading to the D.O. degree).

5. American Podiatric Medical Association, Council on Podiatric Medical Education (requested scope of recognition: The accreditation and preaccreditation of colleges of podiatric medicine, including first professional and graduate degree programs).

6. Association of Theological Schools in the United States and Canada, Commission on Accrediting (requested scope of recognition: The accreditation and preaccreditation of freestanding schools, as well as schools affiliated with larger institutions, offering graduate professional education for ministry and graduate study of theology).

7. Council on Naturopathic Medical Education, Commission on Accreditation (requested scope of recognition: The accreditation and preaccreditation of programs leading to the N.D. or N.M.D. degree).

8. National Accrediting Commission for Schools and Colleges of Acupuncture and Oriental Medicine (requested scope of recognition: The accreditation of first professional master's degree and professional master's-level certificate and diploma programs in acupuncture and oriental medicine).

9. National Council for Accreditation of Teacher Education (requested scope of recognition: The accreditation of professional education units that provide baccalaureate and graduate programs for the preparation of teachers and other professional personnel for elementary and secondary schools).

10. New York Board of Regents (requested scope of recognition: The

registration [accreditation] of collegiate degree-granting programs or curricula offered by institutions of higher education and of credit-bearing certificate and diploma programs offered by degree-granting institutions of higher education).

11. Commission on Occupational Education Institutions of the Council on Occupational Education [formerly the Southern Association of Colleges and Schools, Commission on Occupational Education Institutions] (requested scope of recognition: The accreditation and preaccreditation [''candidate for accreditation''] of postsecondary, prebaccalaureate [degree-granting and nondegree-granting], vocational education institutions).

(The above scope incorporates the agency's request to expand its current geographic scope of recognition from regional to national, and its request to expand its current scope of recognition to include degree-granting [prebaccalaureate] institutions.)

12. Transitional Association of Christian Colleges and Schools, Accrediting Commission (requested scope of recognition: The accreditation and preaccreditation [as Candidate] of postsecondary institutions which offer certificates, diplomas, and associate, baccalaureate, and graduate degrees).

13. Western Association of Schools and Colleges, Accrediting Commission for Schools (requested scope of recognition: The accreditation of adult and postsecondary schools that offer non-degree programs located in California, Hawaii, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands).

14. Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities (requested scope of recognition: The accreditation of senior colleges and universities located in California, Hawaii, American Samoa, and the Commonwealth of the Northern Mariana Islands).

State Agencies Recognized for the Approval of Public Postsecondary Vocational Education

Petitions for Renewal of Recognition

1. Missouri State Board of Education
2. New York Board of Regents

State Agencies Recognized for the Approval of Nurse Education

Petitions for Renewal of Recognition

1. Missouri State Board of Nursing
2. New Hampshire State Board of Nursing
3. New York Board of Regents (Nursing Education)

In accordance with the Federal policy governing the granting of academic degrees by Federal agencies (approved by a letter from the Director, Bureau of the Budget, to the Secretary, Health, Education, and Welfare, dated December 23, 1954), the Secretary is required to establish a review committee to advise the Secretary concerning any legislation that may be proposed that would authorize the granting of degrees by a Federal agency. The review committee forwards its recommendation concerning a Federal agency's proposed degree-granting authority to the Secretary, who then forwards the committee's recommendation and the Secretary's recommendation to the Office of Management and Budget for review and transmittal to the Congress. The Secretary uses the Advisory Committee as the review committee required for this purpose. Accordingly, the Advisory Committee will review the following institution at this meeting:

Proposed Bachelor's Degree—Granting Authority

1. Joint Military Intelligence College (formerly the Defense Intelligence College), Washington, DC (request to award a bachelor's degree in Intelligence Studies).

A request for comments on all agencies whose petitions, and request for degree-granting authority are being reviewed during this meeting was published in the **Federal Register** on December 22, 1994.

Requests for oral presentation before the Advisory Committee should be submitted in writing to Ms. Sperry at the address above by May 3, 1995. Requests should include the names of all persons seeking an appearance, the organization they represent, the purpose for which the presentation is requested, and a brief summary of the principal points to be made during the oral presentation. Any written materials presenters may wish to give to the Advisory Committee must be submitted to Ms. Sperry by May 3, 1995 (one original and 25 copies). Only documents submitted by that date will be considered by the Advisory Committee. Presenters are requested not to distribute written materials at the meeting.

At the conclusion of the meeting, attendees may, at the discretion of the Committee chair, be invited to address the Committee briefly on issues pertaining to the functions of the Committee, as identified in the section above on Supplementary Information. Participants interested in making such comments should inform Ms. Sperry before or during the meeting.

A record will be made of the proceedings of the meeting and will be available for public inspection at the Office of Postsecondary Education, U.S. Department of Education, 7th and D Street, SW., room 3905, ROB 3, Washington, DC, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Authority: 5 U.S.C.A. Appendix 2.

Dated: March 31, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–8633 Filed 4–6–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94–1475–000, et al.]

Illinova Power Marketing, Inc., et al.; Electric Rate and Corporate Regulation Filings

March 31, 1995.

Take notice that the following filings have been made with the Commission:

1. Illinova Power Marketing, Inc.

[Docket No. ER94–1475–000]

Take notice that on March 20, 1995, Illinova Power Marketing, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: April 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Catex Vitol Electric, L.L.C. [Catex Vitol Electric, Inc.]

[Docket No. ER94–155–006]

Take notice that on March 2, 1995, Catex Vitol Electric, L.L.C. tendered for filing a Notice of Change In Status.

Comment date: April 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. KCS Power Marketing, Inc.

[Docket No. ER95–208–001]

Take notice that on March 16, 1995, KCS Power Marketing, Inc. tendered for filing a Notice of Succession as it relates to their new corporate name, KCS Power Marketing, Inc.

Comment date: April 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Tennessee Power Company

[Docket No. ER95–581–000]

Take notice that on March 14, 1995, Tennessee Power Company tendered for

filing additional information in the above-referenced docket.

Comment date: April 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Central Illinois Light Company

[Docket No. ER95–602–000]

Take notice that on March 27, 1995, Central Illinois Light Company (CILCO), tendered for filing with the Commission a substitute tariff for the Coordination Sales Tariff filed on February 15, 1995. This substitute tariff has been filed for the purpose of reflecting maximum weekly prices for certain service, a change in the late payment and arbitration provisions, and to remove a load factor limitation.

CILCO is requesting a waiver of the notice period to allow the revised tariff to be effective on April 3, 1995.

Copies of the filing were served on all parties and the Illinois Commerce Commission.

Comment date: April 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Southwestern Electric Power Company

[Docket No. ER95–660–000]

Take notice that on March 22, 1995, Southwestern Electric Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: April 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Southwestern Electric Power Company

[Docket No. ER95–737–000]

Take notice that on March 14, 1995, Southwestern Electric Power Company (SWEPCO), submitted a Service Agreement, dated February 21, 1995, establishing the City of Ruston, Lincoln Parish, Louisiana (the City of Ruston) as a customer under the terms of SWEPCO's Coordination Sales Tariff CST–1)(CST–1 Tariff).

SWEPCO requests an effective date of March 1, 1995, and, accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served upon the City of Ruston and the Louisiana Public Service Commission.

Comment date: April 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Duke Power Company

[Docket No. ER95–760–000]

Take notice that on March 17, 1995, Duke Power Company (Duke), filed an application to sell up to 2500 MW of capacity and energy from its owned generation assets at negotiated rates, including Rate Schedule MR providing for sales by Duke of both firm and non-firm power. In support of its application, Duke, on its own behalf and as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, filed a Comparable Access Transmission Tariff, Offering Network Firm Transmission Service, Point to Point Firm Transmission Service, Point to Point Limited Transmission Service and Point to Point Non-Firm Transmission Service, including pro forma transmission service agreements. Duke requests that Rate Schedule MR and Duke's Comparable Access Transmission Tariff take effect on May 16, 1995.

Comment date: April 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Prairie Wind Energy Partners

[Docket No. QF95–198–00]

On March 23, 1995, Prairie Wind Energy Partners (Applicant) tendered for filing a supplement to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The supplement provides additional information pertaining primarily to the technical data and the ownership structure of the small power production facility.

Comment date: April 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8541 Filed 4–6–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 6939–059 West Virginia]

City of Jackson, Ohio and Certain Ohio Municipalities; Notice of Availability of Final Environmental Assessment

April 3, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) Regulations, 18 CFR part 380 (Order 486, 52 FR 47897), the Commission's Office of Hydropower Licensing has reviewed a non-capacity related amendment of license for the Belleville Hydroelectric Project, No. 6939–059. The Belleville Hydroelectric Project is located on the Ohio River in Wood County, West Virginia. The application is to relocate a transmission line to connect the project to a substation near Rutland, Ohio. The final environmental assessment (FEA) finds that approving the application would not constitute a major federal action significantly affecting the quality of the human environment.

The FEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426. Copies can also be obtained by calling the project manager, Rebecca Martin at (202) 219–2650.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8537 Filed 4–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–286–000]

Koch Gateway Pipeline Co.; Notice of Request Under Blanket Authorization

April 3, 1995.

Take notice that on March 28, 1995, Koch Gateway Pipeline Company (Koch), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP95–286–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate approximately 5 miles of 12-inch pipeline including one meter station and appurtenant facilities, all located in Mobile County, Alabama, to permit the delivery of natural gas to Bay Gas Storage Company (Bay Gas) and Clarke-Mobile Utilities (Clarke-Mobile), under Koch's blanket certificate issued in Docket No. CP82–430–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that

is on file with the Commission and open to public inspection.

Koch proposes to install the pipeline and appurtenant facilities to accommodate two delivery taps for service to Bay Gas, an intrastate storage company, and Clarke-Mobile, a local distribution company. Koch states that the tap for Bay Gas will provide a connection to Bay Gas' facilities and the tap for Clarke-Mobile will permit deliveries at a higher pressure than is available from the existing interconnection with Clarke-Mobile.

It is stated that Koch would use the delivery taps for the delivery of up to 73,000 Mcf of gas on a peak day to Bay Gas and up to 30,000 Mcf of gas on a peak day to Clarke-Mobile. It is stated that these volumes are within both customers' existing daily entitlements. It is asserted that deliveries to both Bay Gas and Clarke-Mobile would be made under Koch's ITS and FTS rate schedules. It is further asserted that the tap proposed for Bay Gas would be bi-directional and would be used for the receipt by Koch of up to 202,000 Mcf of gas on a peak day from Bay Gas.

The total construction cost is estimated at $1.68 million, of which Koch will receive $1 million as contribution-in-aid of construction. Koch states that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers and that its tariff does not prohibit the addition of delivery taps.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8535 Filed 4–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–287–000]

Mojave Pipeline Company; Request Under Blanket Authorization

April 3, 1995.

Take notice that on March 28, 1995, Mojave Pipeline Company (Mojave), 5001 E. Commercenter Drive, Bakersfield, California 93309, filed in Docket No. CP95–287–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) to construct and operate a sale tap under Mojave's blanket certificate issued in Docket Nos. CP89–1–000 and CP89–2–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Mojave proposes to construct a sales tap and metering and appurtenant facilities onto its existing 42-inch line in Kern County, California to transport natural gas on behalf of Tehachapi-Cummings County Water District (Tehachapi-Cummings). Mojave states these facilities would be used to transport up to 3,000 MMBtu per day on behalf of Tehachapi-Cummings pursuant to Mojave's FT–1 and IT–1 rate schedules. Mojave states that the service rendered to Tehachapi-Cummings through the proposed facilities will have no material impact on Mojave's peak day or annual deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8536 Filed 4–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–251–003]

National Fuel Gas Supply Corporation; Request for Waiver

April 3, 1995.

Take notice that on March 29, 1995, National Fuel Gas Supply Corporation (National) tendered for filing a request for an extension of a waiver granted by the Commission related to Section 21.1(a) of its FERC Gas Tariff.

National states that on June 16, 1994, the Commission issued a Letter Order in the above-referenced docket granting waiver of Section 21.1(a) of its tariff to allow National to file a report on or before June 1, 1995, to reflect the balances of its Account Nos. 191, 858 and 186 related to the flowthrough of costs by Columbia Gas Transmission Corporation (Columbia) and CNG Transmission Corporation.

National states that it is filing to extend the waiver of Section 21.1(a) of its tariff to the extent the Commission grants Columbia an extension of the close-out period for its Account No. 191, as requested by Columbia in Docket No. RP94–273–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protest should be filed on or before April 10, 1995. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8538 Filed 4–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–88–001, RP95–112–006, RP93–148–004, RP95–62–000, RP95–63–000, RP95–64–000, and RP95–90–000]

Tennessee Gas Pipeline Co.; Notice of Proposed Tariff Revisions

April 3, 1995.

Take notice that on March 30, 1995, Tennessee Gas Pipeline Company (Tennessee), tendered for filing proposed tariff revisions in response to various rate and tariff issues discussed at a March 6–9, 1995 technical conference convened by the Commission in the above-referenced dockets. Tennessee further states that the filing contains (1) A response to

customer objections with regards to certain operational costs included in Tennessee's rate case filing in Docket No. RP95–112–000; and (2) a number of revisions to the tariff sheets filed in Docket Nos. RP95–88–000 and RP95–112–000 resulting from discussions with both customers and Commission Staff at the Technical Conference.

Comments to this filing by parties to this proceeding should be made in conjunction with the comments following the technical conference in Docket No. RP93–148–004, *et al.* These comments are due on April 13, 1995, with reply comments due April 20, 1995.

Any person who has not previously intervened in any of the above referenced dockets and desires to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before April 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

Appendix A

Substitute Second Revised Sheet No. 25
Substitute First Revised Sheet No. 27
Substitute First Revised Sheet No. 28
Substitute Second Revised Sheet No. 95A
Substitute Second Revised Sheet No. 98
Substitute Second Revised Sheet No. 99
Substitute 2nd Revised Sheet No. 100
Original Sheet No. 100A
First Revised Sheet No. 104
Substitute First Revised Sheet No. 105
Substitute First Revised Sheet No. 106
Substitute First Revised Sheet No. 107
Substitute First Revised Sheet No. 108
Substitute Original Sheet No. 108A
Substitute First Revised Sheet No. 110
Substitute First Revised Sheet No. 115
Substitute Original Sheet No. 115A
Substitute First Revised Sheet No. 121
Substitute First Revised Sheet No. 122
Substitute Third Revised Sheet No. 127
Substitute Third Revised Sheet No. 153
Substitute Second Revised Sheet No. 154
Substitute Second Revised Sheet No. 155C
Substitute First Revised Sheet No. 155E
Substitute First Revised Sheet No. 157
Substitute Third Revised Sheet No. 159
Substitute Original Sheet No. 159A
Substitute First Revised Sheet No. 160
Substitute Second Revised Sheet No. 161
Substitute Second Revised Sheet No. 162
Substitute Original Sheet No. 162A
Substitute First Revised Sheet No. 163
Substitute First Revised Sheet No. 165
Substitute Original Sheet No. 165A
Substitute First Revised Sheet No. 166
Substitute Second Revised Sheet No. 167
Substitute Second Revised Sheet No. 168
Substitute First Revised Sheet No. 170
Substitute First Revised Sheet No. 171
Substitute Second Revised Sheet No. 172
Substitute First Revised Sheet No. 173
Substitute Second Revised Sheet No. 174
Substitute Second Revised Sheet No. 176
Substitute Original Sheet No. 176A
Fourth Revised Sheet No. 178
Substitute First Revised Sheet No. 204
Substitute Third Revised Sheet No. 205
Substitute First Revised Sheet No. 205A
Substitute First Revised Sheet No. 206
Substitute First Revised Sheet No. 207
Substitute Original Sheet No. 207A
Substitute Original Sheet No. 207B
Substitute First Revised Sheet No. 208
Substitute First Revised Sheet No. 209
Original Sheet No. 209A
Substitute First Revised Sheet No. 211
Substitute Original Sheet No. 211A
Substitute Second Revised Sheet No. 212
Substitute First Revised Sheet No. 213
Substitute First Revised Sheet No. 214
Substitute First Revised Sheet No. 215
Substitute Original Sheet No. 215A
Substitute Original Sheet No. 215B
Substitute First Revised Sheet No. 216
Substitute First Revised Sheet No. 217
Substitute First Revised Sheet No. 218
Sheet No. 218A (Reserved for Future Use)
First Revised Sheet No. 220
Substitute First Revised Sheet No. 224
Substitute First Revised Sheet No. 226
Substitute First Revised Sheet No. 227
Substitute First Revised Sheet No. 305
Substitute First Revised Sheet No. 308
Substitute First Revised Sheet No. 312
Substitute Second Revised Sheet No. 313
Substitute Second Revised Sheet No. 317
Original Sheet No. 317A
Substitute Third Revised Sheet No. 319B
Substitute Second Revised Sheet No. 319C
Substitute First Revised Sheet No. 328
Substitute First Revised Sheet No. 332
First Revised Sheet No. 333
Substitute First Revised Sheet No. 334
Substitute First Revised Sheet No. 335
Substitute First Revised Sheet No. 336
Substitute 2nd Revised Sheet No. 337
Substitute Original Sheet No. 337A
First Revised Sheet No. 339
Substitute Original Sheet No. 339A
Substitute First Revised Sheet No. 345
Substitute First Revised Sheet No. 346
Substitute First Revised Sheet No. 347
First Revised Sheet No. 359
First Revised Sheet No. 360
Original Sheet No. 360A
Substitute First Revised Sheet No. 363
Substitute Original Sheet No. 363A
Substitute Second Revised Sheet No. 364
Substitute First Revised Sheet No. 365
Substitute Second Revised Sheet No. 401
Substitute First Revised Sheet No. 401A
Substitute 2nd Revised Sheet No. 406
Substitute Second Revised Sheet No. 509
Substitute Second Revised Sheet No. 512
Substitute Second Revised Sheet No. 526
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Substitute First Revised Sheet No. 576
Substitute First Revised Sheet No. 581
Substitute First Revised Sheet No. 587
First Revised Sheet No. 588
Substitute First Revised Sheet No. 596
Substitute First Revised Sheet No. 601
Substitute Second Revised Sheet No. 605
Substitute First Revised Sheet No. 621
Substitute First Revised Sheet No. 655
Substitute First Revised Sheet No. 659E
Substitute First Revised Sheet No. 660
Original Sheet No. 660A
Original Sheet No. 660B
Substitute First Revised Sheet No. 661
Substitute First Revised Sheet No. 662
Original Sheet No. 662A
Substitute First Revised Sheet No. 663
Substitute First Revised Sheet No. 664
Original Sheet No. 664A
Substitute First Revised Sheet No. 665
Original Sheet No. 665A
Substitute First Revised Sheet No. 666
Original Sheet No. 666A
Substitute First Revised Sheet No. 667
Original Sheet No. 667A
Substitute First Revised Sheet No. 668
Original Sheet No. 668A
Substitute First Revised Sheet No. 669
Original Sheet No. 669A
Substitute First Revised Sheet No. 670
Original Sheet No. 670A
Substitute First Revised Sheet No. 671
Original Sheet No. 671A
Substitute First Revised Sheet No. 672
Original Sheet No. 672A
Substitute First Revised Sheet No. 673
Original Sheet No. 673A
Substitute First Revised Sheet No. 674
Original Sheet No. 674A
Substitute First Revised Sheet No. 675
Original Sheet No. 675A
Substitute Original Sheet No. 676

[FR Doc. 95–8539 Filed 4–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–216–000]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

April 3, 1995.

Take notice that on March 30, 1995, Tennessee Gas Pipeline Company filed a limited application pursuant to Section 4 of the Natural Gas Act, and the rules and regulations of the Federal Energy Regulatory Commission promulgated thereunder, to recover gas supply realignment costs (GSR costs) paid, or known and measurable, at the time of the filing.

Tennessee proposes that the filing be made effective May 1, 1995. Tennessee states that the tariff sheets identified

below set forth Tennessee's GSR-related charges:

First Revised Second Revised Sheet No. 21A
First Revised Second Revised Sheet No. 22
First Revised Second Revised Sheet No. 22A
First Revised Second Revised Sheet No. 24
Twelfth Revised Sheet No. 30

Tennessee states that copies of the filing were posted in conformance with Section 154.16 of the Commission's Regulations and mailed to all affected customers of Tennessee and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8540 Filed 4–6–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL—5185–6]

Access to Confidential Business Information by TechLaw, Inc. and Its Team Subcontractors

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA awarded Region I Enforcement Support Services (ESS) Contract 68–W4–0019 to prime contractor, TechLaw, Inc. EPA has authorized TechLaw, including its team subcontractors, CDM Federal Programs Corporation, Financial Investigations & Services, Inc., Blake Investigative Agency, Barber Associates, Life Systems, Inc., Science Applications International Corporation, ISSI, Inc., and HydroGeoLogic, Inc., access to information in Region I Superfund files which has been submitted to EPA under the environmental statutes administered by the Agency. Some of this information may be claimed or determined to be confidential business information (CBI).

DATES: Comments should be submitted to EPA within five working days after publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mary H. Grealish, Project Officer, U.S. Environmental Protection Agency, (HPC–CAN), JFK Federal Building, Boston, MA 02203–2211. Telephone (617) 223–5507.

SUPPLEMENTARY INFORMATION: Under Contract No. 68–W4–0019, TechLaw provides agency-wide information management support services to the Environmental Protection Agency for the operation of dockets, records management support programs, records centers, and file rooms in certain Headquarters, Regional, Laboratory, and other offices. In performing these tasks, TechLaw employees have access to Agency documents for purposes of document processing, filing, abstracting, analyzing, inventorying, retrieving, tracking, etc. The documents to which TechLaw has access potentially include all documents submitted under the Resource Conservation and Recovery Act, Clean Air Act, Clean Water Act, and Comprehensive Environmental Response, Compensation and Liability Act. Some of these documents may contain information claimed as CBI.

Pursuant to EPA regulations at 40 CFR part 2, subpart B, EPA has determined that TechLaw requires access to CBI to perform the work required under the contract. These regulations provide for five days notice before contractors are given CBI.

TechLaw is required by contract to protect confidential information. When TechLaw's need for the documents is completed, TechLaw will return them to EPA.

Dated: March 28, 1995.

John P. DeVillars,

Regional Administrator.

[FR Doc. 95–8612 Filed 4–6–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5185–9]

Public Water Supervision Program: Program Revisions for the Commonwealth of Massachusetts

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commonwealth of Massachusetts is revising it's approved State Public Water Supervision Primacy Program. Massachusetts has adopted drinking water regulations for Volatile Organic Chemicals, Synthetic Organic Chemicals, and Inorganic Chemicals (known as Phase II, IIB, and V) in drinking water that correspond to the National Primary Drinking Water Regulations promulgated by EPA on January 30, 1991 (56 FR 3526), July 1, 1991 (56 FR 30266), and July 17, 1992 (57 FR 31776). EPA has determined that the State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by May 8, 1995 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by May 8, 1995, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective May 8, 1995.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intended to submit at such hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday, at the following offices:

Massachusetts Department of Environmental Protection, Division of Water Supply—9th Floor, One Winter Street, Boston, MA 02108
and
U.S. Environmental Protection Agency—New England, Water Management Division, Ground Water Management and Water Supply Branch, One Congress Street—11th Floor, Boston, MA 02203

FOR FURTHER INFORMATION CONTACT: Kevin Reilly, U.S. Environmental Protection Agency—Region I, Ground Water Management and Water Supply

Branch, JFK Federal Building, Boston, MA 02203, Telephone: (617) 565–3619.

Authority: Section 1413 of the Safe Drinking Water Act as amended, 42 U.S.C. 300f *et seq.*, and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: March 24, 1995.

John P. DeVillars,

Regional Administrator.

[FR Doc. 95–8614 Filed 4–6–95; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–4721–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 6, 1995 through March 10, 1995 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

Summary of Rating Definitions

Environmental Impact of the Action

LO—Lack of Objections

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

EC—Environmental Concerns

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

EU—Environmental Objections

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

EO—Environmentally Unsatisfactory

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

Adequacy of the Impact Statement

Category 1—Adequate

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

Category 2—Insufficient Information

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

Category 3—Inadequate

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

Draft EISs

ERP No. D–BLM–J03022–WY Rating EC2, Greater Wamsutter Area II Natural Gas Development Project, Approvals and Permits Issuance, Carbon and Sweetwater Counties, WY.

SUMMARY: EPA expressed environmental concerns regarding the plugging program and possible ground water degradation. EPA requested additional information on these issues, as well as, a discussion to reduce the projected disturbance of 5 acres (per well) pad.

ERP No. D–NPS–E65048–TN Rating EC2, Foothills Parkway Section 8D, Construction, between Wear Valley Road (US 321) and Gatlinburg Pigeon Forge Spur (US 441/321), Right-of-Way and COE Section 404 Permits, Great Smoky Mountain National Park, Blount, Sevier and Cocke Counties, TN.

Summary: EPA expressed environmental concern regarding potential acid drainage and requested that the final EIS discuss possible secondary or backup mitigation plans should the proposed strategies fail. ERP No. D–USA–K11058–CA Rating EC2, San Onofre Area Sewage Effluent Compliance Project, Cease and Desist Orders, Camp Pendleton Marine Corps Base, San Diego and Orange Counties, CA.

Summary: EPA expressed environmental concerns regarding impacts to wetlands, biological resources and water quality. Additional information is requested for the project description and its alternatives analysis.

Final EISs

ERP No. F–FTA–L54003–OR, New Eugene Transfer Station, Site Selection and Construction, Funding, McDonald Site or IHOP Site, Lane County, OR.

Summary: Review of the Final EIS has been completed and no environmental concerns with the project were identified. No formal comment letter was sent to the preparing agency.

Dated: April 4, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–8609 Filed 4–6–95; 8:45 am]

BILLING CODE 6560–50–U

[ER-FRL–4721–8]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed March 27, 1995 Through March 31, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950116, DRAFT EIS, USA, CA, Hamilton Army Airfield Disposal and

Reuse, Implementation, City of Novato, Marin County, CA, Due: May 22, 1995, Contact: Robert Koenigs (916) 557–6712.

EIS No. 950117, DRAFT EIS, AFS, CA, Snowy Trail Off-Highway Vehicle Re-Route, Smith Fork Parcel of Los Padres National Forest, Approval and Implementation, Mount Pinos Ranger District, Ventura County, CA, Due: May 22, 1995, Contact: Mark Bethke (805) 245–3731.

EIS No. 950118, DRAFT EIS, IBR, WA, ND, OR, ID, NV, MT, SD, WY, NB, UT, CO, CA, NM, OK, KS, AZ, TX, Acreage Limitation and Water Conservation Rules and Regulations, Revised and/or New Rules for Replacement and Expansion of Existing Rules pertaining to the Administration of the Reclamation Reform Act of 1982, Implementation in Seventeen Western States, Due: May 31, 1995, Contact: Ronald J. Schuster (303) 236–9336.

EIS No. 950119, LEGISLATIVE DRAFT EIS, AFS, ID, White Sand Creek and a Two-Mile Segment of the Upper Lochsa River Wild and Scenic River Suitability Study for Designation or Nondesignation in the Wild and Scenic Rivers System, Clearwater National Forest, Idaho County, ID, Due: June 6, 1995, Contact: Dennis Elliott (208) 942–3113.

EIS No. 950120, FINAL EIS, FHW, NY, I–26 Mohawk River Crossing connecting NYS Thruway Interchange 26, I–890, NYS–5S and NYS–5 Construction, Funding, US Coast Guard Permits and COE Section 404 Permit, Towns of Rotterdam and Glenville, Schenectady County, NY, Due: May 8, 1995, Contact: Harold J. Brown (518) 472–3616.

EIS No. 950121, FINAL EIS, BOP, MA, Fort Devens, Massachusetts Federal Medical Center Complex (FMCC) and Federal Prison Camp, Construction and Operation, Worcester and Middlesex Counties, MA, Due: May 10, 1995, Contact: Patricia K. Sledge (202) 514–6470.

EIS No. 950122, DRAFT EIS, FTA, IL, St. Clair County Corridor Transit Improvements, Funding, St. Clair County, IL, Due: May 22, 1995, Contact: Lee Waddleton (816) 523–0204.

Amended Notices

EIS No. 940530, DRAFT EIS, BLM, WY, Grass Creek Resource Management Plan, Implementation, Big Horn, Washakie, Hot Springs and Park Counties, WY, Due: May 7, 1995, Contact: Joe Patty (307) 775–6101. Published FR 2–3–95 Review period extended.

Dated: April 4, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–8610 Filed 4–6–95; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5186–2]

Annual Conference on Analysis of Pollutants in the Environment and Trace Metals Workshop

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of conference and training workshop.

SUMMARY: The Office of Science and Technology and the Water Environment Federation, co-sponsors, will hold the ''18th Annual Conference on Analysis of Pollutants in the Environment'' to discuss all aspects of environmental measurement. The conference is open to the public. A Workshop on Trace Metals sampling and analysis will precede the conference. This workshop is designed for state and regional authorities.

DATES: The conference will be held on May 3–4, 1995. On May 3, 1995, the conference will begin at 8:45 am and last until 5:15 pm; on May 4, 1995, the conference will begin at 8:45 am and adjourn at 4:30 pm. The Workshop on Trace Metals will be held on May 2, 1995, from 12:30 pm to 5:30 pm.

ADDRESSES: The conference will be held at the Norfolk Waterside Marriott, Norfolk, Virginia. The Trace Metals Workshop will be held at the Omni International Hotel, 777 Waterside Drive, Norfolk, Virginia 23510.

FOR FURTHER INFORMATION CONTACT: Conference arrangements are being coordinated by the Water Environment Federation. For information on registration, hotel rates, transportation, social events and reservations call the Water Environment Federation Conference Service Line at (800) 666–0206. If you have technical questions regarding the conference program please contact William Telliard, Office of Science and Technology (Mail Code 4303), telephone (202) 260–7120, fax (202) 260–7185.

For Information on the Trace Metals Workshop registration requirements or technical program, call Cindy Simbanin, DynCorp Environmental, at (703) 519–1386.

SUPPLEMENTARY INFORMATION: EPA's 18th Annual Conference on Analysis of Pollutants in the Environment is designed to bring together representatives of regulated industries, commercial environmental laboratories, state and Federal regulators, and environmental consultants and contractors to discuss all aspects of environmental measurement with a particular focus on analytical methods and related regulatory issues.

A Workshop on Trace Metals Sampling and Analysis for state and regional authorities will precede the full conference and focus on cutting edge issues in the determination of trace metals in ambient waters. The session on trace metals determinations will cover EPA's recent work on sampling and analysis of metals at water quality criteria levels, discussions of clean and ultra-clean techniques, a case study on a project to determine trace metals and to establish chemical translator ratios for the City of Danville, Virginia, and presentation of methods under development for the determination of arsenic, selenium, and mercury at EPA and state ambient water quality criteria levels. The program for the conference follows:

18th Annual EPA Conference on Analysis of Pollutants in the Environment

Wednesday, May 3, 1995

8:45 am Opening Remarks
William Telliard, Director, Analytical Methods Staff, Office of Science and Technology, Office of Water, USEPA

9:00 am Introductory Remarks
Mike Pollen, Water Environment Federation

9:15 am Welcome
James Hanlon, Deputy Office Director, Office of Science and Technology, USEPA

Trace Metals

9:30 am Implementing EPA's Metals Criteria
Elizabeth Southerland, Director, Standards and Applied Sciences Division, Office of Water, USEPA

10:00 am Establishing Trace Metal Clean Facilities in Existing Laboratories
Russell Flegal, University of California at Santa Cruz

10:30–10:45 am Break

10:45 am Determination of Arsenic at Ultra-Trace Levels Using Vapor Generation-Atomic Fluorescence Spectrometry
Reshan Fernando, Research Triangle Institute

11:15 am Temporal Variability in Dissolved Trace Metals in the Houston Ship Channel, Texas
Paul Boothe, Texas A&M University

11:45–1:00 pm Lunch

1:00 pm Trace Mercury Analysis of Biological Fluids
Conrad Naleway and Hwai-Nan Chou, American Dental Association

1:30 pm Analytical Methods for Arsenic in Water with an MDL of 2 ng/L
Eric Crecelius, Chuck Apts, and Steve Kiesser, Battelle Marine Sciences Laboratory

Wednesday, May 3, 1995

Cyanide Methods

2:00 pm Present and Future of ''Free Cyanide'' Determinations
Emil Milosavljevic, University of Nevada, Reno
2:30 pm Effects of Metals, Ligands, and Oxidants on Cyanide Analysis; Gold Mining Waste Case Study
Margaret Goldberg, Research Triangle Institute
3:00–3:15 pm Break
3:15 pm Approaches to the Determination of Total and Available Cyanide in Solid Samples
Ed Heithmar, Environmental Monitoring Systems Laboratory, Las Vegas
3:45 pm The Determination of Cyanide in a Chemical Plant's Waste Water Using Ion Chromatography
Susan Gantz Matz, Quantum USI Division

Analysis Protocols—I

4:15 pm EPA's Sediment Toxicity Testing Methods
Teresa Norberg-King, USEPA Environmental Research Laboratory, Duluth and Elizabeth Southerland, Director, Standards and Applied Sciences Division, Office of Water, USEPA
4:45 pm Microscale Solvent Extraction Methods for Organic Compound Analyses
David Mauro, META Environmental, Inc.
5:15 pm Adjourn

Thursday, May 4, 1995

Quality Control

8:45 am Statistical Properties of Low Concentration Measurements and Wastewater Effluent Limitations
Chuck White and Henry Kahn, U.S. Environmental Protection Agency
9:15 am Compliance Monitoring Detection and Quantitation Levels for EPA Method 1653
Larry LaFleur, NCASI
9:45 am Seeing the Light From a Blind PE Sample: Rocky Mountain Arsenal's Analytical Laboratory Performance Evaluation System
Angela Barnard-Hatmaker, Martin Marietta Energy Systems, Inc.
10:15–10:30 am Break
10:30 am Selecting Kinds and Numbers of QC Samples for More Defensible Environmental Analyses
Larry Keith, Radian Corporation
11:00 am Approaches to Quality Control of Non-Linear Calibration Relationships for SW–846 Methods
Harry McCarty, SAIC

Sampling Protocols

11:30 am VOA Compositing Study
Dale Rushneck, Interface
12:00–1:15 pm Lunch
1:15 pm The Evaluation and Application of a Large Volume In-Situ Resin Sampler for Monitoring Trace Organic Compounds in Ambient Water
Hans Biberhofer, Environment Canada
1:45 pm Practical Application of Clean Metals Sampling Protocols to NPDES Monitoring
Will Hunley, Hampton-Roads Sanitation District
2:15 pm Residential Environmental Sampling Protocols for Human Exposure Assessment of Lawn Pesticides
Marielle Brinkman, Battelle Columbus

Thursday, May 4, 1995

2:45–3:00 pm Break

Analysis Protocols—II

3:00 pm Solid-Phase Microextraction for the Analysis of Industrial Wastewaters
Bruce Colby, Pacific Analytical, Inc.
3:30 pm Field Analysis: An Effective Approach to Site Assessment and Remediation
Ileana Rhodes, Shell Development Company
4:00 pm Determination of N-Nitrosodimethylamine (NDMA) at Part-per-Trillion Levels in Drinking Waters and Contaminated Groundwaters
Bruce Tomkins, Wayne H. Griest, and Cecil E. Higgins, Oak Ridge National Laboratory
4:30 pm Adjourn

Trace Metals Training Workshop Agenda

Tuesday, May 2, 1995.

12:00 noon

Introductory Remarks: William A. Telliard, USEPA

Mr. Telliard will provide an overview of the WQC levels for trace metals determinations and the topics to be discussed in the workshop to aid attendees in resolving the problems associated with the sampling and analysis of trace metals, including the difficulty in precluding contamination.

Requirements for Determination of Trace Metals: James A. Hanlon, USEPA

Mr. Hanlon will give a background on the need for the determination of trace metals at WQC levels as required by the Clean Water Act and will discuss the detection and quantitation limits necessary to ensure reliable determination of trace metals at these levels.

Overview of the Sampling and Analysis Process for Trace Metals Determinations: Carlton Hunt, Battelle Ocean Sciences

Dr. Hunt will explain how to organize and manage a project for sampling, analysis, data validation, and quality control to ensure that reliable trace metals determinations are made.

Field Sampling for Trace Metals: William A. Telliard, USEPA

Mr. Telliard will discuss ''clean-hands/dirty-hands'' sampling techniques, the use of protective gloves and clothing to prevent contamination, and the processing of equipment blanks to ensure reliable sampling. Videos of sampling will be used to supplement this presentation.

Laboratory Determinations of Trace Metals: Russell Flegal, University of California at Santa Cruz

Dr. Flegal will describe the set-up and operation of a trace metals laboratory, including the clean room, clean benches, and the equipment and analytical techniques required for determination of each metal.

Quality Assurance, Quality Control, and Data Reliability: Dale Rushneck, Interface, Inc.

Mr. Rushneck will discuss the inter-relationship between quality control testing and the production of reliable data of defensible quality.

Verification and Validation of Trace Metals Data: Lynn Riddick, DynCorp Environmental

Ms. Riddick will provide examples of data review checklists that can be used to determine the reliability of trace metals results. These checklists outline the summary level quality control data required by the analytical methods.

Case Study for Compliance and Determination of Translators: John N. Leonard, Hazen and Sawyer

Dr. Leonard will present the requirements, criteria, background, sampling, analysis, and outcome of a project to determine trace metals and establish chemical translator ratios for the city of Danville, Virginia.

5:30 pm Adjourn

Dated: March 30, 1995.

James A. Hanlon,

Acting Director, Office of Science and Technology.

[FR Doc. 95–8611 Filed 4–6–95; 8:45 am]
BILLING CODE 6560–50–P

[FRL–5185–4]

Revocation of Sulfide Waiver Granted on April 17, 1986, to W.B. Place Tannery Discharging to City of Hartford Subject to Pretreatment Standards Under 40 CFR Part 425

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The City of Hartford (hereinafter referred to as ''Hartford''), Wisconsin, operates a publicly owned treatment works (POTW) which accepts wastewater from a leather tanning and finishing facility which is subject to pretreatment standards at 40 CFR part 425. Pursuant to 40 CFR 425.04(c) Hartford certified to the U.S. Environmental Protection Agency (U.S. EPA) on April 11, 1984, that discharge of sulfide from the tannery would not interfere with the operation of the POTW. On April 17, 1986, U.S. EPA placed notice at 51 FR 13092–13093 stating that, pursuant to 40 CFR part 425, the following tannery would not be subject to the categorical sulfide pretreatment standard: W.B. Place Tannery, 368 West Summer Street, Hartford, Wisconsin.

On August 31, 1994, Hartford requested that U.S. EPA rescind the categorical sulfide pretreatment waiver

granted to W.B. Place Tannery. The affected tannery was informed of Hartford's intention.

Pursuant to 40 CFR 425.04(d) and in consideration of the representations and information provided by Hartford, I hereby, rescind the April 17, 1986, waiver of the sulfide requirements set forth in the Leather Tanning and Finishing Pretreatment Standards for the delineated tannery in Hartford, Wisconsin. As provided in 40 CFR 425.04(d)(2), the affected tannery must comply with the categorical sulfide standards no later than 18 months following the publication of this notice or at an earlier date established by the City.

DATES: This action is effective as of April 7, 1995.

FOR FURTHER INFORMATION CONTACT: Matthew Gluckman, Pretreatment Coordinator, Permits Section, Water Quality Branch, U.S. EPA—Region 5, at (312) 886–6089.

Dated: March 10, 1995.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 95–8613 Filed 4–6–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of January 31-February 1, 1995

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on January 31-February 1, 1995.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests a strong further rise in economic activity during the closing months of 1994. Nonfarm payroll employment was up considerably further in December after a sharp increase in November, and the civilian unemployment rate declined to 5.4 percent. Industrial production registered another large advance in December and capacity utilization continued to move up from already high levels. Current estimates indicate little change in retail sales over November and December, while housing starts posted sizable gains on balance over the two months. Orders for nondefense capital goods point to a continued strong expansion in spending on business equipment; permits for nonresidential construction have been trending appreciably higher. The nominal deficit on U.S. trade in goods and services widened somewhat in October-November from its average rate in the third quarter. Prices of many materials have continued to move up rapidly, but broad indexes of prices for consumer goods and services have increased moderately on average over recent months.

Most market interest rates have declined slightly on balance since the Committee meeting on December 20, 1994. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies has declined somewhat over the intermeeting period. The Mexican peso has depreciated sharply against the dollar.

Growth of M2 and M3 strengthened in December and January. From the fourth quarter of 1993 to the fourth quarter of 1994, M2 grew at a rate at the bottom of the Committee's range for 1994 and M3 at a rate in the lower half of its range for the year. Total domestic nonfinancial debt has continued to expand at a moderate rate in recent months, and for the year 1994 it grew at a rate in the lower half of its monitoring range.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at this meeting established ranges for growth of M2 and M3 of 1 to 5 percent and 0 to 4 percent respectively, measured from the fourth quarter of 1994 to the fourth quarter of 1995. The Committee anticipated that money growth within these ranges would be consistent with its broad policy objectives. The monitoring range for growth of total domestic nonfinancial debt was lowered to 3 to 7 percent for the year. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to increase somewhat the existing degree of pressure on reserve positions, taking account of a possible increase in the discount rate. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, somewhat greater reserve restraint or somewhat lesser reserve restraint would be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with moderate growth in M2 and M3 over coming months.

By order of the Federal Open Market Committee, April 3, 1995.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 95-8579 Filed 4-6-95; 8:45 am]

BILLING CODE 6210-01-F

[1] Copies of the Minutes of the Federal Open Market Committee meeting of January 31-February 1, 1995, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

Banco de Sabadell, S.A.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 21, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Banco de Sabadell, S.A., Sabadell, Spain; to retain 50 percent of the voting shares of PRS International Investment Advisory Services, Inc., and PRS International Brokerage, Inc., both of Miami, Florida, and thereby continue to engage in providing institutional and retail customers portfolio investment advice general economic information and advice, and general economical statistical forecasting services and industry studies, pursuant to § 225.25(b)(4) of the Board's Regulation Y; providing to institutional and real customers securities services, related securities credit activities, pursuant to Regulation T, and incidental activities such as custodial services, individual retirement accounts, and cash management services, pursuant to § 225.25(b)(15) of the Board's Regulation Y; and acting as an introducing broker for institutional and retail customers in the execution and clearance on major commodity exchanges of futures contracts and options on futures contracts for bullion, foreign exchange, government securities, certificates of deposit, other money market instruments, pursuant to § 225.25(b)(18) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 3, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-8580 Filed 4-6-95; 8:45 am]

BILLING CODE 6210-01-F

Commonwealth Holdings, LLC, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 1, 1995.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Commonwealth Holdings, LLC, Burlington, Kentucky; to become a bank holding company by acquiring 31.75 percent of the voting shares of Heritage Bancorp, Inc., Burlington, Kentucky, and thereby indirectly acquire Heritage Bank, Inc., Burlington, Kentucky.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. SouthTrust Corporation, Birmingham, Alabama, and SouthTrust of Georgia, Inc., Roswell, Georgia; to merge with Southern Bank Group, Inc., Roswell, Georgia, and thereby indirectly acquire Northside Bank & Trust Company, Roswell, Georgia.

Board of Governors of the Federal Reserve System, April 3, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–8581 Filed 4–6–95; 8:45 am]

BILLING CODE 6210–01–F

Steven L. Ohs, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 21, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Steven L. Ohs, Glendive, Montana; to acquire 20 percent of the voting shares of Community First Bancorp, Glendive, Montana, and thereby indirectly acquire Community First Bancorp, Glendive, Montana, Glendive Bancorporation, Inc., Glendive, Montana, and First Fidelity Bank, Glendive, Montana.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Dr. Joel W. Kovner, Malibu, California; to retain up to 27.93 percent of the voting shares of Professional Bancorp, Inc., Santa Monica, California, and thereby indirectly retain First Professional Bank, N.A., Santa Monica, California.

Board of Governors of the Federal Reserve System, April 3, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–8582 Filed 4–6–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Health Care Policy and Research Special Emphasis Panel; Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following special emphasis panel scheduled to meet during the month of May 1995:

Name: Health Care Policy and Research Special Emphasis Panel.

Date and Time: May 5, 1995, 8:30 a.m.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Conference Room TBA, Chevy Chase, MD 20815.

Open May 5, 8:30 a.m. to 9:30 a.m.

Closed for remainder of meeting.

Purpose: This Panel is charged with conducting review of competing continuation of grant applications for MEDTEP Research Centers on Minority Populations.

Agenda: The open session of the meeting on May 5 from 8:30 a.m. to 9:30 a.m. will be devoted to a business meeting covering administrative matters. During the closed session, the committee will be reviewing competing continuation of grant applications for MEDTEP Research Centers on Minority Populations. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that this latter session will be closed because the discussions are

likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members or other relevant information should contact Linda Blankenbaker, Agency for Health Care Policy and Research, Suite 602, 2101 East Jefferson Street, Rockville, Maryland 20852, telephone (301) 594–1438.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: March 31, 1995.

Clifton R. Gaus,

Administrator.

[FR Doc. 95–8577 Filed 4–6–95; 8:45 am]

BILLING CODE 4160–90–M

Health Care Financing Administration

Notice of Hearing: Reconsideration of Disapproval of Utah State Plan Amendment (SPA)

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

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on May 17, 1995 in Room 578, 1961 Stout Street, Denver, Colorado to reconsider our decision to disapprove Utah SPA 93–033.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the presiding officer by April 24, 1995.

FOR FURTHER INFORMATION CONTACT: Stan Katz, Presiding Officer, Groundfloor, Meadowwood East Building, 1849 Gwynn Oak Avenue, Baltimore, Maryland 21207, telephone: (410) 597–3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Utah State plan amendment (SPA) number 93–033.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The State of Utah submitted SPA 93–033 which proposed changes in an asset test for poverty level pregnant women. Specifically, Utah's amendment required certain poverty level pregnant women who did not meet the resource test to make a one-time payment equal to 4 percent of the individual's total non-exempt resources. In addition, Utah's amendment would waive this requirement for high risk pregnant women.

The issues in this matter are whether Utah SPA 93–033 adheres to the Federal law at section 1902(a)(14) of the Act (referencing section 1916 of the Act) section 1902(l) and section 1902(a)(17).

Section 1902(a)(14) of the Act specifies that enrollment fees, premiums, deductions, cost sharing, or similar charges may be imposed *only* as provided in section 1916. Section 1916(a)(1) prohibits the application of any enrollment fee with respect to the categorically needy. It restricts States from charging a premium for Medicaid for the categorically needy. An exception is made regarding poverty level pregnant women with income at or above 150 percent of the Federal Poverty Level. For these women, the amount of that premium is restricted to 10 percent of the amount by which the family income (less expense for care of a dependent child) exceeds 150 percent of the poverty level. In addition, section 1916(a)(2)(B) prohibits States from imposing any deduction, cost sharing or similar charge with respect to services furnished to pregnant women, provided the services relate to the pregnancy or a complicating condition. HCFA disapproved Utah's amendment finding contrary to the statute's prohibition on imposing premiums (other than those authorized in section 1916(c) of the Act) enrollment fees, or similar charges on categorically needy individuals.

Utah believes its proposed policy to waive the resource spenddown for pregnant women determined to be in the high risk category is supported by section 1902(1)(3) of the Act. Utah believes this is the only statutory authority over resource standards and methodologies for poverty level pregnant women. Utah also claims that section 1902(a)(17) explicitly exempts pregnant women from all requirements in that section. HCFA did not agree with Utah's interpretation of the statute that section 1902(l) exempts this group from the comparability requirements in section 1902(a)(17).

While HCFA acknowledges that subsection (l)(3) exempts the States from using a resource test for high-risk pregnant women, this exemption does not override the remainder of section 1902 (a)(17) which requires comparability of services to all such women. Utah cites the phrase, ''except as provided in subsections (l)(3), (m)(3), and (m)(4) include reasonable standards (which shall be comparable for all groups * * *)'' as a rationale for this assertion. However, section 1902(1)(3) applies only in cases in which its application would be inconsistent with the requirements of subsection (a)(17). HCFA believed that subsection (l)(3) authorizes States to establish a more liberal resource standard or to drop the resource test for all section 1902(l)(A) pregnant women, but not to adopt either of these approaches for a specific segment of that group. While the goal of removing barriers to ensure positive birth outcomes is a shared one, HCFA did not approve foregoing a resource test exclusively for high-risk pregnant women because they are not a separate group described in section 1902(l).

Utah points out that subsection (l)(3) prescribes that a resource standard or methodology may not be more restrictive than applied under Title XVI. Utah also believes that exclusion of all resources based upon the level of medical risk factors is less restrictive than Title XVI, and is also reasonable. However, HCFA believed that section 1902(a)(17) is explicitly meant to be inclusive of whole eligibility groups and not portions of groups. HCFA contended it cannot authorize a State to single out any part of an eligibility group for preferential treatment. HCFA's position was, in order to drop the resource test for high risk pregnant women, the State must do so for the entire poverty level group of pregnant women.

The notice to Utah announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Rod L. Betit,

Executive Director, Utah Department of Health, 288 North 1460 West, P.O. Box 16700, Salt Lake City, Utah 84116–0700.

Dear Mr. Betit: I am responding to your request for reconsideration of the decision to disapprove Utah State Plan Amendment (SPA) 93–033.

The State of Utah submitted SPA 93–33 which proposed changes in an asset test for poverty level pregnant women. Specifically, Utah proposed policy regarding a one-time payment equal to 4 percent of the individual's total non-exempt resources if

they are equal to or exceed $5,000. In addition, Utah proposed to waive this payment requirement for high risk pregnant women.

The issues in this matter are whether Utah SPA 93–033 adheres to the Federal law at section 1902(a)(14) of the Act (referencing section 1916 of the Act), section 1902(l) and section 1902(a)(17).

I am scheduling a hearing on your request for reconsideration to be held on May 17, 1995, in Room 578, 1961 Stout Street, Denver, Colorado. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, Part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the residing officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 597–3013.

Sincerely,

Bruce C. Vladeck,

Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR section 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: March 30, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–8524 Filed 4–6–95; 8:45 am]

BILLING CODE 4120–01–P

Public Health Service

Centers for Disease Control and Prevention; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69696, October 20, 1980, as amended most recently at 59 FR 63406–62407, dated December 5, 1994) is amended to reflect the transfer of the Division of HIV/AIDS, excluding the Hematologic Diseases Branch, Immunology Branch, and Laboratory Investigations Branch, from the National Center for Infectious Diseases to the National Center for Prevention Services.

Section HC–B, *Organization and Functions*, is hereby amended as follows:

Delete in its entirety the title and functional statement for the *Division of HIV/AIDS (HCRK).*

Following the functional statement for the *Division of Oral Health (HCM6), Office of the Director (HCM61),* insert the following:

Division of HIV/AID (HCM7). (1) Conducts national surveillance of infectious diseases and other illnesses associated with human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS), and sentinel surveillance of HIV infection; (2) conducts national and international surveillance, epidemiologic investigations, and studies to determine risk factors and transmission patterns of HIV/AIDS; (3) develops recommendations and guidelines on the prevention and control of HIV/AIDS; (4) evaluates prevention and control activities in collaboration with other CDC components; (5) provides epidemic aid, epidemiologic and surveillance consultation, and financial assistance for HIV/AIDS surveillance activities to State and local health departments; (6) provides consultation to other PHS agencies, medical institutions, and private physicians; (7) provides information to the scientific community through publications and presentations; (8) works closely with NCID on HIV/AIDS surveillance activities and epidemiologic studies that require laboratory support and collaboration.

Office of the Director (HCM71). (1) Plans, directs, and coordinates the activities of the Division; (2) develops goals and objectives and provides leadership, policy formulation, and guidance in program planning and development; (3) provides program management and administrative support services for HIV/AIDS activities, both domestic and international.

International Activity (HCM712). (1) Designs and executes epidemiologic studies of HIV infection in developing nations of Africa and other continents; (2) develops and conducts epidemiologic studies of risk factors for AIDS and HIV transmission; (3) provides technical assistance to developing nations to develop AIDS case surveillance systems; (4) assists foreign governments in carrying out seroprevalence studies and surveys; (5) implements strategies to protect the blood supply in developing countries; (6) assists in the design, implementation, and evaluation of AIDS prevention and control activities; (7) performs epidemiologic studies of HIV/AIDS interventions in foreign countries; (8) coordinates with other CIOs in CDC that have similar international responsibilities; (9) provides consultation to WHO, USAID, and AIDSTECH, and other organizations whose mission is to prevent and control HIV infection and related outcomes.

Technical Information Activity (HCM713). (1) Provides scientific information, in cooperation with other CDC organizations, to health-care professionals, public health officials, and the general public; handles controlled and general correspondence and prepares responses to Freedom of Information Act requests; (2) coordinates preparation of responses and provision of material requested by Congress; (3) coordinates preparation of documents for annual program review with the Directors of NCPS and CDC; (4) prepares HIV/AIDS briefing reports for Director, CDC, and the Assistant Secretary for Health; (5) prepares printed and audiovisual materials on HIV/AIDS in cooperation with other CDC organizations; (6) assists in preparing guidelines for prevention of HIV infection; (7) maintains library of HIV/AIDS reprints and MMWR articles and distributes on request; (8) coordinates requests for presentations at scientific, medical, and public health meetings; (9) assists in preparing, editing, and clearing manuscripts; (10) plans and arranges for HIV/AIDS conferences and scientific meetings sponsored by CDC.

Epidemiology Branch (HCM72). (1) Designs and conducts epidemiologic studies to determine risk factors, co-factors, and modes of transmission for AIDS and HIV infection; (2) conducts epidemic aid investigations of HIV infection, infectious disease, and other illnesses associated with HIV/AIDS; (3) conducts technical reviews of proposals submitted for epidemiologic studies, arranges for ad hoc panel reviews, and recommends funding levels; (4) provides epidemiologic consultation to State and local health departments, other PHS agencies, and other groups and individuals investigating the syndrome; (5) responds to inquiries from physicians and other health providers for information on the medical and epidemiologic aspects of HIV/AIDS.

Pediatric and Family Studies Section (HCM722). (1) Designs and conducts epidemiologic studies of AIDS and HIV infection that examine risk factors, modes of transmission, and the natural history of disease in children, adolescents, mothers, and other family members; (2) develops guidelines and recommendations to reduce transmission in these populations, particularly aspects related to transmission from mother to child and

the effects of pregnancy on infected women; (3) conducts epidemic investigations of infectious diseases and other illnesses associated with AIDS and HIV infection related to these populations; (4) provides technical assistance to medical professionals, health departments, the mass media, and the public on various issues concerning the HIV/AIDS epidemic and its effect on these population groups.

Social and Behavioral Studies Section (HCM723). (1) Designs and conducts social, psychological, and behavioral studies of AIDS and HIV infection that examine cognitive, social, and environmental influences on behaviors associated with the transmission of HIV and development of life-threatening disease; (2) develops guidelines and recommendations to reduce transmission of HIV and the development of AIDS; (3) assists biomedical and epidemiologic researchers in investigations of infectious diseases associated with AIDS and HIV infection; (4) provides technical assistance to social, behavioral, and biomedical scientists, health departments, universities, the mass media, and the public on social and behavioral aspects of the HIV/AIDS epidemic.

Special Studies Section (HCM724). (1) Designs and conducts epidemiologic studies examining the natural history of HIV infection and AIDS and the efficiency of, and risk factors for, the transmission of HIV by homosexual, heterosexual, or bloodborne routes (i.e., transfusion, organ transplantation, or needle-sharing); (2) conducts epidemic investigations of infectious diseases and other illnesses associated with AIDS and HIV infection in these risk groups; (3) develops guidelines and recommendations to reduce HIV transmission in these affected populations; (4) provides technical assistance to medical professionals, health departments, the mass media, and the public on various issues concerning the HIV/AIDS epidemic in these populations; (5) develops and maintains systems for the laboratory monitoring of specimens for human immunodeficiency virus type 2 (HIV–2) infection in the United States and conducts epidemiologic investigations of identified cases.

Field Services Branch (HCM73). (1) Serves as the focus for the Division of HIV/AIDS in carrying out field initiatives and programs with State and local health departments; (2) assists the Surveillance, HIV Seroepidemiology, and Statistics and Data Management Branches in implementing and maintaining HIV/AIDS surveillance activities and HIV seroprevalence surveys and studies at the State and local level; (3) administers and tracks the surveillance and seroprevalence components of combined AIDS Prevention and Surveillance cooperative agreements with State and local health departments; (4) works with the Office of the Division Director and the Procurement and Grants Office in processing cooperative agreements and contracts; (5) negotiates field assignments of public health advisors with State and local health officials and provides supervision and training for the advisors; (6) provides training, technical assistance, and consultation to State and local health departments; (7) consults and collaborates with other CDC organizations to assure efficient and effective utilization of available resources.

Consultation Section (HCM732). (1) Assists the Surveillance, HIV Seroepidemiology, and Statistics and Data Management Branches in implementing projects related to HIV/AIDS surveillance and serosurveys; (2) coordinates, reviews, and conducts program negotiations and participates in budget negotiations for HIV/AIDS surveillance and seroprevalence cooperative agreement applications; (3) serves as the Division focal point for communications with State and local health departments and the PHS Regional Offices regarding HIV/AIDS surveillance and seroprevalence surveys and studies; (4) works closely with the medical epidemiologists of the Surveillance and HIV Seroepidemiology Branches to ensure local adherence to surveillance and serosurvey protocols and program guidelines; (5) identifies projects needing on-site epidemiologic assistance from the Surveillance and HIV Seroepidemiology Branches and provides coordination of required on-site visits; (6) monitors, maintains, and follows surveillance and seroprevalence activities (including no identified risk cases) conducted by recipients of HIV/AIDS cooperative agreement funds in collaboration with the Surveillance and HIV Seroepidemiology Branches; (7) negotiates field assignments of public health advisors with State and local health officials, provides support and supervision of field assignees, and conducts site reviews and evaluations of State and local HIV/AIDS surveillance and seroprevalence programs to identify and assist in resolving problems.

Training Section (HCM733). (1) Serves as Division resource in conducting meetings, conferences, and workshops; (2) plans, conducts, and evaluates training and development of public health advisor field assignees; (3) determines training needs and plans, and conducts and coordinates surveillance and seroprevalence training courses for State and local health department staff; (4) develops surveillance and seroprevalence training and operational manuals and guidelines for State and local personnel.

HIV Seroepidemiology Branch (HCM74). (1) Plans, develops, and coordinates HIV clinic and special surveys and population studies in selected geographic areas; (2) provides data and serves as the focus for information about the extent of HIV prevalence and incidence in the U.S.; (3) collaborates and provides technical assistance to public and private organizations regarding HIV seroprevalence; (4) works closely with other CDC organizations in applying prevalence and incidence data to target and evaluate HIV prevention programs; (5) works with the Surveillance Branch and the Statistics and Data Management Branch to evaluate HIV/AIDS trends in incidence and prevalence projections; (6) collaborates and works closely with the Field Services branch to effectively implement and evaluate CDC-funded HIV seroprevalence surveys.

Clinic and Special Surveys Section (HCM742). (1) Designs, monitors, and evaluates HIV seroepidemiologic surveys and studies in health care sites such as sexually transmitted disease, tuberculosis, drug treatment, and women's health clinics, and in additional selected populations; (2) provides guidance, technical assistance, and consultation to the Field Services Branch and State and local health departments in implementing clinic and special surveys and studies; (3) ensures the collection and analysis of HIV prevalence data; (4) prepares MMWR and other scientific articles and report related to HIV prevalence and trends of HIV infection in selected health care facilities; (5) provides technical assistance to and coordination with CDC organizations in interpreting and utilizing seroprevalence data to implement and evaluate HIV prevention programs.

Population Studies Section (HCM743). (1) Designs, implements, monitors, and evaluates seroepidemiologic surveys and studies among populations such as childbearing women, hospital clients, blood donors, civilian applicants for military services, Job Corps entrants, patients of family practitioners, and Native Americans; (2) ensures the analysis of HIV prevalence data in these populations; (3) coordinates, reviews, and participates in budget and program negotiations of HIV seroprevalence cooperative agreement

applications and contract proposals; (4) provides on-site technical assistance and consultation to grantees and contractors, including State and local health departments, hospitals, universities, blood centers, and private organizations, and other Federal agencies such as the Departments of Defense and Labor, and the Indian Health Service; (5) administers cooperative agreements and contracts for HIV seroprevalence and studies; (6) prepares MMWR and scientific articles and reports related to the incidence and prevalence of HIV infection among selected populations; (7) provides technical assistance and consultation to the Field Services Branch and to other CDC organizations and other agencies interpreting and utilizing seroprevalence data to implement and evaluate HIV prevention programs.

Statistics and Data Management Branch (HCM75). (1) Manages, directs, and coordinates the activities of the Statistics and Data Management Branch; (2) provides leadership in the development of Branch planning, policy, implementation, and evaluation; (3) provides data management and statistical support for AIDS/HIV surveillance, HIV serosurveys, and epidemiologic studies; (4) develops, negotiates, monitors, and evaluates projects to construct mathematical models of the spread of AIDS and HIV infection; (5) creates mathematical models to project the incidence of AIDS and HIV infection; (6) provides statistical models of epidemiologic parameters to describe the efficiency of HIV transmission and the incubation time for AIDS; (7) responds to inquiries from medical professionals, health departments, the media, and the public about AIDS epidemic statistical issues, including projections of the number of AIDS cases and estimates of persons infected with HIV.

Seroepidemiology Support Section (HCM752). (1) Provides data management support for the HIV Family of Surveys, including receipt and acknowledgment of electronically transmitted data, entry of hard copy data, editing, uploading, and producing standard data analyses; (2) coordinates, in collaboration with the HIV Seroepidemiology Branch, the development and operation of data management systems for HIV surveys and studies; (3) designs and develops microcomputer-based software for clinics, hospitals, State laboratories and health departments to use in managing data collected from a variety of HIV prevalence surveys; (4) provides consultation and computer programming assistance to project officers in analyzing data from their respective surveys and studies; (5) assists the HIV Seroepidemiology Branch and Section Chiefs in preparing summaries of analyses and reports of Family of Surveys data; (6) recommends mainframe and microcomputer hardware and software that will be required to support the National HIV Seroprevalence Surveys data management.

Statistics Section (HCM753). (1) Provides statistical support in the design and analysis of data from epidemiologic studies; (2) provides statistical support in estimating the prevalence of HIV infection in a variety of survey populations; (3) develops statistical models describing changes in the prevalence of HIV infection over time; (4) assists the Surveillance Branch in the analysis of trends in HIV/AIDS surveillance data by different demographic and patient risk characteristics; (5) supplies a large number of statistical services to division components, including the review of statistical methods in manuscripts, production of standardized statistical reports and additional data analysis; (5) creates mathematical models to project the incidence of AIDS and HIV infection; (7) provides statistical models of epidemiologic parameters to describe the efficiency of HIV transmission and the incubation time for AIDS.

Surveillance Support Section (HCM754). (1) Coordinates, in collaboration with the Surveillance Branch, the development and operation of data management systems for HIV surveys and studies; (2) designs and develops microcomputer-based data management software used by State and local health departments for collecting and reporting HIV/AIDS surveillance data; (3) provides user manuals and telephone support to health department personnel using CDC-developed software; (4) designs, implements, and supports mainframe data systems for HIV/AIDS epidemiologic and surveillance studies; (5) provides consultation and computer programming assistance to project officers in analyzing data from their respective surveys and studies; (6) prepares, distributes, and supports public information data sets containing HIV/AIDS surveillance and epidemiologic statistical findings for the world research community; (7) recommends hardware and software packages that will be required to support the national AIDS/HIV surveillance.

Systems and Hardware Support Section (HCM755). (1) Designs, implements, and supports data systems for HIV/AIDS epidemiologic and laboratory studies, both in the United States and in overseas sites; (2) creates and maintains data entry and management systems for use by collaborating health departments and research organizations; (3) codes and enters data collected from HIV/AIDS research studies into CDC's computers; (4) supports office automation hardware and software; (5) recommends and supports hardware and software used for data management, data analysis, networking, word processing, and desktop publishing.

Surveillance Branch (HCM76). (1) Conducts national surveillance of AIDS cases in coordination with State/local health departments; (2) maintains national confidential registry of cases; (3) monitors adult and pediatrics HIV-related mortality and morbidity and AIDS risk-group trends; (4) develops additional methods of surveillance of HIV and HIV-related disease; (5) evaluates surveillance systems for HIV-related disease and modifies surveillance and methodologies as needed to meet changing needs of AIDS programs at the national, State, and local levels; (6) provides consultation and technical assistance on surveillance activities to State and local health departments; (7) provides international consultation on surveillance and epidemiology of HIV/AIDS.

Reporting and Analysis Section (HCM762). (1) Conducts national surveillance of HIV/AIDS; (2) develops and distributes surveillance guidelines, case definitions, and case report forms in coordination with State/local health departments; (3) maintains national confidential registry of cases; (4) conducts routine analysis of surveillance data and disseminates information on morbidity, mortality, and AIDS risk-group trends, and survival trends; (5) collaborates with the Statistics and Data Management Branch in the projection of HIV/AIDS trends through mathematical modeling; (6) in collaborating with other NCPs programs, evaluates State and local case reporting systems for HIV-related disease, including impact of State laws on reporting and modifications in reporting criteria; (7) assists with responses to public inquiries; (8) provides technical direction to the HIV Seroepidemiology Branch in monitoring surveillance programs at the State level.

Special Projects Section (HCM763). (1) Develops alternative methods of surveillance for spectrum of HIV-related disease; (2) conducts selected analyses of HIV-related morbidity and mortality data to determine at-risk populations, risk factors, survival trends, etc., and

disseminates results through publications and presentations; (3) updates criteria for reporting pediatric and adult cases; (4) assists the Reporting and Analysis Section with studies to evaluate the completeness, timeliness, and other aspects of reporting; (5) collaborates with other NCPS programs in the epidemiologic investigations of atypical or unusual HIV/AIDS cases.

Effective Date: March 28, 1995.

David Satcher,

Director, Centers for Disease Control and Prevention.

[FR Doc. 95–8634 Filed 4–6–95; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–05–1430–00; AZA 29060]

Arizona: Realty Action, Recreation and Public Purposes (R&PP) Act Classification; Mohave County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following public lands in Mohave County, Arizona, have been examined and found suitable for classification for lease or conveyance, under the provisions of the Recreation and Public Purposes (R&PP) Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*). The lands will not be offered for lease or conveyance until at least 60 days after the date of publication of this notice in the **Federal Register**. The lands described below have been developed by the Arizona State Parks Department (State Parks) for park purposes, and are currently in use for that purpose. The lands are currently leased to State Parks by the United States pursuant to Reclamation lease authority, and particularly pursuant to the Acts of June 17, 1902, (32 Stat. 388) and August 4, 1939, (53 Stat. 1187, 1196), as amended by the Act of August 18, 1950, (64 Stat. 463). This action will allow lease or conveyance of lands to State Parks under current and more appropriate R&PP Act authority. All legal descriptions are within the Gila and Salt River Meridian, Arizona. The following lands are hereby classified suitable for lease to State Parks:

1. Cattail Cove State Park

T. 12 N., R. 18 W.,
Sec. 19, that portion of lot 4 acquired for use by the Bureau of Reclamation (approximately 18 acres);
T. 12 N., R. 19 W.,
Sec. 25, lots 1, 2 & 3, NE¼NE¼ (136.82 acres).
Containing 154.82 acres, more or less.

2. Lake Havasu State Park

T. 13 N., R. 20 W.,
Sec. 23, lots 2 & 3, E½SW¼, W½W½SE¼, SE¼NW¼SE¼, E½SW¼SE¼, SE¼SE¼.
Containing 239.39 acres, more or less.

Total lands classified suitable for lease is 394.21 acres, more or less. The following public lands are hereby classified suitable for conveyance to State Parks:

1. Buckskin Mountain State Park

T. 11 N., R. 18 W.,
Sec. 32, All, excepting that portion of the SW¼ lying west of Arizona State Highway 95 as rerouted (approximately 400 acres);
Sec. 33, lots 10, 11, and 12, S½NW¼, S½ (507.38 acres).
Containing 907.38 acres, more or less.

2. Cattail Cove State Park

T. 12 N., R. 18 W.,
Sec. 19, All excepting that portion of lot 4 acquired for use by the Bureau of Reclamation (approximately 600 acres);
Sec. 20, W½, excepting that portion east of Arizona State Highway 95 (approximately 200 acres);
Sec. 29, All, excepting that portion east of Arizona State Highway 95 (approximately 500 acres);
Sec. 30, All (481.42 acres);
T. 12 N., R. 19 W.,
Sec. 24, All (628.20 acres).
Containing 2409.62 acres, more or less.

3. Lake Havasu State Park

T. 13 N., R. 20 W.,
Sec. 23, lot 5, NE¼SE¼, NE¼NW¼SE¼ (61.33 acres);
Sec. 26, lots 1–4, NE¼ (290.93 acres).
Containing 352.26 acres, more or less.

Total lands classified suitable for conveyance is 3669.26 acres, more or less. Total lands classified for lease or conveyance is 4063.47, more or less.

The final lease or patent documents will reflect resurvey and revised descriptions of certain parcels. The lands are not needed for Federal purposes. Lease or conveyance conforms to the Yuma District Resource Management Plan and would be in the public interest.

Leases or patents, when issued, 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.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove materials.

4. All prior and existing rights.

5. All lands adjacent to Lake Havasu below 450 feet above mean sea level are excepted and reserved to the United States for the operation of Parker Dam and Lake Havasu.

6. An inundation easement is reserved to the United States for all parcels adjacent to Lake Havasu for those lands between 450 and 455 feet above mean sea level for the operation of Parker Dam and Lake Havasu.

7. An inundation easement is reserved to the United States for those lands adjacent to the Colorado River downstream from Parker Dam for the operation of Parker and Headgate Dams.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Yuma District, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona. Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the Area Manager, Havasu Resource Area Office, 3189 Sweetwater Avenue, Lake Havasu City, AZ 86406.

CLASSIFICATION COMMENTS: Interested parties may submit comments on the suitability of the lands for park purposes. 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 the local planning and zoning, or if the use is consistent with State and Federal programs. Any adverse comments will be reviewed by the Arizona State Director, Bureau of Land Management, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

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 park purposes.

FOR FURTHER INFORMATION CONTACT: Joe Liebhauser, Yuma District, Havasu Resource Area Office, at the address above, or by telephone at (520) 855–8017.

Dated: March 28, 1995.

Judith I. Reed,

District Manager.

[FR Doc. 95–8529 Filed 4–6–95; 8:45 am]

BILLING CODE 4310–32–M

[ID–942–7130–00–7660]

Idaho: Filing of Plats of Survey; Idaho

The supplemental plats of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., March 29, 1995.

The supplemental plats of T. 48 N., R. 3 E. and T. 49 N., R. 5 E., Boise, Meridian, Idaho, prepared to amend lots in sections 13 and 23, and section 32, respectively, were accepted, March 29, 1995.

The supplemental plats of the following described land will be officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., on May 10, 1995.

The supplemental plats (2) of partially unsurveyed T. 48 N., R. 5 E., Boise Meridian, Idaho, prepared to create tracts 48–53 and tracts 54–59 respectively, were accepted, March 29, 1995.

These supplemental plats were prepared 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: March 29, 1995.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 95–8527 Filed 4–6–95; 8:45 am]

BILLING CODE 4310–GG–M

[AZ–930–1430–01; AZA–29042]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: On March 14, 1995, the Forest Service, U.S. Department of Agriculture, filed application AZA–29042 to withdraw approximately 4.50 acres of national forest land to protect it from potential mineral location pending completion of studies concerning possible future disposal of the parcel. The land is located in the Coronado National Forest in Cochise County. The proposed withdrawal is from mineral entry or location under the mining laws only.

DATES: Comments and requests for a meeting should be received on or before July 6, 1995.

ADDRESSES: Comments and meeting requests should be sent to the Arizona State Director, Bureau of Land Management (BLM), 3707 North 7th Street, Phoenix, Arizona 85011–6563.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM, Arizona State Office, 602–650–0518.

SUPPLEMENTARY INFORMATION: On March 14, 1995, the Forest Service, U.S. Department of Agriculture, filed application AZA–29042 to withdraw the following described national forest land from location and entry under the United States mining laws only, subject to valid existing rights. Legal description of the land proposed for withdrawal is as follows:

Gila and Salt River Meridian

T. 16 S., R. 30 E.,
Sec. 33, lot 1, except that portion of Silver No. 2, Lode Mining Claim, Mineral Survey No. 4541.

The area described aggregates 4.50 acres, more or less, of national forest land in Cochise County, Arizona.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposal must submit a written request to the Arizona State Director within 90 days from the date of publication of this notice. Upon a determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date.

Herman L. Kast,

Deputy State Director, Resource Planning, Use and Protection Division.

[FR Doc. 95–8525 Filed 4–6–95; 8:45 am]

BILLING CODE 4310–32–P

[AZ–930–1430–01, AR–030451]

Notice of Case Closure, Cancellation of Application to Withdraw Certain Public Lands in Graham and Greenlee Counties, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: By letter, dated February 24, 1995, the Department of the Army, Corps of Engineers requested the withdrawal of pending application AR–030451. The application was for the withdrawal of public lands for the Camelsback Dam Flood Control Project which has since been deauthorized. Need for the land for project purposes is now nonexistent and the lands opened to filings, as listed below, subject to valid existing rights. The segregative effect resulting from AR–030451 was terminated by statute on October 20, 1991.

On February 27, 1961, the U.S. Army, Corps of Engineers, filed application AR–030451 to withdraw approximately 13,232.43 acres of public land and minerals. Additionally, the application requested the withdrawal of Federal minerals under the non-public surface.

Gila and Salt River Meridian, Arizona

T. 5 S., R. 28 E.,
* Sec. 36, SE¼.
T. 6 S., R. 28 E.,
* Sec. 1, Lots 1 and 2, S½NE¼, W½, and SE¼;
* Sec. 2, S½;
* Sec. 11, N½;
* Sec. 12, N½NE¼, NW¼, and N½SW¼.
T. 5 S., R. 29 E.,
Sec. 7, W½E½, E½W½, and SW¼NW¼;
Sec. 11, E½NE¼, S½SW¼, and SE¼;
Sec. 12, Lots 1, 5–16 inclusive, NW¼NW¼, S½NW¼, SW¼, and patented Mineral Survey 1029 B to 1033 B, inclusive;
Sec. 13, NW¼NW¼;
Sec. 14, SW¼NE¼, N½NE¼, and W½;
Sec. 15, E½NE¼, S½SW¼, and SE¼;
Sec. 16, SE¼SE¼;
Sec. 18, N½, E½SW¼, and SE¼;
Sec. 19, W½E½, and E½W½;
T. 5 S., R. 29 E., (continued)
* Sec. 21, NE¼, E½SW¼, and SE¼;
* Sec. 22, N½, NW¼SW¼, and S½S½;
* Sec. 25, Lots 2, 3, 5–16, inclusive, S½NW¼, and SW¼;

* Sec. 26, All;
* Sec. 27, N½, N½N½SW¼, and SE¼;
* Sec. 28, N½N½;
* Sec. 29, NE¼, S½NW¼, W½SW¼, and N½SE¼;
* Sec. 30, All;
* Sec. 31, N½NE¼, W½;
* Sec. 32, NW¼NW¼;
* Sec. 35, N½N½;
* Sec. 36, Lots 1 and 2.

T. 6 S., R. 29 E.,
Sec. 6, NW¼, and W½SW¼;
Sec. 7, NW¼NW¼

T. 5 S., R. 30 E.,
Sec. 6, Lots 3–6, 8, 9, 12–17, 19, 20, 23 and 24, and Mineral Survey 1654 B;
Sec. 7, Lots 1–4, and NE¼NW¼;
Sec. 30, Lots 2–4, SE¼NW¼, and E½SW¼;
Sec. 31, Lot 1, NW¼NE¼, S½NE¼, E½W½, and SE¼;
Sec. 32, S½NW¼, and SW¼;
Sec. 33, SE¼NE¼, and S½;
Sec. 34, SW¼NW¼, and W½SW¼;

T. 6 S., R. 30 E.,
Sec. 1, Lots 5–12;
Sec. 2, Lots 1–12;
Sec. 3, Lots 1–7;
Sec. 4, Lots 1–6, N 9.44 acres of Lot 7, SE¼NW¼, and the Gila River between the meander line of said lots of secs. 1, 2, 3, and 4.

* Land descriptions following the asterisk are located wholly or partially within the boundaries of the Gila Box Riparian National Conservation Area.

The areas described, include both public and non-public lands in the application and aggregate 13,232.43 acres, more or less, in Graham and Greenlee Counties.

Under Title II of Public Law 101–628, (Arizona Desert Wilderness Act), a portion of the subject land was afforded continued protection by virtue of designation as the Gila Box Riparian National Conservation Area (NCA). This action withdrew all Federal lands within the NCA from all forms of entry, appropriation, or disposal under the public land laws; from location, entry, and patent under the United States mining laws; and from disposition under all laws pertaining to mineral and geothermal leasing, and all amendments thereto. This action negates any need to further withdraw the land.

As a result of designation as the Gila Box Riparian NCA and deauthorization of the Camelsback Dam project, the Corps of Engineers requested withdrawal application AR–030451 be rescinded. All public land located outside the boundaries of the NCA are open to filings under the public land laws and the mining laws. It was opened to mineral leasing on February 28, 1982, (FR Vol. 47, No. 17, page 3623, January 26, 1982). Subsequent actions are subject to valid existing rights, and on lands along the Gila and San Francisco Rivers, decisions are pending concerning the wild and scenic rivers designation as recommended in the Final Arizona Statewide Wild and Scenic Rivers Legislative Environmental Impact Statement, approved December 1994. Upon publication in the **Federal Register**, application AR–030451 will be cancelled and the records of the Bureau of Land Management appropriately noted. Casefile AR–030451 will be closed.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 640–0518.

Herman L. Kast,

Deputy State Director, Resource Planning, Use & Protection.

[FR Doc. 95–8526 Filed 4–6–95; 8:45 am]

BILLING CODE 4310–32–P

Minerals Management Service

Outer Continental Shelf, Central Gulf of Mexico, Oil and Gas Lease Sale 152—Final

1. *Authority.* This Notice is published pursuant to the Outer Continental Shelf (OCS) Lands Act as amended (43 U.S.C. 1331–1356), and the regulations issued thereunder (30 CFR part 256).

2. *Filing of Bids.* Sealed bids will be received by the Regional Director (RD), Gulf of Mexico OCS Region, Minerals Management Service (MMS), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Bids may be delivered in person to that address during normal business hours (8 a.m. to 4 p.m., Central Standard Time (c.s.t.)) until the Bid Submission Deadline at 10 a.m. Tuesday, May 9, 1995. Hereinafter, all times cited in this Notice refer to c.s.t. unless otherwise stated. Bids will not be accepted the day of Bid Opening, Wednesday, May 10, 1995. Bids received by the RD later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified or withdrawn unless written modification or written withdrawal request is received by the RD prior to 10 a.m. Tuesday, May 9, 1995. Bid Opening Time will be 9 a.m., Wednesday, May 10, 1995, at the Radisson Hotel (formerly the Clarion Hotel), 1500 Canal Street, New Orleans, Louisiana. All bids must be submitted and will be considered in accordance with applicable regulations, including 30 CFR Part 256. The list of restricted joint bidders which applies to this sale appeared in the **Federal Register** at 60 FR 14777, published on March 20, 1995.

3. *Method of Bidding.*

(a) *Submission of Bids.*

A separate signed bid in a sealed envelope labeled ''Sealed Bid for Oil and Gas Lease Sale 152, not to be opened until 9 a.m., c.s.t., Wednesday, May 10, 1995'' must be submitted for each block bid upon. The sealed envelope and the bid should contain the following information: the company name, qualification number, area number and/or name (abbreviations acceptable), and the block number of the block bid upon. In addition, the total amount bid must be in whole dollar amounts.

Bidders must submit with each bid one-fifth of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior—Minerals Management Service. For identification purposes, the company name and company qualification number should also appear on the check or draft together with the bid block identification (abbreviation acceptable). No bid for less than all of the unleased portions of a block will be considered.

All documents must be executed in conformance with signatory authorizations on file in the Gulf of Mexico regional office. Partnerships also need to submit or have on file a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, e.g., 33.33333 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders.

(b) *Submission of Statement Regarding Certain Geophysical Data.*

Each company submitting a bid, or participating as a joint bidder in such a bid, shall submit, prior to the Bid Submission Deadline specified in Paragraph 2 of this Notice, a statement or statements identifying any processed or reprocessed pre and post stack depth migrated geophysical data in their possession or control pertaining to each and every block on which they are participating as a bidder. The existence, extent, and type of such data must be clearly identified. In addition, the statement shall certify that no such data is in their possession for any other blocks on which they participate as a bidder. The statement shall be submitted in an envelope separate from those containing bids and shall be clearly marked; an example of a preferred format for the statement and the envelope is included in the document titled ''Trial Procedures for Access to Certain Geophysical Data in the Gulf of Mexico''. Only one statement

per bidder is required for each sale, but more than one may be submitted if desired, provided that all tracts bid on by that company are covered in the one or more statements.

Paragraph 14(l), *Information to Lessees,* contains additional information pertaining to this requirement.

4. *Bidding, Yearly Rental, and Royalty Systems.* The following bidding, yearly rental, and royalty systems apply to this sale:

(a) *Bidding Systems.* All bids submitted at this sale must provide for a cash bonus in the amount of $25.00 or more per acre or fraction thereof.

(b) *Yearly Rental.* All leases awarded will provide for a yearly rental payment of $5 per acre or fraction thereof.

(c) *Royalty Systems.* All leases will provide for a minimum royalty of $5 per acre or fraction thereof. The following royalty systems will be used in this sale.

(1) *Leases with a 12½-Percent Royalty.* This royalty rate applies to blocks in water depths of 400 meters or greater; this area is shown on the Stipulations, Lease Terms, and Bidding Systems map applicable to this Notice (see paragraph 13). Leases issued on the blocks offered in this area will have a fixed royalty rate of 12½ percent.

(2) *Leases with a 16⅔-Percent Royalty.* This royalty rate applies to blocks in water depths of less than 400 meters (see aforementioned map). Leases issued on the blocks offered in this area will have a fixed royalty rate of 16⅔ percent.

5. *Equal Opportunity.* The certification required by 41 CFR 60–1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS–2033 (June 1985), and the Affirmative Action Representation Form, Form MMS–2032 (June 1985) must be on file in the Gulf of Mexico regional office prior to lease award (see paragraph 14(e)).

6. *Bid Opening.* Bid opening will begin at the bid opening time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of bid opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. *Deposit of Payment.* Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid may be deposited by the Government in an interest-bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. *Withdrawal of Blocks.* The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

9. *Acceptance, Rejection, or Return of Bids.* The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block will be awarded to any bidder, unless:

(a) the bidder has complied with all requirements of this Notice and applicable regulations;

(b) the bid is the highest valid bid; and

(c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of $25.00 or more per acre or fraction thereof. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance.

10. *Successful Bidders.* Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease, pay the balance of the cash bonus bid along with the first year's annual rental for each lease issued, by electronic funds transfer in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR 256, Subpart I, as amended. See **Federal Register** at 58 FR 45255, published August 27, 1993.

11. *Leasing Maps and Official Protraction Diagrams.* Blocks offered for lease may be located on the following Leasing Maps or Official Protraction Diagrams which may be purchased from the Gulf of Mexico regional office (see paragraph 14(a)):

(a) Outer Continental Shelf (OCS) Leasing Maps—Louisiana Nos. 1 through 12. This is a set of 30 maps which sells for $32.

Note: On January 13, 1995, it was announced (60 FR 3258) that two new maps, LA–6 (South Timbalier Area) and LA–6C (Bay Marchand Area), have replaced one old map LA–6 (South Timbalier and Bay Marchand Areas). No changes were made to the leasing areas nor to any of the blocks within. The only effect of the map replacement is that the Bay Marchand Area is now known as map LA–6C. The South Timbalier Area remains map LA–6. These two new maps are available separately for $2.00 each. The new map designation for the Bay Marchand Area (LA–6C) must be used when preparing bids.

(b) Outer Continental Shelf Official Protraction Diagrams. These diagrams sell for $2.00 each.

NH 15–12 Ewing Bank (rev. 12/02/76)
NH 16–4 Mobile (rev. 02/23/93)
NH 16–7 Viosca Knoll (rev. 12/02/76)
NH 16–10 Mississippi Canyon (rev. 12/02/76)
NG 15–3 Green Canyon (rev. 12/02/76)
NG 15–6 Walker Ridge (rev. 12/02/76)
NG 15–9 (No Name) (rev. 04/27/89)
NG 16–1 Atwater Valley (rev. 11/10/83)
NG 16–4 Lund (rev. 08/22/86)
NG 16–7 (No Name) (rev. 04/27/89)

(c) A complete set of all the above OCS Leasing Maps and Official Protraction Diagrams is available on microfiche for $5.00 per set.

12. *Description of the Areas Offered for Bids.*

(a) Acreages of blocks are shown on Leasing Maps and Official Protraction Diagrams. Some of these blocks, however, may be partially leased, or transected by administrative lines such as the Federal/State jurisdictional line. Information on the unleased portions of such blocks, including the exact acreage, is included in the following document available from the Gulf of Mexico regional office and also included with this Notice:

Central Gulf of Mexico Lease Sale 152—Final—Unleased Split Blocks and Unleased Acreages of Blocks with Aliquots and Irregular Portions Under Lease.

(b) *Blocks which have recently become available for leasing since January 30, 1995:* Attention is drawn to the following update list which is included as a matter of convenience for interested parties. This update list reflects blocks which have become available since the publication of the Preliminary Final Notice of Sale 152. Any questions on this may be directed to Ms. Patricia Bryars, phone (504) 736–2763.

Update List: West Cameron Area blocks 241 and 247; West Cameron Area, South Addition, block 619; East Cameron Area block 39; Eugene Island Area, South Addition, blocks 326 and 336; and Green Canyon Area blocks 128 and 354.

(c) *Blocks not available for leasing due to appeals:* The lease status of the following blocks are currently under appeal and therefore these blocks are unavailable for leasing in this sale: South Marsh Island Area, South Addition, blocks 165, 168, 169, 179, 180, 181, 185, and 186; and Main Pass Area, South and East Addition, blocks 253 and 254.

(d) *Blocks currently leased and not available for leasing:* The areas offered for leasing include all those blocks shown on the OCS Leasing Maps and Official Protraction Diagrams listed in paragraph 11 (a) and (b), except for those blocks or partial blocks already under lease, as listed at the end of this Notice.

13. *Lease Terms and Stipulations.*

(a) Leases resulting from this sale will have initial terms as shown on the Stipulations, Lease Terms, and Bidding Systems Map applicable to this Notice and will be on Form MMS–2005 (March 1986). Copies of the map and lease form are available from the Gulf of Mexico regional office (see paragraph 14(a)).

(b) The applicability of the stipulations which follow is as shown on the map described in paragraph 13(a) and as supplemented by references in this Notice.

Stipulation No. 1—Topographic Features.

(This stipulation will be included in leases located in the areas so indicated in the Biological Stipulation Map Package associated with this Notice which is available from the Gulf of Mexico regional office (see paragraph 14(a)).)

The banks that cause this stipulation to be applied to blocks of the Central Gulf are:

Bank name	No activity zone defined by isobath (meters)
McGrail Bank	85
Bouma Bank	85
Rezak Bank	85
Sidner Bank	85
Rankin Bank	85
Sackett Bank[2]	85
Ewing Bank	85
Diaphus Bank[2]	85
Parker Bank	85
Jakkula Bank	85
Sweet Bank[1]	85
Bright Bank	85
Geyer Bank[3]	85
MacNeil Bank[3]	82
Alderdice Bank	80
Fishnet Bank[2]	76
29 Fathom Bank	64
Sonnier Bank	55

[1] Only paragraph (a) of the stipulation applies.

[2] Only paragraphs (a) and (b) apply.

[3] Western Gulf of Mexico bank with a portion of its ''3–Mile Zone'' in the Central Gulf of Mexico.

(a) No activity including structures, drilling rigs, pipelines, or anchoring will be allowed within the listed isobath (''No Activity Zone'' as shown in the aforementioned Biological Stipulation Map Package) of the banks as listed above.

(b) Operations within the area shown as ''1,000-Meter Zone'' in the aforementioned Biological Stipulation Map Package shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

(c) Operations within the area shown as ''1-Mile Zone'' in the aforementioned Biological Stipulation Map Package shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom. (Where there is a ''1-Mile Zone'' designated, the ''1,000-Meter Zone'' in paragraph (b) is not designated.)

(d) Operations within the area shown as ''3-Mile Zone'' in the aforementioned Biological Stipulation Map Package shall be restricted by shunting all drill cuttings and drilling fluids from development operations to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

Stipulation No. 2—Live Bottoms

(To be included only on leases in the following blocks: Main Pass Area, South and East Addition, Blocks 190, 194, 198, 219–226, 244–266, 276–290; Viosca Knoll, Blocks 473–476, 521, 522, 564, 565, 566, 609, 610, 654, 692–698, 734, 778.)

For the purpose of this stipulation, ''live bottom areas'' are defined as seagrass communities; or those areas which contain biological assemblages consisting of such sessile invertebrates as sea fans, sea whips, hydroids, anemones, ascidians, sponges, bryozoans, or corals living upon and attached to naturally occurring hard or rocky formations with rough, broken, or smooth topography; or areas whose lithotope favors the accumulation of turtles, fishes, and other fauna.

Prior to any drilling activities or the construction or placement of any structure for exploration or development on this lease, including, but not limited to, anchoring, well drilling, and pipeline and platform placement, the lessee will submit to the Regional Director (RD) a live bottom survey report containing a bathymetry map prepared utilizing remote sensing techniques. The bathymetry map shall be prepared for the purpose of determining the presence or absence of live bottoms which could be impacted by the proposed activity. This map shall encompass such an area of the seafloor where surface disturbing activities, including anchoring, may occur.

If it is determined that the live bottoms might be adversely impacted by the proposed activity, the RD will require the lessee to undertake any measure deemed economically, environmentally, and technically feasible to protect the pinnacle area. These measures may include, but are not limited to, the following:

(a) the relocation of operations; and

(b) the monitoring to assess the impact of the activity on the live bottoms.

Stipulation No. 3—Military Areas

(This stipulation will be included in leases located within the Warning Areas and Eglin Water Test Areas 1 and 3, as shown on the map described in paragraph 13(a)).

(a) Hold and Save Harmless

Whether compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occur in, on, or above the Outer Continental Shelf (OCS), to any persons or to any property of any person or persons who are agents, employees, or invitees of the lessee, its agents, independent contractors, or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the OCS, if such injury or damage to such person or property occurs by reason of the activities of any agency of the United States Government, its contractors or subcontractors, or any of its officers, agents or employees, being conducted as a part of, or in connection with, the programs and activities of the command headquarters listed in the following table.

Notwithstanding any limitation of the lessee's liability in Section 14 of the lease, the lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of its officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee, or to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the

aforementioned military installation, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors, or subcontractors, or any of its officers, agents, or employees and whether such claims might be sustained under a theory of strict or absolute liability or otherwise.

(b) Electromagnetic Emissions

The lessee agrees to control its own electromagnetic emissions and those of its agents, employees, invitees, independent contractors or subcontractors emanating from individual designated defense warning areas in accordance with requirements specified by the commander of the command headquarters listed in the following table to the degree necessary to prevent damage to, or unacceptable interference with, Department of Defense flight, testing, or operational activities, conducted within individual designated warning areas. Necessary monitoring control, and coordination with the lessee, its agents, employees, invitees, independent contractors or subcontractors, will be effected by the commander of the appropriate onshore military installation conducting operations in the particular warning area; provided, however, that control of such electromagnetic emissions shall in no instance prohibit all manner of electromagnetic communication during any period of time between a lessee, its agents, employees, invitees, independent contractors or subcontractors and onshore facilities.

(c) Operational

The lessee, when operating or causing to be operated on its behalf, boat, ship, or aircraft traffic into the individual designated warning areas shall enter into an agreement with the commander of the individual command headquarters listed in the following list, upon utilizing an individual designated warning area prior to commencing such traffic. Such an agreement will provide for positive control of boats, ships, and aircraft operating into the warning areas at all times.

W–155A and B (For Agreement)—Chief, Naval Air Training, Naval Air Station, Office No. 206, Corpus Christi, Texas 78419–5100 telephone: (512) 939–3862/2621

W–155A and B (For Operational Control)—Fleet Area Control & Surveillance Facility (FACSFAC), Operations, Naval Air Station, Pensacola, Florida 32508, telephone: (904) 452–2735/4671

W–92—Naval Air Station, Air Operations Department, Air Traffic Division/Code 52, New Orleans, Louisiana 70146–5000, telephone: (504) 393–3100/3101

W–453—Air National Guard—CRTC, Gulfport/ACMI, Scheduling Office, Gulfport, Mississippi 39507, Telephone: (601) 867–2433

Eglin Water Test Areas 1 and 3—Air Force Development Test Center, Plans and Programs Department, Requirement Directorate, 101 West ''D'' Avenue, Suite 125, Eglin AFB, Florida 32542–5495, Telephone: (904) 882–3899/4188

14. *Information to Lessees*

(a) *Supplemental Documents.* For copies of the various documents identified as available from the Gulf of Mexico regional office, prospective bidders should contact the Public Information Unit, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, either in writing or by telephone at (504) 736–2519 or (800) 200–GULF. For additional information, contact the Regional Supervisor for Leasing and Environment at that address or by telephone at (504) 736–2759.

(b) *Navigation Safety.* Operations on some of the blocks offered for lease may be restricted by designation of fairways, precautionary zones, anchorages, safety zones, or traffic separation schemes established by the U.S. Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.), as amended, and the Deepwater Port Act (33 U.S.C. 1501–1524). Bidders are advised that the U.S. Coast Guard published a notice of final rulemaking expanding the existing safety zone around the Louisiana Offshore Oil Port (LOOP) (59 FR 17480 published on April 13, 1994).

U.S. Army Corps of Engineers (COE) permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the seabed located on the OCS in accordance with section 4(e) of the OCS Lands Act, as amended.

For additional information, prospective bidders should contact Lt. Commander Ken Parris, Assistant Marine Port Safety Officer, 8th Coast Guard District, Hale Boggs Federal Building, New Orleans, Louisiana 70130, (504) 589–6901. For COE information, prospective bidders should contact Mr. Ron Ventola CELMN-OD-S, Post Office Box 60267, New Orleans, Louisiana 70160–0267, (504) 862–2255.

(c) *Offshore Pipelines.* Bidders are advised that the Department of the Interior and the Department of Transportation have entered into a Memorandum of Understanding, dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

(d) *8-Year Leases.* Bidders are advised that any lease issued for a term of 8 years will be cancelled after 5 years, following notice pursuant to the OCS Lands Act, as amended, if within the initial 5-year period of the lease, the drilling of an exploratory well has not been initiated; or if initiated, the well has not been drilled in conformance with the approved exploration plan criteria; or if there is not a suspension of operations in effect. Bidders are referred to 30 CFR 256.37 and the MMS Gulf of Mexico OCS Region Letter to Lessees of February 13, 1995.

(e) *Affirmative Action.* Revision of Department of Labor regulations on affirmative action requirements for Government contractors (including lessees) has been deferred, pending review of those regulations (see **Federal Register** of August 25, 1981, at 46 FR 42865 and 42968). Should changes become effective at any time before the issuance of leases resulting from this sale, section 18 of the lease form (Form MMS–2005, March 1986), would be deleted from leases resulting from this sale. In addition, existing stocks of the affirmative action forms described in paragraph 5 of this Notice contain language that would be superseded by the revised regulations at 41 CFR 60–1.5(a)(1) and 60–1.7(a)(1). Submission of Form MMS–2032 (June 1985) and Form MMS–2033 (June 1985) will not invalidate an otherwise acceptable bid, and the revised regulations' requirements will be deemed to be part of the existing affirmative action forms.

(f) *Ordnance Disposal Areas.* Bidders are cautioned as to the existence of two inactive ordnance disposal areas in the Mississippi Canyon area, shown on the map described in paragraph 13(a). These areas were used to dispose of ordnance of unknown quantity and composition. Water depths range from approximately 750 to 1,525 meters. Bottom sediments in both areas are soft, consisting of silty clays. Exploration and development activities in these areas require precautions commensurate with the potential hazards.

The U.S. Air Force has released an indeterminable amount of unexploded ordnance throughout Eglin Water Test Areas 1 and 3. The exact location of the unexploded ordnance is unknown, and lessees are advised that all lease blocks included in this sale within these water test areas should be considered

potentially hazardous to drilling and platform and pipeline placement.

(g) *Communications Towers.* The Department of Defense, U.S. Air Force, has installed seven military communications towers in the Chandeleur/Mobile/Viosca Knoll area which support Air Combat Maneuvering Instrumentation (ACMI). This project may impose certain restrictions on oil and gas activities in that area since no activity can take place within 500 feet of a tower site, and unobstructed lines of sight must be maintained between towers. The seven towers are located within Mobile, Blocks 769, 819, and 990; Viosca Knoll, Block 116; Chandeleur Area, Blocks 33 and 61; and Chandeleur Area, East Addition, Block 39. Information and maps of the specific locations and line of sight crossings for ACMI towers may be obtained from Mr. Wallace Williams, Minerals Management Service, (504) 736–2772.

(h) *Archaeological Resources.* Bidders are advised that a Final Rule regarding archaeological resources was published in the **Federal Register** on October 21, 1994 (59 FR 53091), granting specific authority to each MMS Regional Director to require archaeological surveys and reports (under 30 CFR 250, 256, 260, and 281) and the submission of these reports to the Regional Director prior to exploration, development and production, or installation of lease-term or right-of-way pipelines. MMS Notice To Lessees (NTL) 91–02 (Outer Continental Shelf Archaeological Resources Requirements for the Gulf of Mexico OCS Region) published in the **Federal Register** on December 20, 1991 (56 FR 66076) effective February 17, 1992, specifies survey methodology, linespacing, and archaeological report writing requirements for lessees and operators in the Gulf of Mexico Region.

Two additional documents are available from the MMS Gulf of Mexico Region Public Information Office (see paragraph 14(a)):

''List of Lease Blocks Within The High-Probability Area For Historic Period Shipwrecks On The OCS'' dated January 30, 1995. This list supersedes the list promulgated by the MMS Letter to Lessees (LTL) of November 30, 1990.

''List of Lease Blocks Within The High-Probability Area For Pre-Historic Archaeological Resources On The OCS'' dated January 30, 1995.

Implementation of this Final Rule and NTL 91–02 obviates the need for the Protection of Archaeological Resources Stipulation required in previous leases.

(i) *Proposed Rigs to Reefs.* Bidders are advised that there are OCS artificial reef sites and planning areas for the Gulf of Mexico. These are generally located in water depths of less than 200 meters. While all existing and proposed sites require a permit from the U.S. Army Corps of Engineers, this ''Rigs to Reefs'' program is implemented through State sponsorship through the following State Coordinators:

Alabama Mr. Walter M. Tatum, (205) 968–7577

Louisiana Mr. Rick Kasprzac, (504) 765–2375

Mississippi Mr. Mike Buchanan, (601) 385–5860

Texas Ms. Jan Coulbertson, (713) 474–2811

For more information on artificial reef sites, prospective bidders should contact the above listed State Artificial Reef Coordinators for their areas of interest.

(j) *Right of Use and Easement for Chandeleur Blocks 27 and 30.* Bidders are advised that a right of use and easement has been granted for portions of Chandeleur Area Blocks 27 and 30 for gas storage purposes. The area is generally on the southernmost quarter of the federal portion of Chandeleur Area, Block 27 and the W1/2 NW1/4; NW1/4 SW1/4 portion of Chandeleur Area, Block 30. For additional information, contact the MMS Gulf of Mexico Regional Supervisor for Production and Development at (504) 736–2675.

(k) *Proposed Lightering Zones.* Bidders are advised that the U.S. Coast Guard has proposed designating certain areas of the Gulf of Mexico (60 FR 1958 of January 5, 1995), as lightering zones for the purpose of permitting single hull vessels to off-load oil within the U.S. Exclusive Economic Zone. Such designation may have implications for oil and gas operations in the areas. Additional information may be obtained from Lieutenant Commander Stephen Kantz, Project Manager, Oil Pollution Act (OPA 90) Staff, at (202) 267–6740.

(l) *Statement Regarding Certain Geophysical Data.* Pursuant to Sections 18 and 26 of the OCS Lands Act as amended, and the regulations issued thereunder, MMS has a right of access to certain geophysical data and information obtained or developed as a result of operations on the OCS. MMS is sensitive to the concerns expressed by industry regarding the confidentiality of individual company work products and client lists and the potential burden of responding to a myriad of requests from MMS pertaining to the existence and availability of these types of reprocessed geophysical data. To resolve the concerns of both industry and MMS with respect to such cases, MMS has worked with industry to develop the requirements contained within paragraph 3(b) *Method of Bidding* above. These requirements are being imposed on a trial basis to determine their effectiveness and are subject to modification in future sales.

The details of this requirement are specified in the document ''Trial Procedures for Access to Certain Geophysical Data in the Gulf of Mexico'', which is provided in the Sale Notice package and which is available upon request from the MMS Gulf of Mexico Region Public Information Office (see paragraph 14(a)). In brief, these requirements include:

1. In the period for ninety (90) days after the sale, bidders will allow MMS to inspect such data within seven (7) days of a written request from MMS, and upon further written request will transmit to MMS, within ten (10) working days, such data. After this ninety day period, a response time of thirty (30) days following an MMS written request will be considered adequate.

2. Successful bidders must retain such data for three (3) years after the sale, and unsuccessful bidders must retain such data for six (6) months after the sale, for possible acquisition by MMS.

For the six (6) month period after the sale, based on a review of the allowable cost of data reproduction to MMS for three-dimensional and two-dimensional data sets, the company providing the reprocessed data will be reimbursed at a rate of $480 per block or part thereof for three-dimensional data and $2 per line mile for two-dimensional data. Afterwards, reimbursement will be subject to the terms and conditions of 30 CFR 251.13(a).

All geophysical data and information obtained and reviewed by MMS pursuant to these procedures shall be held in the strictest confidence and treated as proprietary in accordance with the applicable terms of 30 CFR 251.14.

For additional information, contact the MMS Gulf of Mexico Regional Office of Resource Evaluation at (504) 736–2720.

Dated: April 4, 1995.

Carolita U. Kallaur,

Acting Deputy Director, Minerals Management Service.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

Central Gulf of Mexico Leased Lands

March 20, 1995

Description of blocks listed represent all Federal acreage leased unless otherwise noted.

Sabine Pass

3, 6, 7, 8, 9, 10, 11, 12, 13, 14

West Cameron

17, 18, 19, 20, 21, 22, 23, 24, 27, 28, 34, 35, 36, 38, 39, 41, 42, 43, 44, 45, 47, 48, 49, 53, 54, 55, 56, 57, 58, 59, 60, 61, 63, 64, 65, 66, 67, 68, 69, 71, 72, 73, 74, 75, 76, 77, 78, 79, 81, 82, 83, 91, 92, 93, 95, 97, 98, 99, 101, 102, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 117, 118, 128, 130, 131, 132, 133, 135, 136, 137, 138, 139, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 153, 165, 166, 167, 168, 170, 171, 172, 173, 174, 176, 177, 178, 179, 180, 181, 183, 184, 191, 192, 193, 194, 196, 197, 198, 199, 200, 201, 202, 205, 206, 207, 211, 212, 213, 215, 216, 222, 224, 225, 226, 229, 230, 231, 236, 237, 238, 239, 240, 242, 244, 245, 246, 248, 249, 250, 252, 253, 254, 255, 256, 258, 259, 261, 264, 265, 266, 269, 275, 276, 277, 279, 280, 282, 284, 285

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154, 161, 162, 163, 287, 288, 290, 291, 292, 293, 294, 295, 296, 298, 299, 305, 306, 310, 312, 313, 315, 321, 323, 324, 331, 332, 333, 334, 337, 338, 340, 342, 343, 344, 347, 351, 352, 359, 363, 367, 368, 369, 370, 379, 380, 383, 385, 386, 391, 392, 398, 400, 401, 404, 405, 406, 408, 409, 410, 411, 416, 417, 418, 421, 422, 423, 424, 425, 426, 427, 430, 431, 432, 433, 435, 436, 437, 438, 442, 444

West Cameron, South Addition

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East Cameron

2, 9, 11, 12, 14 (E½NW¼; NE¼) (Landward of 8(g) Line), 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 31, 32, 33, 34, 36, 37, 38, 40, 41, 42, 44, 45, 46, 47, 48, 49, 50, 51, 55, 56, 57, 58, 60, 62, 63, 64, 65, 66, 67, 70, 71, 72, 75, 76, 77, 78, 81, 82, 83, 84, 87, 88, 89, 92, 94, 95, 96, 103, 104, 106, 109, 110, 111, 112, 114, 115, 116, 117, 118, 119, 122, 123, 125, 129, 131, 132, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 145, 148, 149, 151, 152, 153, 154, 155, 157, 158, 160 (E½), 169, 170, 171, 172, 176, 178, 179, 182, 184, 185, 188, 189, 190, 192, 193, 194 (E½E½SE¼), 195 (S½), 196, 199, 200, 201, 203, 204 (N½N½), 205, 211, 213, 214, 215, 218, 219, 220, 221, 222, 223, 226, 227, 229, 230, 231, 232, 234, 235

East Cameron, South Addition

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Vermilion

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Vermilion, South Addition

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South Marsh Island, North Addition

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South Marsh Island

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South Marsh Island, South Addition

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Eugene Island

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Eugene Island, South Addition

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Ship Shoal

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Ship Shoal, South Addition

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South Timbalier

10, 11, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27 (N½; N½SW¼), 28 (NE¼), 29, 30, 32, 33, 34, 35, 36, 37, 38, 47, 48, 50, 51, 52, 53, 54, 55, 63, 66, 67, 68, 71, 72, 73, 74, 76, 77, 78, 83, 86, 91, 92, 95, 99, 100, 101, 106, 108, 110, 111, 112, 123, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 140, 142, 143, 144, 145, 147, 148, 149, 151, 152, 155, 159, 160, 161, 162, 163, 164, 165, 166, 167, 169, 170, 171, 172, 173, 175, 176, 177, 178, 179, 180, 181, 182, 184, 185, 188 (NW¼), 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 203, 205, 206, 207, 208, 210

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South Pelto

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Bay Marchand

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Grand Isle

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Grand Isle, South Addition

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West Delta

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West Delta, South Addition

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South Pass

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South Pass, South & East Addition

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Main Pass

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22, 45, 46, 66, 120, 121, 164, 197, 198, 678, 723, 766

[FR Doc. 95–8625 Filed 4–6–95; 8:45 am]

BILLING CODE 4310–MR–P

Outer Continental Shelf Central Gulf of Mexico; Notice of Leasing System, Sale 152

Section 8(a)(8) (43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA) requires that, at least 30 days before any lease sale, a Notice be submitted to the Congress and published in the **Federal Register:**

1. Identifying the bidding systems to be used and the reasons for such use; and

2. Designating the tracts to be offered under each bidding system and the reasons for such designation.

This Notice is published pursuant to these requirements.

1. *Bidding systems to be used.* In the Outer Continental Shelf (OCS) Sale 152, blocks will be offered under the following two bidding systems as authorized by section 8(a)(1) (43 U.S.C. 1337(a)(1): (a) Bonus bidding with a fixed 16⅔-percent royalty on all unleased blocks in less than 400 meters of water; and (b) bonus bidding with a fixed 12½-percent royalty on all remaining unleased blocks.

a. *Bonus Bidding with a 16⅔-Percent Royalty.* This system is authorized by section (8)(a)(1)(A) of the OCSLA. This system has been used extensively since the passage of the OCSLA in 1953 and imposes greater risks on the lessee than systems with higher contingency payments but may yield more regards if a commercial field is discovered. The relatively high front-end bonus payments may encourage rapid exploration.

b. *Bonus Bidding with a 12½-Percent Royalty.* This system is authorized by section (8)(a)(1)(A) of the OCSLA. It has been chosen for certain deeper water blocks proposed for Central Gulf of Mexico (GOM) (Sale 152) because these blocks are expected to require substantially higher exploration, development, and production costs, as well as longer times before initial production in comparison to shallow-water blocks. Department of the Interior analyses indicated that the minimum economically developable discovery on a block in such high-cost areas under a 12½-percent royalty system would be less than for the same blocks under a 16⅔-percent royalty system. As a result, more blocks may be explored and developed. In addition, the lower royalty rate system is expected to encourage more rapid production and higher economic profits. It is not anticipated, however, that the larger cash bonus bid associated with a lower royalty rate will significantly reduce competition, since the higher costs for exploration and development are the primary constraints to competition.

2. *Designation of Blocks.* The selection of blocks to be offered under the two systems was based on the following factors:

a. Lease terms on adjacent, previously leased blocks were considered to enhance orderly development of each field.

b. Blocks in deep water were selected for the 12½-percent royalty system based on the favorable performance of this system in these high-cost areas as evidenced in our analyses.

The specific blocks to be offered under each system are shown on the ''Stipulations, Lease Terms, and Bidding Systems Map'' for Central GOM Lease Sale 152. This map is available from the Minerals Management Service, GOM Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

Dated: April 4, 1995.

Carolita U. Kallaur,

Acting Deputy Director, Minerals Management Service.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 95–8624 Filed 4–6–95; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Glacier National Park General Management Plan/Environmental Impact Statement, Glacier National Park, Montana

AGENCY: National Park Service, Department of Interior.

ACTION: Notice of Intent to prepare Environmental Impact Statement for the General Management Plan, Glacier National Park.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an environmental impact statement for the General Management Plan for Glacier National park. This statement will be approved by John Cook, Regional Director for the Rocky Mountain Region. The purpose of this federal action is to facilitate management of visitor use, natural and cultural resources, development, and operation of Glacier National Park according to the enabling legislation and other laws and regulations affecting management of this National Park area. The general management plan (GMP) and implementation plans that result from this process will guide the management of Glacier National Park for the next 10 to 15 years. The GMP will replace an existing master plan that has been guiding management of the park since 1977 and contains actions that have either been completed or are no longer appropriate to do. All previously approved development concept and implementation plans will be reviewed and assessed to insure that their proposals are appropriate in light of the new general management plan.

Major issues that will be addressed in the plan include ecosystem management, visitor experience and resource protection, role and management of historic structures and other cultural resources, the Secretary of Interior's trust responsibilities to Native americans and relationships with Native americans and park resources, land protection strategies for private lands within the park to insure protection of park resources, administrative facilities and the concept of sustainability as it relates to park infrastructure and visitor use.

A scoping brochure is being prepared that explains, in more detail, the issues identified to date and outlines the public involvement for this planning effort. Copies of this brochure will be available in mid April and can be obtained by writing GMP/EIS Project, Glacier National Park, West Glacier, Mt 59936 (406) 888–5441

The National Park Service is seeking information and comments from individuals and organizations who may be interested in, or affected by the proposed action, as well as Federal, State and local agencies. Scoping will include the following: a scoping brochure that will be mailed out to interested individuals, groups and federal, state and local agencies asking for comments, identification of issues, concerns to interested and potentially affected individuals, groups, Federal, State, and local governments; newsletters, public meetings; and news releases.

The first set of public meetings were held as Open Houses, during early March. Open houses were held in Missoula, Kalispell, Helena, West Glacier, Browning, St. Mary and Great Falls Montana, and in Lethbridge and Fernie Canada. A summary of issues identified to date is being compiled following those meetings.

FOR FURTHER INFORMATION CONTACT: Requests for information and to be added to the General Management Plan

mailing list should be directed to GMP/EIS Project, Glacier National Park. Comments on the General Management Plan should be sent to David A. Mihalic, Superintendent, Glacier National Park, West Glacier, MT 59936–0128, telephone (406) 888–5441.

Dated: March 30, 1995.

David A. Mihalic,

Superintendent, Glacier National Park.

[FR Doc. 95–8640 Filed 4–6–95; 8:45 am]

BILLING CODE 4310–70–P

Bureau of Reclamation

Privacy Act of 1974—Notice of Establishment of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to establish a new system of records to be maintained by the Bureau of Reclamation. The system, entitled ''Lower Colorado River Well Inventory—Interior, BOR–48,'' will include information pertaining to individuals and/or their lessees who have at least one well on their property that may pump mainstream Colorado River water. The information contained in this system will be used to protect and manage water entitlement holders' rights to use Colorado River water in the lower Colorado River basin. The notice is published in its entirety below.

As required by the Privacy Act of 1974, as amended (5 U.S.C. 552a(r)), the Office of Management and Budget, the Senate Committee on Governmental Affairs, and the House Committee on Government Reform and Oversight have been notified of this action.

5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires a 40-day period in which to review such proposals. Written comments on this proposal can be addressed to the Departmental Privacy Act Officer, Office of the Secretary, Office of Administrative Services, 1849 ''C'' Street NW, Mail Stop 5412 MIB, Washington, DC 20240, telephone (202) 208–6045, fax (202) 208–7971. Comments received within 40 days of publication in the **Federal Register** (May 17, 1995) will be considered. The system will be effective as proposed at the end of the comment period, unless comments are received which would require a contrary determination.

Dated: March 28, 1995.

Albert C. Camacho,

Director, Office of Administrative Services.

INTERIOR/BOR–48

SYSTEM NAME:

Lower Colorado River Well Inventory—Interior, BOR–48.

SYSTEM LOCATION:

Bureau of Reclamation, Division of Water, Land, and Power, Lower Colorado Region, Boulder City, Nevada 89006–1470.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and/or their lessees who have at least one well on their property that may pump mainstream Colorado River water. **Note:** This system also contains records pertaining to corporations and other public entities. Only those records relating to individuals are covered by the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, addresses, and telephone numbers of covered individuals; Assessor Parcel Numbers; contract numbers; categories of uses to which the water is put; methods of disposal of unconsumed portions of water pumped; volumes of water pumped; physical characteristics and locations of wells; water purveyor, municipal, or other administrative boundaries within which wells are located; and water levels of wells located in hydraulically connected areas adjacent to the floodplain.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Reclamation Act of June 17, 1902 (32 Stat. 388, 43 U.S.C. 391), as amended and supplemented; the Colorado River Front Work and Levee System Adjacent to Yuma Project Act of March 3, 1925 (Pub. L. 79–469, 43 Stat. 1186, 1198), as amended and supplemented; the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057, 43 U.S.C. 617), as amended and supplemented; the Reclamation Project Act of August 4, 1939 (53 Stat. 1187, 43 U.S.C. 485); the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885); the Reclamation Reform Act of October 12, 1982 (96 Stat. 1261, 43 U.S.C. 390); and the Supreme Court opinion rendered June 3, 1963 (373 U.S. 546), and Decrees entered March 9, 1964 (376 U.S. 340), January 9, 1979 (439 U.S. 419), and April 16, 1984 (466 U.S. 144), in *Arizona* v. *California et al.*

PURPOSE(S):

The primary purposes of the records are: (a) To assist in the administration and negotiation of water use contracts with individual landowners, lessees, or other classes of water users; and (b) to support the annual compilation and publication of records of consumptive use of mainstream Colorado River water.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure outside the Department of the Interior may be made: (1) To the States of Arizona, California, and Nevada to assist them in administering their apportionments of mainstream Colorado River water; (2) to the U.S. Department of Justice or to a court or adjudicative body with jurisdiction when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (3) to a congressional office in response to an inquiry the individual has made to the congressional office; (4) to appropriate Federal, State, tribal, territorial, local or foreign agencies responsible for investigating or prosecuting the violation of, or for enforcing, implementing, or administering a statute, rule, regulation, program, facility, order, lease, license, contract, grant, or other agreement, of information indicating a violation or potential violation of a statute, rule, regulation, program, facility, order, lease, license, contract, grant or other agreement will be disclosed; (5) to interested parties upon written request, of data pertaining to volumes of water pumped, consumptive uses of water, and points of diversion.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 168a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in automated form on computer databases and in manual form in file folders.

RETRIEVABILITY:

Records stored in computer databases will be retrievable by any record category. Records stored in manual files will be retrievable by name of property owner or contract holder.

SAFEGUARDS:

Data will be maintained with safeguards meeting the requirements of 43 CFR 2.51 for manual and computerized records.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules, records will be retained in the Bureau of Reclamation for 10 years, relocated to the Federal Records Center and retained there for an additional 75 years, and then transferred to the National Archives and Records Administration for permanent retention.

SYSTEM MANAGER(S) AND ADDRESS:

Bureau of Reclamation, Lower Colorado Regional Office, Regional Supervisor of Water, Land, and Power, P.O. Box 61470, Boulder City, Nevada 89006–1470.

NOTIFICATION PROCEDURE:

An individual requesting notification of the existence of records on him or her should address his/her request to the System Manager. The request must be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

An individual requesting access to records maintained on him or her should address his/her request to the System Manager. The request must be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

An individual requesting amendment of a record maintained on him or her should address his/her request to the System Manager. The request must be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individuals on whom records are maintained, state and county well permits, land ownership and water use records and databases, and the U.S. Geological Survey Ground Water Site Inventory database.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 95–8415 Filed 4–6–95; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–366]

Certain Microsphere Adhesives, Process for Making Same, and Products Containing Same, Including Self-Stick Repositionable Notes; Notice of Commission Decision To Extend by Fifteen Days the Deadline for Determining Whether To Review an Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has extended by 15 days, *i.e.*, from May 8, 1995, to May 23, 1995, the deadline by which it must determine whether to review the presiding administrative law judge's final initial determination (ID) in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, DC 20436, telephone 202–205–3104.

SUPPLEMENTARY INFORMATION: On March 23, 1994, the presiding administrative law judge (ALJ) issued her final ID in this investigation. The ALJ determined that a violation of section 337 of the Tariff Act of 1930, as amended, has occurred by reason of infringement of certain claims of U.S. Letters Patent 4,166,152 in the importation or sale of certain products containing microsphere adhesives. Under Commission interim rule 210.53(h), the ID would have become the determination of the Commission on May 8, 1995, unless review were ordered or the review deadline were extended.

On March 29, 1995, complainant Minnesota Mining and Manufacturing Co. and respondents Taiwan Hopax Chemicals Manufacturing, Co., Yuen Foong Paper Co., Ltd., Beautone Specialties Co., Ltd., and Beautone Specialties Co., submitted a joint motion requesting a ten-day extension of time—from April 5 to April 17, 1995—to file petitions for review of the ID. The parties also requested that the deadline for filing responses to any petitions be extended from April 12 to April 27, 1995. The Commission investigative attorney did not oppose the joint motion.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rule 210.53(h) (19 C.F.R. 210.53(h)).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: April 3, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–8618 Filed 4–6–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–290 (Sub-No. 163X)]

Central of Georgia Railway Company—Abandonment Exemption—in Atlanta, GA

Central of Georgia Railway Company (Central) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon a 0.3-mile portion of its line of railroad between milepost S-294.14 and milepost S-294.44, in Atlanta, GA.

Central has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 7, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by April 17, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 27, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: James R. Paschall, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

Central has filed an environmental report which addresses the effects of the abandonment, if any, on the environment and historic resources. The Commission's Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by April 12, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: March 29, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–8591 Filed 4–6–95; 8:45 am]

BILLING CODE 7035–01–P

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request prior to the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[Finance Docket No. 32661]

Norfolk Southern Railway Company—Trackage Rights Exemption—Norfolk and Western Railway Company

Norfolk and Western Railway Company (NW) has agreed to grant approximately 11.8 miles of overhead trackage rights between St. Louis, MO, and Berkeley, MO, to Norfolk Southern Railway Company (NS). The trackage extends between milepost SL–6.2 at Luther Yard, in the city of St. Louis and milepost SL–18.0 at Berkeley, in St. Louis County, MO. The proposed transaction will allow NS to expedite the movement of auto parts trains to the Ford Motor Company plant in Berkeley. The transaction was scheduled to be consummated on March 28, 1995.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Robert J. Cooney, Norfolk Southern Corporation, 3 Commercial Place, Norfolk, VA 23510–2191.

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).

Decided: March 29, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–8590 Filed 4–6–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32679]

Union Pacific Corporation—Securities Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts from the requirements of 49 U.S.C. 11301 the issuance, by Union Pacific Corporation, of certain securities in a principal amount not to exceed $2.3 billion.

DATES: This exemption will be effective on April 10, 1995. Petitions to reopen must be filed by April 27, 1995.

ADDRESSES: Send pleadings referring to Finance Docket No. 32679 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Carl W. von Bernuth, Esq., Senior Vice President and General Counsel, Union Pacific Corporation, Eighth and Eaton Avenues, Bethlehem, PA 18018.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: March 31, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–8620 Filed 4–6–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

April 3, 1995.

The Department of Labor has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act (44 U.S.C. Chapter 35) of 1980, as amended (Pub. L. 96–511). Copies may be obtained by calling the Department of Labor Departmental Clearance Officer, Kenneth A. Mills (202) 219–5095). Comments and questions about the ICRs listed below should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of

Management and Budget, Room 10102, Washington, DC 20503 (202) 395–7316). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1 p.m. and 4 p.m. Eastern time, Monday through Friday.

Type of Review: Extension.
Agency: Occupational Safety and Health Administration.
Title: Gear Certification.
OMB Number: 1218–0003.
Frequency: Recordkeeping.
Affected Public: Businesses or other for-profit.
Number of Respondents: 120.
Estimated Time Per Respondent: 2.1 average hours.
Total Burden Hours: 18,305.
Description: The Occupational Safety and Health Administration is requiring this information to be collected by accredited agencies to determine the condition of certain cargo handling gear and other material handling devices to ensure the safety of those employees working in the maritime industry while using such equipment.

Type of Review: Revision.
Agency: Veterans' Employment and Training Service.
Title: Eligibility Data Form for Requesting Assistance in Obtaining Veterans' Reemployment Rights.
OMB Number: 1293–0002.
Agency Number: VETS/USERRA 1010.
Frequency: On occasion.
Affected Public: Individuals or households.
Number of Respondents: 2,000.
Estimated Time Per Respondent: 15 minutes.
Total Burden Hours: 500.
Description: The information is needed to determine eligibility of veteran complaints for reemployment rights they are seeking as well as to state alleged violations by employers of the pertinent statutes and to request assistance in obtaining appropriate reemployment benefits.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 95–8632 Filed 4–6–95; 8:45 am]

BILLING CODE 4510–26–M

Employment Standards Administration/Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Withdrawn General Wage Determination Decisions

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination Nos. MO950054, MO950055, MO950057, MO950071, MO950073, and MO950079 dated Feb. 10, 1995.

Agencies with construction projects pending, to which Wage Decisions MO950054, MO950055, MO950057, MO950071, and MO950073 would have been applicable, should utilize Wage Decision MO950049. Agencies with construction projects pending to which Wage Decision MO950079 would have been applicable, should utilize Wage Decision MO950048. Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

New General Wage Determination Decision

The number of decisions added to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' are listed by Volume and State:

Volume VI

California
CA950028 (Apr. 07, 1995)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations

Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA950001 (Feb. 10, 1995)
MA950002 (Feb. 10, 1995)
MA950005 (Feb. 10, 1995)
MA950007 (Feb. 10, 1995)
MA950012 (Feb. 10, 1995)
MA950017 (Feb. 10, 1995)
MA950018 (Feb. 10, 1995)
MA950019 (Feb. 10, 1995)
New Jersey
NJ950002 (Feb. 10, 1995)
NJ950003 (Feb. 10, 1995)
NJ950004 (Feb. 10, 1995)
NJ950015 (Feb. 10, 1995)
New York
NY950003 (Feb. 10, 1995)

Volume II

Pennsylvanaia
PA950042 (Feb. 10, 1995)

Volume III

Tennessee
TN950016 (Feb. 10, 1995)
TN950017 (Feb. 10, 1995)
TN950057 (Feb. 10, 1995)
TN950059 (Feb. 10, 1995)

Volume IV

Illinois
IL950001 (Feb. 10, 1995)
IL950002 (Feb. 10, 1995)
IL950004 (Feb. 10, 1995)
IL950011 (Feb. 10, 1995)
IL950013 (Feb. 10, 1995)
IL950015 (Feb. 10, 1995)
IL950016 (Feb. 10, 1995)
IL950018 (Feb. 10, 1995)
IL950021 (Feb. 10, 1995)
IL950026 (Feb. 10, 1995)
IL950028 (Feb. 10, 1995)
IL950034 (Feb. 10, 1995)
IL950058 (Feb. 10, 1995)
IL950060 (Feb. 10, 1995)
IL950062 (Feb. 10, 1995)
IL950063 (Feb. 10, 1995)
IL950064 (Feb. 10, 1995)
IL950067 (Feb. 10, 1995)
IL950068 (Feb. 10, 1995)
IL950070 (Feb. 10, 1995)
IL950077 (Feb. 10, 1995)
IL950084 (Feb. 10, 1995)
IL950091 (Feb. 10, 1995)
IL950092 (Feb. 10, 1995)
IL950095 (Feb. 10, 1995)
Michigan
MI950001 (Feb. 10, 1995)
MI950002 (Feb. 10, 1995)
MI950003 (Feb. 10, 1995)
MI950005 (Feb. 10, 1995)
MI950007 (Feb. 10, 1995)
MI950012 (Feb. 10, 1995)
MI950031 (Feb. 10, 1995)
MI950046 (Feb. 10, 1995)
MI950047 (Feb. 10, 1995)

Volume V

Kansas
KS950012 (Feb. 10, 1995)
KS950022 (Feb. 10, 1995)
KS950028 (Feb. 10, 1995)
Missouri
MO950002 (Feb. 10, 1995)
MO950048 (Feb. 10, 1995)
MO950049 (Feb. 10, 1995)
MO950050 (Feb. 10, 1995)
Nebraska
NE950001 (Feb. 10, 1995)
New Mexico
NM950001 (Feb. 10, 1995)
Oklahoma
OK950035 (Feb. 10, 1995)
Texas
TX950100 (Feb. 10, 1995)
TX950114 (Feb. 10, 1995)

Volume VI

Alaska
AK950001 (Feb. 10, 1995)
California
CA950001 (Feb. 10, 1995)
CA950002 (Feb. 10, 1995)
CA950004 (Feb. 10, 1995)
CA950027 (Feb. 10, 1995)
Idaho
ID950001 (Feb. 10, 1995)
ID950003 (Feb. 10, 1995)
Montana
MT950006 (Feb. 10, 1995)
MT950008 (Feb. 10, 1995)
Oregon
OR950001 (Feb. 10, 1995)
OR950004 (Feb. 10, 1995)
Washington
WA950001 (Feb. 10, 1995)
WA950002 (Feb. 10, 1995)
WA950003 (Feb. 10, 1995)
WA950005 (Feb. 10, 1995)
WA950006 (Feb. 10, 1995)
WA950008 (Feb. 10, 1995)
WA950010 (Feb. 10, 1995)
WA950011 (Feb. 10, 1995)
WA950013 (Feb. 10, 1995)
Wyoming
WY950009 (Feb. 10, 1995)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, D.C. this 30th day of March, 1995.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 95–8440 Filed 4–6–95; 8:45 am]

BILLING CODE 4510–27–M

Pension and Welfare Benefits Administration

[Application No. D–9511, et al.]

Proposed Exemptions; Bank of America Illinois, 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. 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 NW., Washington, DC 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 NW., Washington, DC 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.

Bank of America Illinois, Located in Chicago, IL

[Exemption Application Nos. D–9511, D–9512 and D–9513]

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).

Section I—Exemption for Purchases and Sales

If the exemption is granted, effective September 1, 1993, the restrictions of section 406(a)(1)(A) through (D) and section 406(b) 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 (F) of the Code, shall not apply to the purchase and sale by employee benefit plans (the Plans), to which the Bank serves as fiduciary, of shares in the Prime Fund, the Government Securities Fund, and the Treasury Fund, three open-end money market mutual fund portfolios (collectively referred to as the Funds), to which the Bank of America Illinois, and its affiliates (the Bank) provide investment advisory and other services, in connection with the Supplemental Sweep Service (as defined in paragraph (a) of section IV below), provided that the conditions of Section III are met.

Section II—Exemption for Receipt of Fees

If the exemption is granted, effective September 1, 1993, the restrictions of section 406(a)(1)(A) through (D) and section 406(b) 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 (F) of the Code, shall not apply to the receipt of fees by the Bank from the Funds for providing investment advisory and other services to the Funds, in connection with the investment of the assets of the Plans in the Funds, for which the Bank provides investment advisory and other services, provided that the conditions of Section III are met.

Section III—Conditions

(a) The Bank does not have investment discretion or render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to the Plan assets invested in the Funds pursuant to this proposed exemption.

(b) No sales commissions or redemption fees are paid by the Plans in connection with the purchase or sale of shares in the Funds.

(c) The Bank does not receive any fees payable pursuant to Rule 12b-1 under the Investment Company Act of 1940 (the 12b-1 Fees) in connection with the transactions.

(d) The price paid or received by a Plan for shares in a Fund is the net asset value per share on the date of the transaction, as defined in section IV(a), and is the same price which would have been paid or received for the shares by any other investor on that date.

(e) Prior to the Bank's receipt of fees paid by each Fund with respect to Plan assets invested therein, each Plan receives a credit of such Plan's proportionate share of all fees charged to the Fund by the Bank.

(f) The Plans are not employee benefit plans sponsored or maintained by the Bank.

(g) A second fiduciary who is independent of and unrelated to the Bank or any of its affiliates (the Second Fiduciary), receives full written disclosure of information concerning the Fund(s), including but not limited to:

(1) A current prospectus for each fund in which a Plan is considering investing;

(2) A statement describing the fees for investment advisory or similar services, and all other fees to be charged to or paid by the Plan or the Funds, including the nature and extent of any differential between the rates of such fees;

(3) The reason why the Bank may consider such investment to be appropriate for the Plan; and

(4) Upon request of the Second fiduciary, a copy of the proposed exemption and/or a copy of the final exemption, if granted once such documents become available.

(h) On the basis of the information described above in paragraph (g) of section III, the Second Fiduciary authorizes in writing the investment of assets of the Plan in each particular Fund, the fees to be paid by the Fund and the Plan to the Bank, and the credit to the Plan of fees received by the Bank from the Funds for investment advisory and other services, consistent with the responsibilities, obligations, and duties imposed on fiduciaries by part 4 of Title I of the Act.

(i) The Second Fiduciary referred to in paragraph (g) of section III, or any successor thereto, is notified of any change in the rates of the fees referred to in paragraph (g) of section III and approves in writing the continued holding of any Fund shares acquired by the Plan prior to such change and still held by the Plan.

(j) The Bank provides annually, written disclosures to the Second Fiduciary which are provided to all shareholders of the Fund(s), which establish the rate of return of the Fund(s) absent the credit paid to the Plans for fees paid by the Funds to the Bank.

(k) The combined total of all fees received by the Bank for the provision of services to the Plans, and in connection with the provision of services to any of the Funds in which the Plans may invest, are not in excess

of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(l) All dealings between the Plans and the Funds are on a basis no less favorable to the Plans than dealings between the Funds and other shareholders of the Funds.

(m) The Bank shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (n) below to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred, if due to circumstances beyond the control of the Bank, the records are lost or destroyed prior to the end of the six year period, and (2) no party in interest other than the Bank shall be subject to the civil penalty that may be assessed under section 502(l) of the Act, or the taxes imposed by section 4975(a) and (b) or the code, if the records are not available for examination as required by section (n) below;

(n) (1) Except as provided in section (2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (l) above shall be unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(B) Any fiduciary of a Plan who has the authority to acquire or dispose of the interests of the Plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any Plan that has an interest in any of the Funds or any duly authorized employee or representative of such employer; and

(D) Any participant or beneficiary of any Plan that has an interest in the Funds or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described in paragraphs (k)(1)(B) through (D) shall be authorized to examine the trade secrets of the Bank's commercial or financial information which is privileged or confidential.

Section IV—Definitions

For purposes of this proposed exemption:

(a) Supplemental Sweep Service means the transfer of shares in the Funds between the Bank and the Plans by means of the Banks's internal accounting procedures at the end of the Supplemental Sweep Period, in connection with Plan orders to purchase shares in the Funds that the Bank is otherwise unable to settle prior to the Supplemental Sweep Period, and Plan orders to purchase or redeem shares in the Funds that are received by the Bank during the Supplemental Sweep Period. A Plan order to purchase or redeem shares in the Fund(s) pursuant to the Supplemental Sweep Service occurs solely as a result of investment decisions, deposits or withdrawals, directed by an independent Second Fiduciary.

(b) Supplemental Sweep Period means the period of time on each business day after the Funds stop accepting orders for the purchase or redemption of shares in the Funds and before the Bank's close of business.

(c) The term ''net asset value'' means the amount for purposes of pricing all purchase and sale of shares in the Funds calculated by dividing the value of all securities, determined by a method as set forth in the Fund's prospectus and statement of additional information, and other assets belonging to the Fund or portfolio of the Fund, less the liabilities charged to each such portfolio or fund, by the number of outstanding shares.

(d) An ''affiliate'' of a person includes:

(1) Any persons directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control, with the person;

(2) Any officer, director, employee, relative of, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(e) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(f) The term ''relative'' means a ''relative'' as that term is defined in section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(g) A fiduciary will not be deemed to be an independent fiduciary with respect to the Bank and its affiliates if:

(1) The fiduciary directly or indirectly controls, is controlled by, or is under common control with the Bank or any affiliate:

(2) The fiduciary, or any officer, director, partner, employee or relative of such fiduciary, is an officer, director partner, or employee of the Bank or any affiliate (or is a relative of such persons); or

(3) The fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this proposed exemption.

If an officer, director, partner, or employee of the Bank (or a relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (i) the choice of the Plan's investment manager/adviser, (ii) the approval of any purchase or sale by the Plan of shares of the Funds, and (iii) the approval of any change of fees charged to or paid by the Plan, in connection with any of the transactions described in sections I and II above, then paragraph (g)(2) of section III above, shall not apply.

The availability of this proposed exemption would be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material facts which are the subject of this exemption.

Summary of Facts and Representations

1. The Bank, which is comprised of Bank of America Illinois, and its wholly owned subsidiary, Continental Trust Company, provides a full range of fiduciary services to qualified employee benefit plans, welfare plans, and governmental retirement plans. Such services include trustee and custodial services, discretionary and directed investment of plan assets, and all related securities processing activities, domestic and foreign. As of December 31, 1994, the Bank provided investment management and custodial services with respect to total assets of approximately $179 billion.

The Plans are comprised of retirement plans qualified under section 401(a) of the Code, pension plans that meet the definition of pension plan set forth in section 3(2) of the Act and section 4975(e)(1) of the Code, with respect to which the Bank serves as a trustee, or investment fiduciary. In addition, the Bank states that it may offer the Funds, under the arrangement described herein, to welfare plans.

2. The Bank provides the Plans with the opportunity to purchase shares in the Funds, to which the Bank provides investment advisory and other services, in connection with existing and expanded cash management sweep services. The Bank states that it currently invests certain assets of the Plans in a short term collective investment fund (the Collective Fund) maintained by the Bank in connection with the provision of sweep services. In this regard, the Bank represents that the addition of the Funds as short term

investment alternatives will result in greater investment choice, greater diversification and reduced risk for the Plans.[1]

3. The Funds are comprised of the Prime Fund, the Government Securities Fund and the Treasury Fund, each of which is a money market mutual fund portfolio of the 231 Funds, an open-end management investment company organized as a Massachusetts business trust (the Trust). The Trust is organized under the Investment Company Act of 1940, as amended. Fund shares offered by the Trust are registered under the Securities Act of 1933.

The assets of the Prime Fund are invested in a diversified portfolio of U.S. Dollar denominated money market instruments, including: Obligations issued or guaranteed by the U.S. Government, its agencies or instrumentalities, bank obligations, including certificates of deposits, time deposits, bankers' acceptances and debt securities issued or supported by domestic banks or domestic branches of foreign banks; short-term corporate obligations including commercial loan participations, commercial paper, corporate bonds, privately placed commercial paper, and participation interests in trusts or special purpose vehicles backed by consumer or commercial credit receivables; and municipal securities including taxable and tax-exempt general obligations, revenue obligations, private activity and industrial development bonds.

The assets of the Government Securities Fund are invested exclusively in obligations issued or guaranteed by the U.S. Government, its agencies or instrumentalities; receipts evidencing separately traded interest and principal components of U.S. Government obligations (including TIGRs and CATS); and repurchase agreements collateralized by government obligations.

The Treasury Fund invests its assets exclusively in obligations issued by the U.S. Treasury, and repurchase agreements relating to such Treasury obligations.

4. The Bank states that the Plans pay a short term cash management fee (Cash Management Fee) of .12 percent of average daily assets to the Bank in connection with Plan investments in the short term collective investment fund maintained by the Bank. In addition, each Plan pays a trustee fee to the Bank of between .01 percent and .15 percent of all Plan assets under the Bank's custody. The Bank negotiates its trustee fees with each Plan individually. The Bank represents that Plan assets are invested in the Funds as an alternative to the short term collective investment fund.[2] In order to avoid charging double fees with respect to Plan assets invested in the Funds, the Bank credits all fees attributable to Plan assets invested therein, payable to the Bank by the Funds, to the Plans. In this regard, the Bank states that its crediting to the Plans of all fees to be paid by the Funds to the Bank results in no additional cost to any of the Plans with respect to Plan assets invested in shares in the Funds.

The fees payable to the Bank by the Funds are accrued daily and paid to the Bank on the first day of the following month, in arrears. On the same day, the Bank credits to the Plans their proportionate shares of all fees to be paid by the Funds to the Bank with respect to Plan assets invested therein.

The Bank states that it discloses annually in writing to the Plans: The total rate of return earned on their shares in the Fund(s) which includes the amounts received by the Plan from the Bank as a credit of the fees paid by the Fund(s) to the Bank in connection with Plan assets invested therein; and the portion of the rate of return which is attributable to the amounts credited by the Bank to the Plans. In addition, the Bank represents that it discloses to the Second Fiduciary annually in writing the rate of return earned on shares in the Fund(s) held by investors other than the Plans.

5. The Bank states that it does not have investment discretion with respect to Plan assets involved in the purchase or sale of shares in the Funds for which relief is requested.[3] Purchases and redemptions of shares in the Funds are solely the result of investment directions from a Second Fiduciary. The Bank represents that only liquid Plan assets awaiting distribution, or investment, are used to purchase shares in the Funds. The Bank states that it has no discretion with respect to the amount of liquid assets available for investment in the funds. The liquid assets of the Plans are always the proceeds of other assets which have been liquidated, or new assets transferred to the Bank, at the direction of a Second Fiduciary.

The Bank states that it has no discretion with respect to how liquid assets of the Plans are invested. The Bank represents that the investment of the liquid assets of a Plan in the Funds is either specifically directed by a Second Fiduciary, or pursuant to standing orders by a Second Fiduciary to invest any daily cash balances in the Fund absent the Bank's receipt of any other investment directions.

6. The Bank states that share purchases and redemption requests communicated by the Bank to the Funds are transmitted each business day prior to the time established by the Fund (currently expected to be 2:00 P.M. Central Standard Time) (the Cutoff Time) for same-day processing and payment of transaction requests. If a transaction triggering a purchase or redemption of Fund shares is processed by the Bank prior to the Cutoff Time, the

[1] The Bank represents that it invests the assets of plans covering its employees in the Funds on terms that are identical to the terms of the proposed exemption set forth herein. In this regard, the Bank states that this arrangement meets the terms and conditions of Prohibited Transaction Exemption (PTE) 77–3 (42 FR 18734, April 8, 1977). The Department expresses no opinion as to whether PTE 77–3 provides relief for the purchase or sale of shares in the Funds by plans covering employees of the Bank pursuant to the arrangement described herein.

[2] The Bank represents that it invests cash collateral provided to the Plans by borrowers of securities in connection with securities lending transactions (the Collateral), in the Funds. The Bank states that it receives a securities lending fee which is part of the Plans' net return from the investment of the Collateral. In this regard, The Bank represents that the securities lending service is separate from the cash management service. According to the Bank, no Cash Management Fee, or investment management fee, is paid by the Plans to the Bank with respect to the management of the Collateral.

The Bank states that it is relying on the relief provided by PTEs 81–6 (46 FR 7527, January 23, 1981) and 82–63 (47 FR 14804, April 6, 1982) for the securities lending transactions and its receipt of fees in connection therewith. In addition, The Bank represents that it is relying on PTE 77–4 (42 FR 18732, April 8, 1977) for relief for the investment of the Collateral in the Funds.

The Bank is not requesting, and the Department is not providing, any relief with regard to the investment of the Collateral in the Funds. In this regard, the Department expresses no opinion as to the availability of the relief provided by PTE's 81–6 and 82–63 for the Plan's securities lending activities and securities lending fees paid by the Plan in connection therewith, nor the availability of PTE 77–4 for the investment of the Collateral in shares of the Funds.

Nevertheless, the Department notes that the relief provided by PTE 77–4 is predicated on, among other things, avoiding the payment of double investment management, investment advisory or similar fees by a plan to a fiduciary of the plan, or any affiliate, which also serves as investment advisor to the mutual fund company. In this regard, it is the Department's view that whether a particular service constitutes the provision of investment advisory services or similar services depends on the particular facts and circumstances of each case. The Department emphasizes that, regardless of whether an administrative exemption may be applicable, it expects the plan fiduciary with investment management responsibility to consider the totality of fees to be paid by the plan directly, and/or indirectly, prior to entering into the arrangement in order to determine that the fees to be paid by the plan do not exceed reasonable compensation for the particular advisory service offered.

[3] The Bank represents that it invests plan assets with respect to which it has investment discretion in the Funds. In this regard, the Bank represents that such transactions meet the terms and conditions of PTE 77–4. The Department expresses no opinion as to the availability of the relief provided by PTE 77–4 for such transactions.

Bank, in turn, transmits the purchase or redemption request to the Fund, which executes the request that same day.

The Bank states that additions to customer accounts (including additions made to cover Fund purchase requests placed prior to the Cutoff Time) and withdrawals from customer accounts may occur subsequent to the Cutoff Time but prior to the close of business for the Bank (the Posting Time). The Bank represents that in order to provide additional opportunities for same-day processing of Plan purchase and redemption requests with respect to shares in the Funds, it offers a Supplemental Sweep Service. The Supplemental Sweep Service provides for the settlement of deposits and withdrawals late each business day subsequent to the Cutoff Time but prior to the Posting Time (the Supplemental Sweep Period).

The Bank represents that the Supplemental Sweep Service assures the overnight investment of any Plan assets to which it applies in order to maximize the return to the Plans by providing an additional period during which the Plan's otherwise idle assets would be invested. In addition, the Bank represents that the Supplemental Sweep Service helps to meet the liquidity needs of the Plans by providing an opportunity for the Plans to, in effect, redeem shares in the Funds and withdraw assets during the Supplemental Sweep Period.

The Bank states that the Supplemental Sweep Service is for selected institutional customers, primarily Plans, and is effective for purchase orders which cannot be settled prior to the Supplemental Sweep Period and for purchase and withdrawal orders received during the Supplemental Sweep Period each business day.

7. The Bank represents that shares acquired by the Plans through the Supplemental Sweep Service are, in some cases, first acquired by the Bank and subsequently allocated to customers which have assets available to be swept as of the Posting Time on that same day. In addition, in order to facilitate prompt redemption of customer shares on the same day that the customer wishes to redeem them, the Bank processes the customer redemption requests received during the Supplemental Sweep Period internally by providing immediate credit to the customer for the Fund Shares.

The Bank represents that the price paid, or received by, a Plan for shares in a Fund purchased, or redeemed, pursuant to the Supplemental Sweep Service is the net asset value per share for all other purchases and redemptions of shares in the Fund on that date.

8. The Bank represents that its acquisition of shares from the Funds through the Supplemental Sweep Service is based on estimates of the prospective purchase and sale of shares in the Funds by the Plans during the Supplemental Sweep Period.

Immediately prior to the Supplemental Sweep Period on each business day, the Bank estimates the approximate number of shares of each fund which its customers will require as of the Posting Time later that same day (in addition to the number of shares needed to cover net customer purchase and sale orders placed prior to the Cutoff Time). The Bank then purchases that number of shares of each Fund prior to the Cutoff time as trustee, nominee or in some other capacity for its customers. The books of the Fund's transfer agent carry only one account for all purchases and redemptions of Fund shares by the Bank, and reflect the Bank as the owner of all Fund shares purchased. The Bank's books, however, reflect its purchase of shares in the Funds as trustee, nominee, or other capacity for its customer accounts, or as principal, on a provisional basis.

Later in the day, at the end of the Supplemental Sweep Period, the Bank determines the precise number of each Fund's shares needed by its customers. Based on its determination, the Bank adjusts the provisional purchase entries previously made on its books to reflect the net purchase or redemption of Fund shares by each customer account (or by the Bank in its own name) in the amount necessary to satisfy the net purchase needs of its customers at the end of the Supplemental Sweep Period. Appropriate final entries are made in the Bank's trust and corporate accounting systems to reflect the previous day's transaction activity and the respective ownership positions of the Bank and its customers as of the previous day's Cutoff Time. The books of the transfer agent of the respective Fund, however reflect no net change (i.e., change in number of shares outstanding) in the record ownership position of the Bank as a result of the Bank's adjustments; all adjustments of Fund shares among the Bank and its various customers would be internal bookkeeping adjustments made by the Bank.

In the event that the Bank, on a given business day, underestimated the number of any Fund's shares which were required by its customers, the Bank allocates any shares the Bank had previously purchased to customer accounts which purchased Fund shares between the Posting Time and the Cutoff Time on a pro rata basis by reflecting on the Bank's books the redemption of Fund shares owned or purchased by the Bank and the simultaneous purchase by its customers, from the Fund, of the corresponding number of fund shares. The balance of each customer's funds that was intended to be invested in the Funds during the Supplemental Sweep Period which remain uninvested after this adjustment process are temporarily invested in the Bank's deposits paying a rate of interest equivalent to the net return on Fund shares for that day (subject to certain regulatory requirements) and subsequently are invested in Fund shares the next business day.[4] The Bank represents that each customer including the Plans realizes an equivalent return on its invested funds for the day.

However, if the Bank overestimated the number of Fund shares required by its customers on a given business day, any excess Fund shares are placed in the Bank's investment portfolio or trading account.

The Bank represents that, in any event, customers who redeem Fund Shares during the Supplemental Sweep Period pursuant to the Supplemental Sweep Service are provided with immediate provisional credit for the value of Fund shares. Such redemptions ultimately are reflected on the Bank's books as having occurred as of the Cutoff Time in the manner described above. Accordingly, such shares are allocated to other customer accounts or to the Bank's own investment or trading account, through the netting procedures. The Bank states that all such entries are made on its own internal accounting systems effective as of the previous day's Cutoff Time, and result in no net change in the transfer agent's records reflecting the Bank's record ownership of Fund shares. The Bank represents that in effect, the Bank is acting functionally as a sub-transfer agent to effect post-Cutoff redemptions by the Fund.

9. In summary, the Bank represents that the proposed transactions satisfy the statutory criteria of section 408(a) of the Act and 4975(c)(2) of the Code because: (a) The Funds provide the Plans with a more effective investment vehicle than the Collective Fund

[4] The Bank represents that it intends to rely on section 408(b)(4) of the Act with regard to the investment of Plan assets in deposits of the Bank. The Department expresses no opinion as to whether the relief provided by section 408(b)(4) of the Act is available for the investment of Plan assets in deposits of the Bank pursuant to the arrangement described herein.

currently maintained by the Banks without any increase in fees paid to the Bank; (b) a Second Fiduciary must authorize in writing the investment of Plan assets in the Funds and the payment of any fees to the Bank by the Plans and the Funds, after receiving full written disclosure, including a prospectus for the Funds and a statement describing the fee structure; (c) no sales fees or redemption fees are paid by the Plans in connection with the acquisition or sale of shares of the Funds; and (d) all dealings between the Plans and the Funds, the Bank, or any affiliated person, are on a basis no less favorable to the Plans than such dealings are with the other shareholders.

FOR FURTHER INFORMATION CONTACT: Eric Berger of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Mellon Bank, N.A. (Mellon) and Its Affiliates Located in Pittsburgh, Pennsylvania

[Application No. D–9724]

Proposed Exemption

Section I—Exemption for Cross-Trading Between Certain Accounts

The restrictions of sections 406(a)(1)(A) and 406(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) of the Code, shall not apply to (1) the purchase and sale of securities (including the stock of Mellon Bank Corporation (MBC)) between Indexed Accounts, as defined in Section IV(a); and (2) the purchase and sale of securities, including the common stock of MBC, between Indexed Accounts and various large accounts (the Large Accounts) pursuant to portfolio restructuring programs of the Large Accounts; provided that the following conditions and the General Conditions of Section III are met:

(a) The Indexed Account is based on an index which represents the investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries. The organization creating and maintaining the index must be (1) engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients, (2) a publisher of financial news or information, or (3) a public stock exchange or association of securities dealers. The index must be created and maintained by an organization independent of Mellon and its affiliates. The index must be a generally accepted standardized index of securities which is not specifically tailored for the use of Mellon or its affiliates.

(b) The price for the securities is set at the current market value for the securities on the date of the transactions. For equity securities, the price shall be the closing price for the security on the day of trading; unless the security was added to or deleted from an index underlying an Indexed Account after the close of trading, in which case the price shall be the opening price for that security on the next business day after the announcement of the addition or deletion. For debt securities, the price shall be the fair market value determined as of the close of the day of trading pursuant to Rule 17a–7(b) issued by the Securities and Exchange Commission under the Investment Company Act of 1940.

(c) The transaction takes place within three business days of the ''triggering event'' giving rise to the cross-trade opportunity. A triggering event is defined as:

(1) A change in the composition or weighting of the index underlying an Indexed Account by the organization creating and maintaining the index;

(2) A change in the overall level of investment in an Indexed Account as a result of investments and withdrawals made on the Account's regularly scheduled opening date; provided, however, that Mellon does not change the level of investment in the Indexed Account through investments or withdrawals of assets of any employee benefit plan maintained by Mellon or its affiliates (the Mellon Plans) for which Mellon has investment discretion; or

(3) A declaration by Mellon (recorded on Mellon's records) that a ''triggering event'' has occurred, which will be made upon an accumulation of cash in an Indexed Account attributable to interest or dividends on, and/or tender offers for, portfolio securities equal to not more than .5 percent of the Indexed Account's total value.

(d) With respect to any Indexed Account that is model-driven, no cross-trades are engaged in by the Account for 10 business days subsequent to any change made by Mellon to the model underlying the Account.

(e) In the event that the amount of a particular security which all of the Indexed Accounts or Large Accounts propose to sell on a given day is less than the amount of such security which all of the Indexed Accounts or Large Accounts propose to buy, or vice versa, the direct cross-trade opportunity must be allocated by Mellon among potential buyers or sellers of the security on a pro rata basis.

(f) An Indexed Account does not participate in a cross-trade if more than 10 percent of the assets of the Indexed Account at the time of the proposed cross-trade are comprised of assets of Mellon Plans for which Mellon exercises investment discretion.

(g) Prior to any proposed cross-trading by an Indexed Account or a Large Account, Mellon provides to each employee benefit plan invested in the Account information which describes the existence of the cross-trading program, the ''triggering events'' which will create cross-trade opportunities, the pricing mechanism that will be utilized for securities purchased or sold by the Accounts, and the allocation methods and other procedures which will be implemented by Mellon for its cross-trading practices. Any employee benefit plan which subsequently invests in the Indexed Account or Large Account shall be provided the same information prior to or immediately after the plan's initial investment in the Account.

(h) With respect to cross-trade transactions involving a Large Account:

(1) Total assets of the Large Account are in excess of $50 million.

(2) Fiduciaries or other appropriate decisionmakers of the Large Account who are independent of Mellon are, prior to any cross-trade transactions, fully informed of the cross-trade technique and provide advance written approval of the cross-trade transactions.

Such authorization shall be terminable at will by the Large Account upon receipt by Mellon of written notice of termination. A form expressly providing an election to terminate the authorization, with instructions on the use of the form, must be supplied to the authorizing Large Account fiduciary concurrent with the receipt of the written information describing the cross-trading program. The instructions for such form must include the following information:

(i) The authorization is terminable at will by the Large Account, without penalty to the Large Account, upon receipt by Mellon of written notice from the authorizing Large Account fiduciary; and

(ii) Failure to return the termination form will result in the continued authorization of Mellon to engage in cross-trade transactions on behalf of the Large Account.

(3) Within 45 days of the completion of the Large Account's portfolio restructuring program, the Large Account's fiduciaries shall be fully appraised in writing of the transaction

results. However, if the program takes longer than three months to complete, interim reports of the transaction results will be made within 30 days of the end of each three month period.

(4) The Large Account transactions occur only in situations where Mellon has been authorized to restructure all or a portion of the Large Account's portfolio into an Indexed Account (including a separate account based on an index or computer model) or to act as a ''trading adviser'' in carrying out a Large Account-initiated liquidation or restructuring of its portfolio.

(i) Mellon receives no additional direct or indirect compensation as a result of any cross-trade transactions.

(j) Mellon does not purchase or sell any debt securities issued by Mellon or an affiliate for the Indexed Accounts.

Section II—Exemption for the Acquisition, Holding and Disposition of MBC Stock

The restrictions of sections 406(a)(1)(D), 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)(D) and (E) of the Code, shall not apply to the acquisition, holding or disposition of the common stock of MBC (the MBC Stock) by Indexed Accounts, if the following conditions and the General Conditions of Section III are met:

(a) The acquisition or disposition of the MBC stock is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Indexed Account is based.

(b) In the event that MBC Stock is added to an index on which an Indexed Account is based or is added to the portfolio of the Indexed Account which tracks an index that includes MBC Stock, all acquisitions necessary to bring the Indexed Account's holdings of MBC Stock to its capitalization weighting in the index, other than cross-trade transactions meeting the conditions of Section I, shall comply with Rule 10b–18 of the Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934, including the limitations regarding the price paid for such stock.

(c) Subsequent to acquisitions necessary to bring the Indexed Account's holdings of MBC Stock to its capitalization weighting in the index pursuant to the restrictions of SEC Rule 10b–18, all aggregate daily purchases of MBC stock, other than cross-trade purchases meeting the conditions of Section I, shall not constitute more than the greater of: (1) 15 percent of the stock's average daily trading volume for the previous five days; or (2) 15 percent of the stock's trading volume on the date of the transaction.

(d) If the necessary number of shares of MBC stock cannot be acquired within 10 business days from the date of the event which causes the particular Indexed Account to require MBC stock, Mellon shall appoint a fiduciary which is independent of Mellon and its affiliates to design acquisition procedures and monitor Mellon's compliance with such procedures.

(e) All purchases and sales of MBC stock, other than cross-trades meeting the conditions of Section I, shall be executed on the national exchange on which MBC stock is primarily traded.

(f) No transactions shall involve purchases from, or sales to, Mellon or any affiliate, officer, director or employee of Mellon or any party in interest with respect to a plan which has invested in an Indexed Account. This requirement does not preclude purchases and sales of MBC stock in cross-trade transactions meeting the conditions of Section I, provided that the Indexed Accounts are not maintained by Mellon primarily for the investment of assets of Mellon or any affiliate, including officers, directors or employees of Mellon other than in connection with a Mellon Plan.

(g) No more than five (5) percent of the total amount of MBC stock issued and outstanding at any time shall be held in the aggregate by the Indexed Accounts which hold plan assets.

(h) MBC stock shall constitute no more than two (2) percent of the value of any independent third-party index on which the investments of an Indexed Account are based.

(i) A plan fiduciary independent of Mellon authorizes the investment of such plan's assets in an Indexed Account which purchases and/or holds MBC stock.

(j) A fiduciary independent of Mellon and its affiliates shall direct the voting of the MBC stock held by an Indexed Account on any matter in which shareholders of MBC stock are required or permitted to vote.

Section III—General Conditions

(a) Mellon maintains or causes to be maintained for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (b) of this Section to determine whether the conditions of the exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Mellon, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than Mellon shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of this Section are available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service,

(B) Any fiduciary of a plan participating in an Indexed Account who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer with respect to any plan participating in an Indexed Account or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an Indexed Account, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in paragraph (b)(1)(B) through (D) shall be authorized to examine trade secrets of Mellon, any of its affiliates, or commercial or financial information which is privileged or confidential.

Section IV—Definitions

(a) Indexed Account—Any Index Fund or Model-Driven Fund.

(b) Index Fund—Any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by Mellon or an affiliate in which one or more investors invest that is designed to replicate the capitalization-weighted composition of an independently maintained securities index which satisfies the conditions of Section I(a) and Section II(h).

(c) Model-Driven Fund—Any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by Mellon or an affiliate, in which one or more investors invest which is based on computer models using prescribed objective criteria to transform an independently maintained securities index which satisfies the conditions of Section I(a) and Section II(h).

(d) Opening date—The regularly-scheduled date on which investments in

or withdrawals from an Indexed Account may be made.

(e) Large Account—An account of an investor that is either: (1) An employee benefit plan within the meaning of section 3(3) of the Act that has $50 million or more in total assets; or (2) an institutional investor, other than an investment company registered under the Investment Company Act of 1940 (i.e. a mutual fund), such as an insurance company separate account or general account, a governmental plan, a university endowment fund, a charitable foundation fund, or a trust or other fund which is exempt from taxation under section 501(a) of the Code, that has total assets in excess of $50 million. As noted in Section I(g)(4), a ''Large Account'' shall only be an account to which Mellon has been authorized to restructure all or a portion of the portfolio for such account into an Indexed Account or to which Mellon has been authorized to act as a ''trading adviser'' (as defined below) in connection with a specific liquidation or restructuring program for the account.

(f) Trading adviser—A person whose role is limited to arranging a Large Account-initiated liquidation or restructuring of an equity or debt portfolio within a stated period of time so as to minimize transaction costs. The person must not be a fiduciary with investment discretion for any underlying asset allocation, restructuring or liquidation decisions for the account in connection with such transactions.

(g) Affiliate—Any person, directly or indirectly through one or more intermediaries, controlling, controlled by, or is under common control with Mellon (except Mellon/McMahon Real Estate Advisors, Inc.).

Summary of Facts and Representations

1. Mellon is a national bank and a subsidiary of MBC, which is the twenty-third largest bank holding company in the U.S. with assets of approximately $37 billion. Mellon is licensed to operate a trust department, which is regulated by the Office of the Comptroller of the Currency. Within the trust department, Mellon provides a variety of fiduciary services, including acting as trustee of employee benefit plans subject to the Act. Currently, Mellon acts as fiduciary of institutional accounts, including employee benefit plans, with assets totaling approximately $481 billion. Additionally, certain affiliates of Mellon provide trust or investment management services to various employee benefit plans. Mellon and its affiliates are, to the extent of the provision of such services, fiduciaries of these plans. For purposes of this proposed exemption, Mellon does not include Mellon/McMahon Real Estate Advisors, Inc., as an ''affiliate'' because that entity is being sold.

2. In its capacity as fiduciary of an employee benefit plan, Mellon may be either directed by an independent plan fiduciary or a plan participant that has the ability to direct investments for his/her plan account under the plan document. Alternatively, in those cases in which Mellon manages the investments, Mellon represents that it does not exercise any discretionary authority over whether an employee benefit plan invests in particular Funds, such as the Mellon S&P 500 Index Funds, except for a relatively small number of plans which subscribe to Mellon's Portfolio Management in Funds (PMF) services (as discussed below in Paragraph 13).

Mellon manages the different collective investment funds in various ways to enable plan assets to be diversified to reduce risk and to be invested in the types of investments that a particular manager for a plan may determine is appropriate at a particular time. Index Funds and Model-Driven Funds (the Funds) are two examples of the Bank's collective investment funds which include plan investors.

Index and Model-Driven Funds

3. An Index Fund may be an individual or collective investment fund, the objective of which is the replication of the performance of an independently-maintained stock or bond index representing the performance of a specific segment of the public market for equity or debt securities. The Index Funds are passively managed, in that the choice of stocks or bonds purchased and sold, and the volume purchased and sold, are made according to predetermined third party indices rather than according to active evaluation of the investments.

4. A Model-Driven Fund may be an individual or collective investment fund, the performance of which is based on computer models using prescribed objective criteria to transform an independently-maintained stock or bond index representing the performance of a specific segment of the public market for equity or debt securities. The portfolio of a Model-Driven Fund is determined by the details of the computer model, which examines structural aspects of the stock or bond market rather than the underlying values of such securities. An example of a Model-Driven Fund would include a fund which ''transforms'' an index, making investments according to a computer model which uses such data as the following: (a) Earnings, dividends and price-earning ratios for common stocks included in the index; (b) current yields on corporate bonds and money market instruments; (c) the duration, maturity structure, yield and sector/quality weights for bonds included in the index; and (d) historical standard deviations and correlations between asset classes.

Mellon represents that the process for the establishment and operation of all Indexed Accounts which are model-driven is very disciplined. Clear-cut rules are established for each model. Since the Model-Driven Funds operate pursuant to pre-specified computer programs, the rules and programs are changed only infrequently. However, to the extent that there is any change made by Mellon to a model underlying an Indexed Account, no cross-trades will be engaged in by the Account for 10 business days subsequent to such change. Thereafter, an Indexed Account that is model-driven will engage in cross-trade transactions if the cross-trade opportunity results from any ''triggering event'' described herein (see Paragraph 5 below).

Mellon currently offers more than 60 collective investment funds that are invested according to the criteria of various third-party indexes or are model-driven based on such indexes. For example, some Funds track the Russell 2000 Index,[5] while other Funds track the Standard & Poors 500 Composite Stock Price Index (the S&P 500 Index).[6] Most of the Funds track stock indexes, although some Funds

[5] The Russell 2000 Index was established and is maintained by the Frank Russell Company, which is not an affiliate of Mellon. The Russell 2000 Index is a subset of the larger Russell 3000 Index. The Russell 3000 Index consists of the largest 3,000 publicly traded stocks of U.S. domiciled corporations, as identified by the Frank Russell Company, and includes large, medium and small stocks. The Russell 3000 Index represents approximately 98% of the total market capitalization of all U.S. stocks that trade on the New York and American Stock Exchanges and in the NASDAQ over-the-counter market. The Russell 2000 Index consists of approximately 2,000 of the smallest stocks within the Russell 3000 Index, and is therefore a broadly diversified index of small capitalization stocks, representing less than 10 percent of the U.S. equity market in total capitalization.

[6] The S&P 500 Index is composed of 500 stocks that are traded on the New York Stock Exchange, American Stock Exchange, and the NASDAQ National Market System. The S&P 500 is a market value-weighted index (i.e. shares outstanding times stock price) in which each company's influence on the Index's performance is directly proportional to its market value.

track indexes of debt securities, such as the Lehman Brothers Bond Indices.[7]

In addition to Funds that are collective investment funds, Mellon has investment responsibility for individual investment funds which are separate portfolios for various client accounts, including employee benefit plans, where the portfolio is invested in accordance with a third-party index. Such individual investment funds and collective investment funds are referred to herein as Indexed Accounts (see Paragraph 6 below). Mellon states that the ability of all Indexed Accounts to cross-trade securities with each other, or to invest in MBC Stock when the stock is included in an index, would improve Mellon's tracking of such indexes.

Cross Trades

5. Mellon represents that cross-trades will be made within three business days of the ''triggering event'' giving rise to the cross-trade opportunity. A ''triggering event'' is limited to: (i) A change in the composition or weighting of the index underlying an Indexed Account by the organization creating and maintaining the index; (ii) a change in the overall investments in an Indexed Account as a result of a net investment or withdrawal on the Account's regularly-scheduled opening date (provided that Mellon does not change the level of investment in the Indexed Account through investments or withdrawals of assets of any Mellon Plans for which Mellon has investment discretion); and (iii) a declaration by Mellon that a ''triggering event'' has occurred upon an accumulation in the Indexed Account of cash attributable to interest or dividends on, and/or tender offers for, portfolio securities equal to not more than .5 percent of the value of the Indexed Account.

Mellon states that frequent purchases and sales of securities by the Indexed Accounts are required to accomplish portfolio balances that conform with the particular indexes. In addition, some securities transactions may be prompted by a client plan's request to add funds to, or withdraw funds from, an Indexed Account. Under any of these circumstances, Mellon's disposition of a particular security for one Indexed Account may involve a security which may be needed by another Account, thus presenting an opportunity to save substantial commissions for both the liquidating Account and the acquiring Account. This saving is enabled by a cross-trade transaction, which involves matching Mellon's sell orders for a particular day with its buy orders for the same day, and the execution of trades between the Accounts in off-market transactions. Under current procedures, all securities transactions, including cross-trades between Indexed Accounts maintained by Mellon, are executed by a broker on behalf of a purchasing or selling Account at the direction of Mellon, dealing with a second broker acting on behalf of the other purchasing or selling party.

6. Mellon proposes to take advantage of opportunities to direct the cross-trading of securities directly between various Indexed Accounts. Such Indexed Accounts will include: (i) Collective investment funds for employee benefit plans, (ii) separate employee benefit plan trust accounts that are not commingled in a collective fund, (iii) other large fiduciary accounts such as governmental plans, university endowment funds, charitable foundation funds and personal trusts, (iv) common or collective trust funds containing assets of governmental plans, university endowments, charitable foundations or personal trusts, and (v) mutual funds and other institutional accounts for which Mellon or an affiliate serves as an investment manager or investment advisor.

Mellon represents that by participating in its cross-trading program, the Accounts will benefit by not incurring the transaction costs involved in dealing with a broker-dealer or ''market maker'' for the particular securities to effect the transactions. Such transaction costs include brokerage commissions and/or the market-maker's bid/offer spread on prices for such securities. Mellon maintains that transactions involving equity securities on the open market between unrelated parties require brokerage commissions equal to at least two cents per share for each sale or purchase transaction. However, the brokerage commissions that would be paid for each proposed cross trade of equity securities would be equal to approximately .05 cents per share, reflecting only the necessary record-keeping costs for the brokers. For debt securities, Mellon states that cross-trades would produce transactions cost savings by eliminating the bid/offer spread that normally would be paid to a broker-dealer to acquire or sell such securities. Mellon also represents that participation in the cross-trading program may enable the Accounts to obtain earlier opportunities to acquire or sell certain securities. The applicant represents that all brokers used in cross trade transactions would be unrelated to and independent of Mellon and its affiliates.

Mellon states that the price for the securities involved in any cross-trade will be set at the current market value for the securities on the date of the transactions.

For equity securities, the price will be the closing price for the security on the day of trading; unless the security was added to or deleted from an index underlying an Indexed Account after the close of trading, in which case the price shall be the opening price for that security on the next business day after the announcement of the addition or deletion.

Mellon will use independent pricing services to value all equity securities which are cross-traded by the Indexed Accounts. The primary service currently used by Mellon for pricing domestic equity securities is Interactive Data Corporation, a subsidiary of Dunn & Bradstreet Corporation. For pricing foreign equity securities, Mellon uses Morgan Stanley & Co. or Vestek Systems. The applicable independent pricing service provides the price in local currency rates and, if that currency is other than U.S. dollars, also provides the U.S. Dollar exchange rate. The equity securities are valued at the close of the day, and thus equity security cross-trades would in all cases be executed at the closing price received by Mellon from the relevant independent pricing service. In addition, the same independent pricing service will be employed to value any given equity security for both the buy and sell sides of all cross-trades involving that equity security. The identity of the applicable independent pricing service for each equity security will be recorded on Mellon's records and will be made available to any participant in the cross-trading program upon request. If the independent pricing service for any particular equity security is changed, a single new independent pricing service will be selected for future pricings of that equity security.

For debt securities, the price will be the fair market value determined as of the close of the day of trading pursuant to SEC Rule 17a–7(b) under the Investment Company Act of 1940. SEC Rule 17a–7(b) contains four possible means of determining ''current market'' value for either debt or equity securities depending on such factors as whether the security is a reported security and whether its principal market is an exchange. Mellon states that all debt securities that are not a reported

[7] The indexes of debt securities used by Mellon for the Funds, such as the Lehman Brothers Bond Indices, consist primarily of high-quality fixed-income securities representing the U.S. government, corporate, and mortgage-backed securities sectors of the bond market in the U.S. Mellon currently has approximately 14 debt Index Funds.

security or traded on an exchange would be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the day of the cross-trade. Such prices would be determined in accordance with Rule 17a–7(b)(4) on the basis of reasonable inquiry from at least three sources that are broker-dealers or market-makers independent of Mellon, except in those circumstances where fewer than three independent sources exist to price a certain debt security (in which event closing price quotations will be obtained from all available sources).

Mellon intends that the requested exemption for cross-trade transactions would apply, in addition to existing Indexed Accounts currently maintained, to all Indexed Accounts which it may create in the future which satisfy the conditions of the exemption, if granted.

7. Mellon proposes to engage in cross-trade transactions between the Indexed Accounts and various Large Accounts that have total assets in excess of $50 million. Mellon states that a Large Account could be either: (i) An employee benefit plan within the meaning of section 3(3) of the Act; or (ii) a portfolio of an institutional investor, other than an investment company registered under the Investment Company Act of 1940 (i.e. a mutual fund), such as an insurance company separate account or general account, a governmental plan, a university endowment fund, a charitable foundation fund, or a trust or other fund which is exempt from taxation under section 501(a) of the Code.

Cross-trades between an Indexed Account and a Large Account would occur only when the fiduciary or other appropriate decision-maker for the Large Account, which is independent of Mellon and its affiliates, is fully informed of the cross-trade technique, provides advance written approval of such transactions, and is fully apprised of the transaction results. Further, cross trades involving a Large Account will be limited to those situations where Mellon has been authorized to restructure all or a portion of the Large Account's assets into an Indexed Account, or where Mellon is otherwise acting as a trading adviser for a Large Account portfolio restructuring. Such restructurings generally occur in connection with a Large Account decision to invest in one of Mellon's Index or Model-Driven Funds, but they may also involve requests for Mellon to carry out a restructuring program independent of future investments in any of the Funds. In the latter instance, Mellon's only role is that of a trading adviser, carrying out a Large Account-initiated liquidation or restructuring. When a Large Account engages Mellon to invest in a collective investment fund that is index or model-driven or to arrange its own passively-managed individual portfolio, the Large Account's assets must be transformed into a portfolio that tracks a third-party index. In implementing the transformation, Mellon is limited to recreating the required portfolio and is not involved in any active investment management decisions. The impetus for the investment comes from the independent fiduciaries or other independent decision-makers for these Large Accounts. By performing cross-trades with existing Index Accounts where possible, Mellon would reduce the overall transactions costs by both parties to the cross-trade. Mellon would have a similar lack of discretion in the case of Large Accounts which request Mellon or an affiliate to restructure a specific portfolio by liquidation. Mellon would act as the trading advisor to the Large Account, arranging for the securities transactions within a stated time so as to minimize transaction costs. The opportunity to engage in cross-trades with Index Accounts occurs only when those Accounts are required to purchase the same securities which the Large Account is selling.

8. Mellon represents that its cross-trading program will be effected pursuant to a proportional allocation system which will ensure that no Indexed Account or Large Account will be favored over any other such Account. In the event that the amount of a particular security which all of the Indexed Accounts or Large Accounts propose to sell on a given day is less than the amount of such security which all such Accounts propose to buy, or vice versa, the direct cross-trade opportunity would be allocated among all potential buyers or sellers of the security on a pro rata basis. Thus, all of the Indexed Accounts or Large Accounts participating in its cross-trade program will have opportunities to participate on a proportional basis in any cross-trade transactions during the operation of the program. This aspect of the proposed cross-trading program would be part of the information disclosed in writing to the fiduciaries or other decisionmakers of the Large Accounts and to all employee benefit plans which invest in the Index or Model-Driven Funds that are collective investment funds maintained by Mellon or to all such plans that invest in any other Indexed Account. In this regard, Mellon states that prior to any cross-trading by an Indexed Account or a Large Account, each employee benefit plan invested in the Account will be provided information which describes the existence of the cross-trading program, the ''triggering events'' which will create cross-trade opportunities, the pricing mechanism that will be utilized for securities purchased or sold by the Accounts, and the allocation methods and other procedures which will be implemented by Mellon for its cross-trading practices. Any employee benefit plan which subsequently invests in the Indexed Account or Large Account will also be provided the same information prior to or immediately after the plan's initial investment in the Account.

Acquisition, Holding and Disposition of MBC Stock

9. Mellon is also proposing that each Indexed Account be permitted to invest in the MBC Stock if such stock is included among the securities listed in the index utilized by the Indexed Account.[8] For example, MBC Stock is one of the stocks included in the S&P 500. Because of the prohibitions of section 406 and 407 of the Act, the Mellon S&P 500 Index Funds and other Indexed Accounts holding plan assets which track the S&P 500 Index currently are not permitted to invest in MBC stock. Mellon states that the exclusion of MBC Stock from such Index Funds or other Indexed Accounts creates tracking error. To correct the tracking error, Mellon proposes to purchase on the open market, and hold, on behalf of all Indexed Accounts which hold plan assets, the number of shares of MBC Stock necessary to replicate correctly the weighting of MBC Stock in the portfolio relative to the S&P 500 Index.[9]

Mellon represents that when MBC Stock is added to an index on which an Indexed Account is based or is added to the portfolio of an Indexed Account which tracks an index that includes MBC Stock, all acquisitions necessary to bring the Indexed Account's holdings of MBC Stock to its capitalization weighting in the index, other than through cross-trade transactions meeting the conditions of Section I, will comply with the SEC Rule 10b–18, including the limitations regarding the price paid for such stock. Such acquisitions of

[8] While certain of the debt indexes used by Mellon for the Indexed Accounts may include debt securities issued by Mellon or an affiliate (Mellon Debt), Mellon states that it does not acquire Mellon Debt for any of its Indexed Accounts. Therefore, Mellon is not requesting relief for any transactions involving Mellon Debt.

[9] In this regard, Mellon is not requesting any relief from section 407(a) of the Act in connection with the acquisition and holding of MBC Stock by the Mellon Plans which invest in the Mellon S&P 500 Index Funds.

MBC Stock would occur when an Indexed Account is first able to hold MBC Stock, such as purchases that will occur for all Indexed Accounts that track the S&P 500 Index, or when MBC Stock is added to an Indexed Account's portfolio as a result of the stock being added to another underlying index used by the Account. SEC Rule 10b–18 provides a ''safe harbor'' for issuers of securities from section 9(a)(2) of the Securities Exchange Act of 1934 and SEC Rule 10b-5 (which generally prohibits persons from manipulating the price of a security and engaging in fraud in connection with the purchase or sale of a security).

Mellon states that the conditions imposed by SEC Rule 10b–18 for purchases of MBC Stock would be as follows: (a) All purchases would be made from or through only one broker on any single day; (b) no purchases would constitute the opening transaction in MBC Stock; (c) purchases would not occur within one-half hour before the scheduled close of trading on the NYSE; (d) the price would not be higher than the current independent bid quotation or the last independent sale price on the exchange, whichever is higher; and (e) if the purchases of MBC Stock are not block purchases as defined by SEC Rule 10b–18(b)(4), the total amount of purchases on any one day would not exceed the higher of one round lot or the number of round lots closest to 25 percent of the trading volume for MBC Stock on that day.

In addition, subsequent to the initial acquisitions necessary to bring an Indexed Account's holdings of MBC Stock to its capitalization weighting in the index pursuant to the restrictions of SEC Rule 10b–18, Mellon states that all aggregate daily purchases of MBC Stock will not constitute more than the greater of either: (i) 15 percent of the stock's average daily trading volume for the previous five days, or (ii) 15 percent of the stock's trading volume on the date of the transaction.

All additional purchases or subsequent sales of MBC Stock by the Indexed Accounts that are made on a daily basis merely to track the S&P 500 Index or other appropriate index would be accomplished either through cross-trade transactions, subject to the conditions of Section I of the proposed exemption, or on the open market, subject to the conditions of Section II the proposed exemption. However, daily purchases of MBC Stock, which occur after all acquisitions of such stock have been made in order to bring the Indexed Account's holdings to the capitalization weighting of MBC Stock in the index, would not be subject to the restrictions of Rule 10b–18, but would be subject to the other conditions of Section II of this proposed exemption. In this regard, Mellon believes that the restrictions of Rule 10b–18 are not necessary for the volume of transactions which will be required by the Indexed Accounts for daily tracking of an index in order to respond to changes in the composition or weighting of MBC Stock in the index.

Mellon represents that no more than 5 percent of the total outstanding shares of MBC Stock will be held in the aggregate by the Indexed Accounts which hold plan assets. In addition, Mellon states that the MBC Stock will not constitute more than 2 percent of the value of any independent third-party index on which investments of an Indexed Account are based.

10. Mellon will appoint an independent fiduciary for the purposes of developing trading procedures for the initial acquisition of MBC Stock on the open market by the Indexed Accounts that track the S&P 500 Index. The independent fiduciary will allow the Indexed Accounts to acquire MBC Stock in the amounts necessary to track the S&P 500 Index while minimizing the impact of the acquisitions on the market for MBC Stock during the acquisition period. The independent fiduciary will also monitor Mellon's compliance with the trading procedures for accomplishing this goal.

The independent fiduciary and its principals will be completely independent from Mellon and its affiliates. The independent fiduciary will also be experienced in developing and operating investment strategies for individual and collective investment funds that track third-party indexes, such as the S&P 500 Index. In addition, Mellon will require the independent fiduciary to represent that neither it nor its principals, employees, or affiliates holds or controls any shares of MBC Stock. During the exercise of the trading program by Mellon, no principal employee of the independent fiduciary nor the fiduciary itself will engage in any trading of any kind in MBC Stock. Furthermore, the independent fiduciary will not act as the broker for any purchases or sales of MBC Stock and will not receive any commissions as a result of the trading program.

11. The independent fiduciary will have as its primary goal the development of a trading program that minimizes the market impact of purchases made pursuant to the initial acquisition program by the Indexed Accounts. Thus, price increases that would be detrimental to the interests of any employee benefit plan investors will be minimized. The trading activities will be conducted in a low-profile, mechanical, non-discretionary manner. In this regard, the independent fiduciary will be required to utilize a computerized trading program that will engage in a number of small purchases over the course of each day, randomly timed. Such a program will allow Mellon to acquire the necessary shares of MBC Stock for the Indexed Accounts that track the S&P 500 Index with minimum impact on the market and in a manner that will be in the best interests of any employee benefit plans that maintain or participate in such Accounts.

12. The independent fiduciary will also be required to monitor Mellon's compliance with the trading program and procedures developed for the initial acquisition of MBC Stock. The independent fiduciary will receive duplicate confirmation slips of all trades as well as the ''time and tape'' of all NYSE transactions in MBC Stock completed immediately before and after each transaction and a time/price/quantity record of all completed or attempted trades. The independent fiduciary will be required to review the activities weekly to determine compliance with the trading procedures and notify Mellon and the Department should any non-compliance be detected. Should the trading strategy need modifications due to unforeseen events or consequences, the independent fiduciary will be required to consult with Mellon and must approve in advance any alteration of the trading procedures. All purchases of MBC Stock by the Indexed Accounts pursuant to the independent fiduciary's trading program will comply with SEC Rule 10b–18 and the conditions of the proposed exemption.

13. If Mellon provides Portfolio Management in Funds (i.e. PMF) services to a plan, Mellon exercises some discretion in allocating and reallocating the plan's assets among various collective investment funds, including Mellon's S&P 500 Index Funds and other Index or Model-Driven Funds. These allocations are based on a plan's investment objectives, risk profile and market conditions. However, Mellon makes the following representations with respect to the purchase, directly or indirectly, of MBC Stock by plans utilizing PMF (PMF Plans):

(a) Mellon represents that any prohibited transactions (other than cross-trade transactions described herein) which might occur as a result of the discretionary allocation and reallocation of plan assets among collective investment funds will be

exempt from the prohibitions of section 406 of the Act by reason of section 408(b)(8).[10]

(b) Before MBC Stock is purchased by an Index or Model-Driven Fund, the appropriate independent fiduciary for each PMF Plan which is currently invested or could be invested in such Funds will be furnished an explanation and a simple form to return on which approval or disapproval of investments in the Fund including MBC Stock could be indicated, together with a postage-paid return envelope. If the form is not received by Mellon within 30 days, Mellon may obtain a verbal response by telephone. If a verbal response is obtained by telephone, Mellon will confirm the fiduciary's decision in writing within five business days. In the event no response is obtained from a PMF Plan fiduciary, the assets of the plan will not be invested in any Index or Model-Driven Fund which invests in MBC Stock and any plan assets currently invested in such Funds at that time would be withdrawn.

(c) Each new management agreement with a PMF Plan will contain language specifically approving or disapproving the investment in any Index or Model-Driven Fund which might hold MBC Stock. The fiduciary for each current PMF Plan will be informed that the existing management agreement could be modified in the same way. However, if the PMF Plan fiduciary does not specifically approve language in the agreement allowing the investment of plan assets in Funds which might hold MBC Stock, then no such investment will be made by Mellon.

(d) Each PMF Plan will be informed on a quarterly basis of any investment in or withdrawal from any Index or Model-Driven Fund holding MBC Stock. The PMF Plan would be granted the election to override Mellon's discretionary decision to invest in or withdraw from such Funds. If the PMF Plan overrides Mellon's decision to invest in or withdraw from the Funds, then Mellon will carry out the plan's election as soon as possible after being notified of such election.

14. In the event a third-party index utilized by Mellon for any Indexed Account (in addition to the S&P 500 Index) adds MBC Stock or if Mellon is otherwise unable to satisfy an Indexed Accounts' needs for MBC Stock through cross-trades with other Indexed Accounts, Mellon will acquire the necessary shares of MBC Stock on the open market. If Mellon is required to purchase MBC Stock in the open market on behalf of any Indexed Account in those circumstances, Mellon will determine whether the stock can be acquired within 10 business days. If the MBC Stock cannot be acquired within 10 business days, Mellon will appoint an independent fiduciary to establish the procedures to be used to acquire the MBC Stock and monitor Mellon's compliance with those procedures. The fiduciary will be unrelated to and independent of Mellon and will have expertise in the operation of index funds.

15. Mellon will appoint an independent fiduciary which will direct the voting of the MBC Stock held by the Mellon S&P 500 Index Funds or other Indexed Accounts. The independent fiduciary will be a consulting firm specializing in corporate governance issues and proxy voting on behalf of public and private pension funds, banks, trust companies, money managers, insurance companies and other institutional investors with large equity portfolios. The fiduciary will be required to develop, and supply to Mellon, a corporate ownership manual which will act as a guideline to the voting of proxies by institutional fiduciaries, and their current voting guidelines. Mellon will provide the independent fiduciary with all necessary information regarding the Indexed Accounts that hold MBC Stock, the amount of MBC Stock held by the Indexed Accounts on the record date for shareholder meetings of MBC, and all proxy and consent materials with respect to MBC Stock. The independent fiduciary will maintain records with respect to its activities as an independent fiduciary on behalf of the Indexed Accounts, including the number of MBC Stock shares voted, the manner in which they were voted, and the rationale for the vote if the vote was not consistent with the independent fiduciary's corporate ownership manual and the current voting guidelines in effect at the time of the vote. The independent fiduciary will supply Mellon with the information after each shareholder meeting. The independent fiduciary will be required to acknowledge that it will be acting as a fiduciary with respect to the plans which invest in the Mellon S&P 500 Index Funds or other Indexed Accounts which own MBC Stock, when voting such stock.

16. In summary, the applicant represents that the proposed cross-trading transactions will satisfy the criteria of section 408(a) of the Act for the following reasons: (a) An Indexed Account will buy or sell securities only in response to various ''triggering events'' which are not within Mellon's control or discretion; (b) a Large Account will engage in cross trades only in situations where the investment decisions relating to a particular portfolio restructuring program for the Large Account are made by a fiduciary or other appropriate decision-maker which is independent of Mellon; (c) all cross trade transactions, including cross-trades involving MBC Stock, will occur within three business days of the ''triggering event'' necessitating the purchase or sale; (d) no cross-trades will be engaged in by an Indexed Account that is model-driven for 10 business days subsequent to any change made by Mellon to the model underlying the Account; (e) the price for all securities will be the current market value for the securities on the date of the transaction, which for equity securities will be set at the closing (or opening, where appropriate) price for the securities on the day of trading as determined by independent pricing services, and for debt securities will be determined based on quotations received from independent broker-dealers or market-makers as of the close of the day pursuant to the procedures described in SEC Rule 17a–7(b); (f) the Indexed Accounts and the Large Accounts will save significant amounts of money on brokerage commissions; and (g) Mellon will receive no additional compensation as a result of the proposed cross trades nor with respect to the acquisition, holding and disposition of MBC Stock.

The applicant further represents that the proposed MBC Stock transactions will satisfy the criteria of section 408(a) of the Act for the following reasons: (a) The acquisition, holding and disposition of MBC Stock by an Indexed Account will occur solely to maintain strict quantitative conformity with the underlying index; (b) all purchases of MBC Stock by the Mellon S&P 500 Index Funds or other Indexed Accounts which occur as a result of such stock being added to an index on which an Indexed Account is based or being added to the portfolio of the Indexed Account which tracks an index that includes MBC Stock, will be made on the open market and will comply with the restrictions of SEC Rule 10b–18; (c) subsequent to the initial acquisitions necessary to bring an Indexed Account's holdings of MBC Stock to its capitalization weighting in the index pursuant to the restrictions of SEC Rule 10b–18, all aggregate daily purchases of MBC Stock will not constitute more than the greater of either (i) 15 percent of the stock's average daily trading volume for the previous five days, or (ii) 15 percent of the stock's trading volume on the date of the transaction; (d) no more than 5 percent of the total outstanding shares of MBC Stock will be

[10] In the absence of regulations, the Department is not prepared at this time to indicate whether section 408(b)(8) applies to transactions described in section 406(b) of the Act. Accordingly, the Department expresses no opinion as to whether Mellon's discretionary allocation and reallocation services for any collective investment funds maintained by Mellon satisfy the requirements of section 408(b)(8) of the Act and is not proposing any exemptive relief beyond that offered by section 408(b)(8).

held in the aggregate by the Indexed Accounts which hold plan assets; (e) the MBC Stock will not constitute more than 2 percent of the value of any independent third-party index on which investments of an Indexed Account are based; (f) the initial acquisitions of MBC Stock by the Mellon S&P 500 Index Funds will be monitored by a fiduciary independent of Mellon in an attempt to minimize market disturbances; and (g) a fiduciary independent of Mellon will direct the voting of any MBC Stock held by the Indexed Accounts.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Analex Corporation (Analex), Analex Corporation Retirement Plan (the Plan) Located in Brook Park, OH

[Application No. D–9786]

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 retroactively to the past loan (the Past Loan) made by the Plan to Analex (the Employer) in accordance with the following conditions:

(1) The terms and conditions of the Past Loan were at least as favorable to the Plan as those obtainable by the Plan under similar circumstances in arm's-length transactions with unrelated parties;

(2) The amount of the Plan's assets involved in the Past Loan did not exceed 15% of the Plan's total assets at any time during the transaction;

(3) The Past Loan was at all times secured by collateral which was valued at not less than 200% of the value of the Past Loan;

(4) Prior to the disbursement under the Loan agreement, an independent, qualified fiduciary determined on behalf of the Plan that the Past Loan was in the best interests of the Plan as an investment for the Plan's portfolio, and protective of the Plan and its participants and beneficiaries;

(5) The independent, qualified fiduciary reviewed the terms and conditions of the exemption and the Past Loan, including the applicable interest rate, the sufficiency of the collateral, the financial condition of the Employer and compliance with the 15% of Plan assets maximum loan amount, prior to approving the disbursement under the Loan agreement;

(6) The fiduciary is monitoring the Past Loan to ensure compliance with the terms and conditions of the exemption and the Loan agreement;

(7) The Plan suffers no loss as a result of the Past Loan; and

(8) The Past Loan will be fully repaid by May 31, 1995.

Temporary Nature of Exemption

If granted, this proposed exemption would be effective for the period from July 12, 1994 through May 31, 1995, the date by which the Past Loan will be repaid.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with a salary reduction feature. There were 394 Plan participants and total assets of $9,222,172 as of December 31, 1993. The Plan provides for participant direction with respect to employee contributions to the Plan, and provides that an Administrative Committee will direct the investment of Employer contributions. Donald M. Zucker of Sorin, Zucker & Warfield, Inc., the independent, qualified fiduciary (the Independent Fiduciary), acted on behalf of the Plan with respect to the Past Loan.

2. The Employer is a Nevada corporation maintaining its principle place of business in Brook Park, Ohio and operating in Florida, Colorado, Texas, California, Virginia and New Mexico. The Employer provides engineering services to commercial and government entities.

3. On July 20, 1993, the Department published a notice of proposed exemption for prospective exemptive relief for a series of loans to the Employer by the Plan (58 FR 38792). The final exemption (PTE 93–65) was published in the **Federal Register** on September 22, 1993 at 58 FR 49325. The exemption was expressly conditioned on compliance with the limitations set forth therein. Among other conditions, PTE 93–65 was subject to the condition that the Independent Fiduciary would monitor the Loans to ensure compliance with the terms and conditions of the exemption and the Loans. Under the terms of PTE 93–65, the Independent Fiduciary was also responsible for reviewing, among other things, the financial condition of the Employer prior to approving each disbursement under the Loan agreement.

Section 6.4 of the written Loan agreement between the Plan and the Employer provides that the Employer must maintain at all times certain net worth requirements. In addition, section 6.5 of the Loan agreement requires that the Employer maintain at all times a certain ratio of current assets to current liabilities. (The net worth test and the current ratio test are hereinafter referred to as the Covenants.)

The Employer represents that only one loan was made to the Employer pursuant to PTE 93–65. It is represented that a $1.3 million loan was made on September 29, 1993 and that the outstanding balance on that loan as of December 13, 1994 was $991,525.41. On July 12, 1994, the Employer entered into a settlement agreement regarding certain claims with respect to activities of Xanalex Corporation, a predecessor corporation to the Employer, which resulted in the Employer's failure to satisfy the Covenants.

4. The Employer now seeks a retroactive exemption for the Past Loan by the Plan to the Employer from the point in time when the Employer failed to satisfy the Covenants. In support of its request for retroactive relief, the Employer and the Independent Fiduciary maintain that the interests of the Plan and its participants and beneficiaries were fully protected throughout the duration of the Past Loan. In this regard, the Independent Fiduciary was engaged to act on behalf of the Plan with respect to the Past Loan. Any disbursement under the Loan agreement required prior approval by the Independent Fiduciary and could not be made unless the Independent Fiduciary found that such disbursement was appropriate and in the interests of the Plan and its participants and beneficiaries.

As further protection for the Plan and its participants and beneficiaries, the Past Loan was collateralized by recorded perfected security interests in accounts receivable (the Accounts Receivable) of the Employer. Upon entering into the Past Loan, the Independent Fiduciary received from the Employer any and all documentation needed to evidence the Plan's security interest in the collateral securing the Past Loan and the Independent Fiduciary ensured that appropriate documentation was recorded to perfect the Plan's security interest. The Independent Fiduciary was also responsible for ensuring that, at no time while the Past Loan was outstanding, was the fair market value of the Accounts Receivable securing such Loan less than 200% of the outstanding face amount of such Past Loan.

5. The Independent Fiduciary maintains that, once apprised of the pending breach of the Covenants, it took appropriate steps to protect the interests of the Plan and its participants and beneficiaries. In this regard, the Independent Fiduciary represents that,

pursuant to its request, the default interest rate was applied to calculate interest payments due after the Covenants were breached.[11] In addition, the Independent Fiduciary retained independent counsel in June, 1994 to represent the interests of the Plan in connection with the anticipated breach of the Covenants.

6. The Independent Fiduciary represents that the Plan suffered no loss as a result of the loan program and no term or condition of the Past Loan was inconsistent with the terms and conditions described in PTE 93–65, except for the failure to satisfy the Covenants. In addition, the Independent Fiduciary represents that payments under the Past Loan have remained current. Finally, the Employer will pay off the remaining balance under the Past Loan no later than May 31, 1995.

7. In summary, the applicant represents that the past transaction meets the statutory criteria for an exemption under section 408(a) of the Act because: (a) The terms and conditions of the Past Loan were at least as favorable to the Plan as those obtainable by the Plan under similar circumstances in arm's length transactions with unrelated third parties; (b) the Plan's independent fiduciary reviewed the terms and conditions of the proposed exemption and the Past Loan and determined that the Loan was in the best interest of the Plan's participants and beneficiaries; (c) the independent fiduciary reviewed and approved the Past Loan prior to making the disbursement; (d) the Past Loan was at all times secured by collateral which was valued at not less that 200% of the balance of the Loan; (e) the amount of the Past Loan did not exceed 15% of the fair market value of the Plan's assets; (f) the Employer will pay off the balance on the Past Loan by May 31, 1995; and (g) except for the failure to satisfy the Covenants, the Past Loan satisfied all other conditions of PTE 93–65.

FOR FURTHER INFORMATION CONTACT: Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Washington Mortgage Corporation, Inc. (WMC) Located in Seattle, Washington

[Application No. D–9814]

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) as follows:

I. If the exemption is granted, the restrictions of section 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: 1) the sale, exchange or transfer between WMC and its affiliates and certain employee benefit plans (the Plans) of certain construction loans or participation interests therein to non-party in interest entities; and 2) the sale, exchange or transfer between WMC and its affiliates and the Plans of any construction or permanent loan made by a Plan to a party in interest, and the resulting extension of credit therefrom, provided that:

(a) The terms of the transactions are not less favorable to the Plans than the terms generally available in arm's-length transactions between unrelated parties;

(b) Such sales, exchanges or transfers are expressly approved by a Plan fiduciary independent of WMC and its affiliates who has authority to manage or control those Plan assets being invested in mortgages or participation interests therein;

(c) No investment management, advisory, underwriting fee or sales commission or similar compensation is paid to WMC or any of its affiliates with regard to such sale, exchange or transfer;

(d) The decision to invest in a loan or a participation interest therein is not part of an arrangement under which a fiduciary of a Plan, acting with the knowledge of WMC or its affiliate, causes a transaction to be made with or for the benefit of a party in interest (as defined in section 3(14) of the Act) with respect to the Plan;

(e) At the time of its acquisition of a loan or participation interest therein, no Plan will have more than 25% of its assets invested in construction and permanent mortgages;

(f) WMC and its affiliates do not and will not act as fiduciaries with regard to any Plan investing in permanent and construction loans and interests therein as described in this proposed exemption; and

(g) WMC shall maintain or will cause to be maintained, for the duration of any loan or participation interest therein sold to a Plan pursuant to this exemption, such records as are necessary to determine whether the conditions of this exemption have been met. The records mentioned above must be unconditionally available at their customary location for examination for purposes reasonably related to protecting rights under the Plans, during normal business hours, by: Any trustee, investment manager, employer of Plan participants, employee organization whose members are covered by a Plan, participant or beneficiary of a Plan.

II. If the exemption is granted, the restrictions of section 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 any transactions to which such restrictions would otherwise apply merely because WMC or any of its affiliates is deemed to be a party in interest with respect to a Plan by virtue of providing services to the Plan in connection with the subject loan transactions (or because it has a relationship to such service provider described in section 3(14)(F), (G), (H), or (I) of the Act), solely because of the ownership of a loan or participation interest therein as described in this exemption by such Plan.

III. Definitions. For purposes of this exemption,

(a) An ''affiliate'' of WMC includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with WMC,

(2) Any officer, director, employee, relative of, or partner in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Temporary Nature of Exemption: If the proposed exemption is granted, it will be effective only for those transactions entered into within eight years of the date on which the Final Grant of this proposed exemption is published in the **Federal Register**.

Summary of Facts and Representations

1. WMC has originated income property (commercial and multifamily) loans since 1949 for major institutional buyers, including pension funds, life insurance companies and thrift institutions. In 1988, WMC was acquired by Puget Sound Bancorp as a wholly owned subsidiary.

2. Through the decade of the 1980's and until 1993, WMC and its affiliates engaged in permanent and construction loan origination and servicing activities involving Plans as lenders. These activities were conducted pursuant to the descriptions contained in proposed

[11] The interest rate applicable upon breach of the Covenants is the greater of 9% or the Advance Rate plus 2%. The Advance Rate is defined as the greater of 7% or the prime rate as published in the Wall Street Journal.

and final prohibited transaction exemptions granted by the Department. These exemptions were PTE 85–1 (50 FR 1004, January 8, 1985), and PTE 89–78 (54 FR 35951, August 30, 1989). These exemptions were obtained to allow WMC and its bank and non-bank affiliates to engage in loan origination, sale and service activity and other (unrelated) banking and non-banking commercial activity with Plans, which would otherwise be prohibited under section 406(a) of the Act and section 4975 of the Code.[12] PTE 85–1 does not provide for any expiration date, and PTE 89–78 expired on August 30, 1994.

3. In 1993, through a series of acquisitions involving national financial institutions, WMC became a subsidiary of KeyCorp, one of the largest bank holding companies in the U.S. KeyCorp owns 21 banks and trust companies and several related financial services companies, with more than 1,300 branch and affiliate offices in 23 states. As of December 31, 1994, KeyCorp had assets of $64.6 billion.

4. At present, WMC maintains offices in Seattle and Tacoma, Washington, but does not do any loan originations. Following the expiration of PTE 89–78 on August 30, 1994, WMC did not originate any new loans to Plans. Prior loans are now serviced elsewhere except for a loan made by the Carpenters Retirement Trust of Western Washington, which is being serviced by KeyCorp Mortgage, Inc., an affiliate of WMC. The applicant represents that seven other loans were placed with Plans by WMC or its affiliates pursuant to PTE 89–78. The applicant represents that no Plan has suffered any loss or default with respect to any of these loans. To allow WMC and its affiliates to resume loan origination and servicing activities with Plans, as a subsidiary of KeyCorp or on its own following possible acquisition by outsiders, KeyCorp has applied for renewal of PTE 89–78 to augment the relief afforded under PTE 85–1.

5. The proposed activities of WMC and its affiliates may be summarized as follows:

(1) WMC works on behalf of the borrower/developer in putting together construction and permanent financing for commercial and multifamily residential real estate projects. The role of WMC is to provide or arrange for all of the construction financing and to arrange a negotiated permanent commitment, so that construction financing is paid off when the building is completed. In some cases, WMC or its affiliates also participate in funding the construction or permanent loans. WMC works on behalf of the borrower/developer to secure permanent financing alternatively by: (a) Committing directly to the borrower for permanent financing, with the intention of later securing a permanent lender; (b) committing to the borrower based on a commitment for permanent financing provided by another lending institution to WMC; or (c) securing for the borrower, directly, a commitment from another lending institution for the permanent financing, with such a commitment going directly from the lender to the borrower, but assigned to WMC during the construction phase as additional collateral and security for the construction loan.

(2) Loan servicing might be done by WMC or an affiliate. Fees paid to the servicer would run 1/8% to 1% per annum on the outstanding principal balance of permanent loans. Servicing fees for construction loans are determined as a percentage of the outstanding balance of the loans. The applicant represents that all fees and charges are set in advance in accordance with prevailing market conditions.[13]

(3) In conducting these permanent and construction loan origination, sales and servicing activities, WMC and its affiliates would not act as a fiduciary to any lending Plan. Rather, all decisions to invest in a loan would be made by Plan fiduciaries independent of WMC and its affiliates. In the case of loans made to parties in interest, these fiduciaries will also be independent of the party receiving the loan proceeds.[14] If construction is to be performed by a contributing employer or other party in interest, WMC would require a written statement executed by the independent fiduciary that its decision to invest was not influenced or controlled by the borrower or any other party in interest.[15]

(4) WMC's responsibilities in the administration or servicing of loans sold to Plans will vary depending on the loan type. For example, construction loans will involve: (a) Releasing construction loan draws and hold backs as various conditions of the construction loan are satisfied; (b) adjustment of hard-line cost items in the construction loan budget to reflect actual costs; (c) making certain the borrower corrects any non-monetary defaults; (d) implementing borrower-requested change orders approved by WMC staff or independent inspectors; (e) clearing mechanics' liens placed on the property during the course of construction; and (f) insuring general compliance by all parties with a construction loan agreement and related agreements.

(5) Any loan in default will involve decisions by the independent Plan fiduciary, or by WMC in accordance with pre- approved guidelines set forth in the loan documents. The loan documents, including default guidelines, would be approved by the independent fiduciary. A Plan, acting through its independent fiduciary, would also retain the ability (with WMC's consent) to transfer, assign or otherwise dispose of its interest in any construction loan, without payment of any fee or penalty.

(6) As to purchase of either permanent or construction loans, or interests therein, Plans would not pay WMC an investment management, investment advisory, sales commission or similar fee. In addition, Plans would not pay more for any loan interest than would be paid by an unrelated party in an arm's-length transaction.

6. WMC represents that as a result of being a party in interest with respect to Plans by virtue of servicing by it or affiliates of the subject loans or participations purchased thereby, WMC and its affiliates would be prohibited from engaging in other commercial transactions with these Plans, such as the making of loans, which transactions have nothing to do with the mortgages or participation interests held by the Plans. The Department has considered WMC's request for relief for such transactions and has decided that

[12] PTE 85–1 exempted transactions involving permanent loans made to non-party in interest entities. PTE 89–78 provided relief for transactions involving construction loans made to non-party in interest entities, and construction and permanent loans made to parties in interest.

[13] The Department is not proposing any relief herein for the receipt of fees beyond that which is provided by the statutory exemption contained in section 408(b)(2) of the Act.

[14] The applicant represents that no loan acquired by a Plan which is made to a party in interest will be a loan to a fiduciary or an affiliate thereof. In this regard, the Department notes that any such loan would involve violations of section 406(b) of the Act for which no relief is being proposed herein.

The applicant represents that, with respect to the subject loans, construction and other services related to the project may, or may not, be performed by a party in interest. The Department notes, as it did in the proposal to both PTE 85–1 and 89–78, that where the construction on the property which secures the loan is by a contributing employer to the Plan and a principal of such employer exercises fiduciary authority in approving the Plan's investment in the loan, a separate prohibited transaction under section 406(b) of the Act may occur, which transaction would not be covered by this proposed exemption. See also condition (d) of Part I of this proposed exemption which has the effect of precluding relief under section 408(a) of the Act for certain transactions undertaken for the benefit of parties in interest.

[15] The Department is not proposing exemptive relief herein for any violation of section 406(b) of the Act resulting from the provision of such construction services. See footnote above.

because the servicing relationship is established as a necessary result of the purchase of a mortgage or participation interest by a Plan, subsequent transactions between the parties otherwise prohibited by section 406(a) are not likely to present an inherent abuse potential. Accordingly, the Department has determined that it would be appropriate to propose the relief from section 406(a) contained in Part II of the proposed exemption.

7. In summary, the applicant represents that the proposed transactions satisfy the criteria contained in section 408(a) of the Act because: (a) The Plans will pay no more for the mortgages and participation interests therein than would be paid by an unrelated party in an arm's-length transaction; (b) all Plan decisions to invest in mortgages and participation interests will be made by a Plan fiduciary independent of WMC and its affiliates; (c) at the time of its acquisition of a loan or a participation therein, no Plan will have more than 25% of its assets invested in construction or permanent mortgages; (d) the terms of the construction or permanent loans will not be less favorable to the Plans than the terms generally available in arm's-length transactions with unrelated parties; and (e) no investment management, advisory, underwriting fee or sales commission will be paid to WMC or any of its affiliates with regard to such sale, exchange or transfer.

Notice to Interested Persons: The applicant represents that notice will be provided to all trustees of Plans currently holding loan investments originated and/or serviced by WMC and/or its affiliates. In addition, WMC agrees to provide a copy of the notice of proposed exemption and any subsequent grant of such exemption to all employee benefit plans with whom WMC may contract in the future to provide services as described herein. Such notification will be provided prior to WMC entering into a contract to provide such services.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz 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.

Signed at Washington, DC, this 31st day of March, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–8395 Filed 4–6–95; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Meeting of the Advisory Committee on Presidential Libraries

Notice is hereby given that the National Archives and Records Administration (NARA) Advisory Committee on Presidential Libraries will meet on Sunday, April 23 1995 from 3 p.m. until 6 p.m. in Room 100 of the National Archives Building, 7th Street and Pennsylvania Avenue, NW., Washington, DC, and on Monday, April 24, 1995 from 9 a.m. until 2 p.m. in Room 105 of the National Archives Building.

The agenda for the meeting will address budget and resource issues, and NARA and Presidential library programs in light of Federal government reductions.

The meeting will be open to the public. For additional information, call Richard Jacobs, Acting Assistant Archivist, Office of Presidential Libraries at (202) 501–5700.

Dated: March 29, 1995.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 95–8598 Filed 4–6–95; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the International Advisory Panel (International Fellowships and Residencies Prescreening Section) to the National Council on the Arts will be held on April 25–27, 1995 from 9:00 a.m. to 7:00 p.m. on April 25–26 and from 9:00 a.m. to 5:00 p.m. on April 27. This meeting will be held in Room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

Portions of this meeting will be open to the public from 9:00 a.m to 9:30 a.m. on April 25 and from 3:30 p.m. to 5:00 p.m. on April 27, for a policy discussion.

The remaining portions of this meeting from 9:30 a.m. to 7:00 p.m. on April 25; from 9:00 a.m. to 7:00 p.m. on April 26; and from 9:00 a.m. to 3:30 p.m. on April 27 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994 these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the

panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5433.

Dated: April 4, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–8631 Filed 4–6–95; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biochemistry and Molecular Structure and Function; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Biochemistry and Molecular Structure and Function—#1134.

Date and Time: Monday, Tuesday, and Wednesday, April 24, 25, & 26, 1995, 8:30 a.m. to 6:00 p.m.

Place: The National Science Foundation, 4201 Wilson Blvd., Room 330, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Dr. Kamal Shukla and Dr. Stewart Hendrickson, Program Directors for Molecular Biophysics, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. (703/306–1444).

Purpose of Meeting: To provide advice and recommendations concerning research proposals submitted to the Molecular Biophysics Program of the Division of Molecular and Cellular Biosciences at NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Molecular Biophysics Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–8565 Filed 4–6–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Bioengineering and Environmental Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Bioengineering and Environmental System (#1189).

Date and Time: April 27–28, 1995; 8:00 am–5:00 pm.

Place: Room 320, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Fred G. Heineken, Program Director, Biochemical Engineering and Biotechnology, Room 565, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1319.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Biosystems Analysis and Control (BAC) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–8555 Filed 4–6–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

Name: Special Emphasis Panel in Biological Sciences (1754).

Date and Times: April 27–28, 1995; 9:00 a.m.–5:00 p.m.

Place: National Science Foundation, Room 320, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Part open.

Contact Person: Dr. Karen Sigvardt, Program Director, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703b 306–1416.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact person listed above.

Agenda: Open Session: April 28, 1995, 11:00 a.m. to 12:00 noon, to discuss goals and assessment procedures. Closed Session: April 27, 9:00 a.m. to 5:00 p.m.; April 28, 9:00 a.m. to 11:00 a.m. and 12:00 noon to 5:00 p.m. to review and evaluate Biosystems Analysis and Control (BAC) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–8558 Filed 4–6–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel For Cell Biology Program; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National science Foundation announces the following meeting.

Name and Committee Code: Advisory Panel for Cell Biology.

Date and Time: April 24–26, 1995, 8:30 am to 5:00 pm.

Place: Room 390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Barbara Zain, Dr. Larry Griffing and Dr. David Capco, Program Directors, for Cell Biology, Division of Molecular and Cellular Biosciences, National Science Foundation, 4201 Wilson Boulevard, Room 655, Arlington, VA 22230. Telephone: (703) 306–1442.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Cellular Organizaiton Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–8566 Filed 4–6–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Cognitive, Psychological and Language Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Cognitive, Psychological and Language Sciences (#1758).

Date and Time: April 26–28, 1995; 9 a.m.–6 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 380, Arlington, VA 22230.

Type of Meeting: Part-Open

Contact Person: Dr. Leslie A. Zebrowitz, Program Director for Social Psychology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1728.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Open session: Friday, April 28, 1995; 9 a.m.–10 a.m.

Closed session: April 26–27, 1995; 9 a.m.–6 p.m. and April 28, 1995; 10 a.m.–6 p.m. To review and evaluate social psychology proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–8561 Filed 4–6–95; 8:45 am]

BILLING CODE 7555–01–M

Earth Sciences Proposal Review Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Earth Sciences Proposal Review Panel (1569).

Dates and Times: April 26–28, 1995; 8:30 a.m. to 6 p.m.

Place: Purdue University, West Lafayette, IN 47907

Type of meeting: Closed

Contact person: Dr. Daniel F. Weill, Program Director, Instrumentation & Facilities Program, Division of Earth Sciences, Room 785, National Science Foundation, Arlington, VA 22230, (703) 306–1558.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Instrumentation & Facilities proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–8570 Filed 4–6–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Economics, Decision and Management Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Economics, Decision and Management Sciences (#1759).

Dates and Times: April 27–28, 1995

Place: Room 390 NSF, 4201 Wilson Boulevard, Arlington, VA.

Type of meeting: Closed

Contact person: Dr. Robin Cantor, Program Director for DRMS, Division of Social, Behavioral and Economic Research, National Science Foundation, Room 995, 4201 Wilson Boulevard, Arlington, VA. Telephone: (703) 307–1757.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate DRMS proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–8559 Filed 4–6–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Genetics & Nucleic Acids; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Genetics & Nucleic Acids (#1149).

Dates and Times: Wednesday April 26, thru Friday April 28, 1995, at 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA, Room 310.

Type of Meeting: Closed.

Contact Person: Charles Liarakos, Program Director for Biochemical Genetics, Division of Molecular and Cellular Biosciences, Room 655, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1439.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Biochemical Genetics Program in the Division of Molecular & Cellular Biosciences at NSF as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary of confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–8563 Filed 4–6–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Genetics & Nucleic Acids; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Genetics & Nucleic Acids (#1149).

Dates and Times: Monday April 24, thru Wednesday April 26, 1995, at 8:30 am to 5 pm.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA, Room 320.

Type of Meeting: Closed.

Contact Person: Susan P.R. Snyder (Program Manager) or Philip Harriman (Program Director) for Microbial Genetics, Division of Molecular and Cellular Biosciences, Room 655, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1441.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Microbial Genetics Program

in the Division of Molecular & Cellular Biosciences at NSF as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–8564 Filed 4–6–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Human Resource Development (HRD); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and committee code: Special Emphasis Panel In Human Resource Development (#1199).

Date and time: April 27–28, 1995; 8:30 a.m.–4:30 p.m.

Place: Room 1235; National Science Foundation; 4201 Wilson Blvd., Arlington, VA 22230.

Type of meeting: Closed.

Contact person: Albert Bridgewater; Program Director, MIE; Human Resource Development (HRD); Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1605.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Model Institutions for Excellence (MIE) proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 1995.

M. Rebecca Winkler;

Committee Management Officer.

[FR Doc. 95–8554 Filed 4–6–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Information Robotics and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Information Robotics and Intelligent Systems (1200).

Date and Time: April 24–25, 1995, 8:30 a.m. to 5:00 p.m.

Place: Holiday Inn-Arlington Hotel, 4610 N. Fairfax Drive, Arlington, VA 22202.

Type of Meeting: Closed.

Contact Person: Dr. Howard Moraff, Acting Deputy Division Director, Robotics and Intelligence, Room 1115, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1928.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Robotics and Machine Intelligence proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–8562 Filed 4–6–95; 8:45 am]

BILLING CODE 7555–01–M

Mathematical and Physical Sciences Advisory Committee Subcommittee on Astronomical Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Mathematical and Physical Sciences, Subcommittee on Astronomical Sciences (#66).

Dates and Time: April 26, 1995, 9 a.m.–6 p.m., April 27, 1995, 9 a.m.–12 Noon.

Place: Room 360, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Hugh M. Van Horn, Director, Division of Astronomical Sciences, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1820.

Purpose of Meeting: To provide advice and recommendations and discuss status of NSF-funded astronomy projects with the objective of achieving the highest quality forefront research for the funds allocated.

Agenda: Wednesday, April 26, 1995. Discussion of FY 1995 Budget Status; FY 1996 Budget Request to Congress; Status of GPRA, GEMINI, MMA, National Observatory Reports; Discussion of Long-Range Plan Formulation.

Dated: April 3, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–8556 Filed 4–6–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Mathematical Sciences (1204).

Dates and Times: April 24–25, 1995; 8:30 a.m. til 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1060, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Alvin Thaler, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1880.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to National Science Foundation for financial support.

Agenda: To review and evaluate proposals concerning the Grants for Scientific Computing Research Environments for the Mathematical Sciences (SCREMS), as part of the selection process for awards.

Reason for Closing: The proposals being reviewed included information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 5523b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–8557 Filed 4–6–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Mathematical and Physical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Mathematical and Physical Sciences (#66).

Dates and Times: April 24, 1995, 8:30 am–7 pm; April 25, 1995, 8:30 am–4 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Thomas A. Weber, Executive Officer, MPS, National Science

Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, telephone: (703) 306–1802.

Minutes: May be obtained from the contact person listed above.

Meeting Purpose: To provide advice and recommendations on development of MPS strategic planning mechanisms; provide advice on the appropriateness of current disciplinary boundaries; evaluate the current MPS interfaces with academia and industry; and advise or methods of achieving overall program excellence in MPS.

Agenda:

April 24, 1995

AM—Introductory Remarks; Discussion on Benchmarking Science.

PM—Discussion on OMA; Prioritization Discussion with MPS Divisions.

April 25, 1995

AM—Reports on Programs and Plans/ Education Measures of Success.

PM—Discussion/Summary of Issues.

Dated: April 3, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–8567 Filed 4–6–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Neuroscience; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Neuroscience (1158).

Dates and Times: April 24–25, 1995; 9 a.m. to 5 p.m.

Place: Room 310, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Part-Open.

Contact Person: Dr. Christopher Platt, Program Director, Sensory Systems, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Telephone: (703) 306–1424.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact person listed above.

Agenda: Open session: April 24, 1995; 3 p.m. to 4 p.m., to discuss goals and assessment procedures. Closed Session: April 24, 1995; 9 a.m. to 3 p.m., 4 p.m. to 5 p.m.; April 25, 1995; 9 a.m. to 5 p.m. To review and evaluate Sensory Systems proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–8568 Filed 4–6–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Neuroscience; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Neuroscience (1158).

Dates and Times: April 24–25, 1995, 9 a.m. to 5 p.m.

Place: Room 370, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Part-Open.

Contact Person: Dr. Karen Sigvardt, Program Director, Neuronal and Glial Mechanisms, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Telephone: (703) 306–1424.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact person listed above.

Agenda: Open session: April 24, 1995; 2 p.m. to 3 p.m., to discuss goals and assessment procedures. Closed Session: April 24, 1995; 9 a.m. to 2 p.m., 3 p.m. to 5 p.m.; April 25, 1995; 9 a.m. to 5 p.m. To review and evaluate Neuronal and Glial Mechanisms proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–8569 Filed 4–6–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Physiology and Behavior; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

Name: Advisory Panel for Physiology and Behavior.

Dates and Times: April 24 and 25, 1995, 8 a.m.–6 p.m.

Place: Room 340, 4201 Wilson Boulevard Arlington, Virginia 22230.

Type of Meeting: Part-Open

Contact Person: Dr. Elvira Doman and Dr. Eldon Braun, Program Directors, Integrative Animal Biology, Division of Integrative Biology and Neuroscience, Room 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. Telephone: (703) 306–1421

Minutes: May be obtained from the contact persons listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Open Session: Tuesday, April 25, 4 p.m. Discussion with Mary Clutter, Assistant Director, Directorate for Biological Sciences. Closed Session: Monday, April 24, 8 a.m.–6 p.m., Tuesday, April 25, 8 a.m.–4 p.m. To review and evaluate Integrative Animal Biology proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–8560 Filed 4–6–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Office of Systemic Reform; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Code: Special Emphasis Panel in Office of Systemic Reform (1765).

Dates and Times: April 24, 1995 and April 25, 1995 (8am-5pm).

Place: Holiday Inn-Arlington, 4610 N. Fairfax Drive, Arlington, VA 22203.

Type of Meeting: Closed.

Contact Persons: Gerald Gipp or Jody Chase, Program Directors, Rural Systemic Initiatives, Room 875, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1684.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals for the Rural Systemic Initiatives Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–8571 Filed 4–6–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. STN 50–528]

Arizona Public Service Company, et al.; (Palo Verde Nuclear Generating Station, Unit No. 1), Exemption

I

The Arizona Public Service Company, et al. (APS or the licensee) is the holder of Facility Operating License No. NPF–41, which authorizes operation of the Palo Verde Nuclear Generating Station, Unit No. 1 (PVNGS–1). The license provides, among other things, that PVNGS–1 is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The PVNGS–1 facility is a pressurized water reactor located at the licensee's site in Maricopa County, Arizona.

II

Section III.D.1.(a) of Appendix J to 10 CFR Part 50 requires the performance of three Type A containment integrated leakage rate tests (ILRTs) at approximately equal intervals during each 10-year service period of the primary containment. The third test of each set shall be conducted when the plant is shut down for the 10-year inservice inspection.

III

By letter dated December 28, 1994, the licensee requested temporary relief from the requirement to perform a set of three Type A tests at approximately equal intervals during each 10-year service period of the primary containment. The requested exemption would permit a one-time interval extension of the third Type A test by approximately 20 months (from the 1995 refueling outage, which begins in May 1995, to the sixth refueling outage (1R6), currently scheduled for September 1996) and would permit the third Type A test of the 10-year inservice inspection period not to correspond with the end of the inservice inspection interval.

The licensee's request concluded that the proposed changes for PVNGS–1, a one-time extension of the interval between the second and third ILRTs and a decoupling of the third test from the outage corresponding to the end of the 10-year inservice inspection period, is justified for the following reasons:

The previous testing history at PVNGS–1 provides substantial justification for the proposed test interval extension. Type A testing is performed to determine that the total leakage from primary containment does not exceed the maximum allowable leakage rate (L_a) as specified in the PVNGS–1 technical specifications (TS). The primary containment maximum allowable leakage rate provides an input assumption to the calculation required to ensure that the maximum potential offsite dose during a design basis accident does not result in a dose in excess of that specified in 10 CFR 100. The allowable L_a for PVNGS–1 is 0.10 percent by weight of the containment air per 24 hours at P_a, where P_a is defined as the calculated peak internal containment pressure related to the design basis accident, specified in the PVNGS–1 TS as 49.5 psig. The acceptance criteria for the Type A test is 75 percent of L_a or 0.075 percent by weight of the containment air per 24 hours at P_a.

In each of the two previous periodic ILRTs at PVNGS–1 (the results were 0.066 percent and 0.067 percent by weight of the containment air per 24 hours at P_a, respectively), the results obtained were below the test acceptance criteria of 75 percent of L_a or 0.075 percent by weight of the containment air per 24 hours at P_a, thereby, demonstrating that PVNGS–1 is a low-leakage containment.

The licensee performed a plant-specific study concluding that the extension of the Type A test has a negligible impact on overall risk. This study relied heavily on the existing Type B and C testing program which is not affected by this exemption, and will continue to effectively detect containment leakage.

Additionally, the licensee stated that its exemption request meets the requirements of 10 CFR 50.12, paragraphs (a)(2)(ii) (the underlying purpose of the regulation is achieved), and (a)(2)(iii) (compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted), for the following reasons:

The licensee categorized mechanisms that could cause degradation of the containment into two types: (1) Degradation due to work which is performed as part of a modification or maintenance activity on a component or system (activity based); or (2) degradation resulting from a time based failure mechanism (i.e., deterioration of the containment structure due to pressure, temperature, radiation, chemical or other such effects). To address the potential degradation due to an activity based mechanism, the licensee reviewed containment system related modifications performed since the last Type A test. The licensee concluded that the modifications performed did not impact containment integrity, or the modifications have, or will be, tested adequately to ensure that there is no degradation from an activity based mechanism. In addition, the licensee maintains administrative controls which ensure that an appropriate retest, including local leak rate testing, if applicable, is specified for maintenance activities which affect primary containment integrity.

Regarding time based failure mechanisms, the licensee concluded that risk of a non-detectable increase in the primary containment leakage is considered negligible due to the 10 CFR Part 50, Appendix J, Type B and C testing program. The licensee stated that without actual accident conditions, structural deterioration is a gradual phenomenon which requires periods of time well in excess of the proposed 81-month test interval which would result by performing the third periodic Type A test during the sixth refueling outage in Unit 1. Other than accident conditions, the only external mechanism inducing stress of the containment structure is the test itself. The licensee maintains that the longer test interval would, therefore, lessen the frequency of stressing the containment.

Additionally, the licensee has performed the general inspections of the accessible interior and exterior surfaces of the containment structures and components prior to the previous Type A tests, as required by 10 CFR Part 50, Appendix J, Section V.A. These inspections are intended to uncover any evidence of structural deterioration which may affect either the containment structural integrity or leak tightness. At PVNGS–1, there has been no evidence of structural deterioration that would impact structural integrity or leak tightness. In a phone conversation with the licensee on March 23, 1995, the staff noted that these inspections, though limited in scope, provide an important added level of confidence. The licensee committed to perform the general containment civil inspection during the upcoming refueling outage (1R5).

The 10 CFR Part 50, Appendix J, Type B tests are intended to detect local leaks and to measure leakage across pressure containing or leakage limiting-boundaries other than valves, such as containment penetrations incorporating

resilient seals, gaskets, doors, hatches, etc. The 10 CFR Part 50, Appendix J, Type C tests are intended to measure reactor system primary containment isolation valve leakage rates. The frequency and scope of Type B and C testing is not being altered by this proposed exemption request. The acceptance criterion for Type B and C testing is 0.6 L_a. This acceptance criterion is for the sum of all valves and penetrations subject to Type B and C testing and represents a considerable portion of the Type A test allowable leakage. The results of the as-left combined Type B and C leakage measured since the last Unit 1 Type A test are 0.054 L_a, 0.06 L_a, and 0.13 L_a (for the February 1991, May 1992, and November 1993 outages, respectively). The licensee maintains that these test results are substantially below the acceptance criterion of 0.60 L_a and demonstrate a good historic performance of containment integrity.

The proposed schedular exemption would allow the third Type A leakage rate test in Unit 1 to be performed during the Fall 1996 (IR6) refueling outage, which meets the 10 CFR Part 50, Appendix J, requirement of performing three tests in a 10-year time period. The performance of a fourth Type A test during the Unit 1 seventh refueling outage, in order to coincide with the outage at the completion of the extended 10-year ISI interval, is not deemed to be appropriate, as it would result in additional radiation exposure to personnel, increased length of the refueling outage and significant additional cost. Omitting the test will result in dose savings by eliminating contamination and by reducing radiation exposure from the venting and draining of piping penetrations necessary to establish the appropriate test conditions. There would also be dose savings from eliminating the need to install and remove the temporary instrumentation necessary to perform the Type A test. Performing a fourth Type A test would also increase the duration of the affected outage by approximately 3 days and result in additional costs associated with this increase.

A PVNGS–1 plant-specific analysis was performed to evaluate the potential for extending the Type A test frequency. The PVNGS–1 plant-specific analysis considered the extension of the interval to as much as 240 months. The conclusion of the analysis was that the extension of the Type A test interval has a negligible impact on overall risk. The licensee's exemption request does not alter the frequency for performance of Type A testing (i.e., it still maintains a frequency of 3 tests per 10 years). However, the licensee maintains that the data from this study support the requested exemption from the requirement of 10 CFR Part 50, Appendix J, regarding ''approximately equal intervals.'' The interval between the second and third Type A tests would be 81 months with this exemption. The PVNGS–1 plant-specific analysis supports the use of a 240-month interval with a negligible impact on overall risk.

The licensee referenced 10 CFR 50.12(a)(2)(ii) as a basis for this exemption. This section defines such a circumstance where ''application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule * * *.'' The underlying purpose of 10 CFR Part 50, Appendix J, Section III.D.1.(a), is to establish and maintain a level of confidence that any primary containment leakage, during a hypothetical design basis accident, will remain less than or equal to the maximum allowable value, L_a, by performing periodic Type A testing. Compliance with the ''approximately equal intervals'' clause of Appendix J is not necessary to achieve the underlying purpose of the rule, as explained in the above technical justification.

The licensee also referenced 10 CFR 50.12(a)(2)(iii) in its submittal, which states the NRC may grant exemptions from requirements of 10 CFR Part 50 when ''compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated * * *.'' The current PVNGS–1 Type A test schedule would require that four Type A tests be performed in an extended ISI interval. This current schedule would result in unnecessary additional radiation exposure in order to perform the test and unnecessary costs associated with the performance of the test and the costs associated with the increase in the length of the refueling outage. Regarding the impact of this exemption on overall risk, it is the staff's experience that risk is insensitive to the Type A test frequency at values of leakage close to L_a. Therefore, while the staff agrees with the licensee's conclusion that the risk increase resulting from granting this exemption is small, the time interval has no particular significance. Additionally, the staff has previously discussed with the licensee that its scheduling of containment ILRTs early in the ISI interval is largely responsible for the necessity of performing an additional test, and would not constitute a hardship that was not anticipated at the time the rule was written. Therefore, the staff has reviewed this exemption request against the criteria of 10 CFR 50.12(a)(2)(ii).

Section III.D.1.(a) of Appendix J to 10 CFR Part 50 states that a set of three Type A leakage rate tests shall be performed at approximately equal intervals during each 10-year service period.

The licensee proposes an exemption to this section which would provide a one-time interval extension for the Type A test by approximately 20 months. Additionally, for schedular reasons, the final Type A test of the 10-year inservice inspection period is proposed to be decoupled from the requirement to perform it during the same outage (the final Type A test would be performed the outage prior (1R6) to the end of the inservice inspection period).

The Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determined, for the reasons discussed below, that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption; namely, that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of the requirement to perform Type A containment leak rate tests at intervals during the 10-year service period, is to ensure that any potential leakage pathways through the containment boundary are identified within a time span that prevents significant degradation from continuing or becoming unknown. The NRC staff has reviewed the basis and supporting information provided by the licensee in the exemption request. The NRC staff has noted that the licensee has a good record of ensuring a leak-tight containment. All Type A tests have passed with adequate margin. The licensee has also noted that the results of the Type A testing have been confirmatory of the Type B and C tests (which will continue to be performed). Additionally, the licensee has committed to perform the general containment civil inspection during the upcoming refueling outage (1R5), thereby providing an added level of confidence in the continued integrity of the containment boundary.

The NRC staff has also made use of a draft staff report, NUREG–1493, which provides the technical justification for the present Appendix J rulemaking effort which also includes a 10-year test interval for Type A tests. The integrated leakage rate test, or Type A test, measures overall containment leakage. However, operating experience with all types of containments used in this country demonstrates that essentially all containment leakage can be detected by local leakage rate tests (Type B and C). According to results given in NUREG-1493, out of 180 ILRT reports covering 110 individual reactors and approximately 770 years of operating history, only 5 ILRT failures were found which local leakage rate testing could not detect. This is three percent of all failures. This study agrees with previous NRC staff studies which show that Type B and C testing can detect a very large percentage of containment leaks. The PVNGS–1 experience has also been consistent with this.

The Nuclear Management and Resources Council (NUMARC), now the Nuclear Energy Institute (NEI), collected and provided the NRC staff with summaries of data to assist in the Appendix J rulemaking effort. NUMARC collected results of 144 ILRTs from 33 units; 23 ILRTs exceeded 1.0 L_a. Of these, only nine were not due to Type B or C leakage penalties. The NEI data also added another perspective. The NEI data show that in about one-third of the cases exceeding allowable leakage, the as-found leakage was less than 2 L_a; in one case the leakage was found to be approximately 2 L_a; in one case the as-found leakage was less then 3 L_a; one case approached 10 L_a; and in one case the leakage was found to be approximately 21 L_a. For about half of the failed ILRTs, the as-found leakage was not quantified. These data show that, for those ILRTs for which the leakage was quantified, the leakage values are small in comparison to the leakage value at which the risk to the public starts to increase over the value of risk corresponding the L_a (approximately 200 L_a, as discussed in NUREG–1493).

Based on generic and plant-specific data, the NRC staff finds the licensee's proposed one-time exemption to permit a schedular extension of one cycle for the performance of the Appendix Type A test, and the decoupling of the third test to be performed coincident with the completion of the inservice inspection period, to be acceptable.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this exemption will not have a significant impact on the human environment (60 FR 16180).

This exemption is effective upon issuance and shall expire at the completion of the 1R7 refueling outage.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 31st day of March 1995.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–8585 Filed 4–6–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35555; File No. SR–NYSE–95–10]

Self-Regulatory Organizations, Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Margin Requirements for Over-the-Counter Options and Interest Rate Composites

March 31, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 9, 1995, the New York Stock Exchange, Inc. (''NYSE'') 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 NYSE proposes to amend Exchange Rule 431, ''Margins'' to establish margin requirements for over-the-counter (''OTC'') options and interest rate composites. Specifically, the NYSE proposes to establish initial and/or maintenance margin requirements for short positions in OTC options overlying certain instruments which are equal to a specified percentage of the current value of the underlying component and the applicable multiplier, if any, plus any in-the-money amount. The required OTC option margin may be reduced by any out-of-the-money amount, but may not be less than the minimum amount specified for each option category. The percentages of the current value of the underlying components are as follows: (1) For stock and convertible corporate debt securities, 30%, with minimum margin of 10%; (2) for industry index stock groups, 30%, with minimum margin of 10%; (3) for broad index stock groups, 20%, with minimum margin of 10%; (4) for U.S. Government or U.S. government agency debt securities other than those exempted by Rule 3a12–7 under the Act,[1] 5%, with minimum margin of 3%; (5) for corporate debt securities registered on a national securities exchange and OTC margin bonds as defined in Section 220.2(t) (1), (4), and (5)[2] of Regulation T under the Act, 15% with minimum margin of 5%; and (6) for all other OTC options, 45%, with minimum margin of 20%.

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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] Rule 3a12–7 under the Act provides that options that are not traded on a national securities exchange and which relate to securities that are direct obligations of the U.S. or are issued or guaranteed by a corporation in which the U.S. has a direct or indirect interest as shall be designated for exemption pursuant to Section 3(a)(12) of the Act are exempt from all provisions of the Act which by their terms do not apply to ''exempted security'' or ''exempted securities,'' provided that the securities underlying the option represent an obligation equal to or exceeding $250,000 in principal amount.

[2] The NYSE clarified that category five of the proposal applies to OTC margin bonds as defined in Section 220.2(t) (1), (4), and (5) of Regulation T under the Act. Telephone conversation between Richard Nowicki, NYSE, and Yvonne Fraticelli, Attorney, Options Branch, Division of Market Regulation, on March 22, 1995 (''March 22 Conversation''). Section 220.2(t)(1) defines an OTC margin bond as certain debt securities not traded on a national securities exchange; Section 220.2(t)(4) defines an OTC margin bond as a debt security issued or guaranteed as a general obligation by the government of a foreign country, its provinces, states or cities, or a supranational entity, provided that certain credit rating requirements are satisfied; and Section 220.2(t)(5) defines an OTC margin bond as a foreign security that is a nonconvertible debt security that meets the requirements specified in Section 220.2(t)(5).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The NYSE proposes to amend Exchange Rule 431 to establish margin requirements for OTC options and interest rate composites.

OTC options are not issued by the Options Clearing Corporation (''OCC'') or listed on any national securities exchange. They are individually tailored agreements between a customer and a broker-dealer designed to reflect the customer's individual needs as to strike price and expiration date. According to the Exchange, these contracts are generally entered into by credit worthy domestic and foreign institutions, mutual funds and insurance companies. The options are usually written for periods of less than one year.

In File No. SR–NYSE–90–25, the NYSE proposed to amend Exchange Rule 431 to establish margin requirements for OTC options developed in conjunction with industry representatives and the Securities Industry Associations's Credit Division on (1) U.S. government securities, and (2) convertible and non-convertible corporate debt securities, including mortgage related securities, and to reduce the existing margin requirements for stocks and for narrow- and broad-based index groups.[3] Since filing the proposal in 1990, the Exchange staff has permitted member organizations to enter into option agreements on a pilot basis utilizing the proposed margin requirements. According to the NYSE, 31 member organizations have been granted Exchange approval to participate in the pilot program.

On October 7, 1994, the Exchange withdrew File No. SR–NYSE–90–25 because pilot participants had not provided volatility data sufficient for Commission staff to consider the appropriateness of the proposed margin levels. The Commission indicated that the Exchange should refile its proposal when the NYSE obtained supporting documentation. The price volatility data has now been provided to the NYSE and is being provided to the Commission for review.

The proposed amendments to NYSE Rule 431 are the same as those filed previously with the Commission in File No. SR–NYSE–90–25, except with respect to the requirements for Treasury bonds, when margin levels were increased as a result of the Commission's review of volatility data. In addition, the Exchange is not proposing to establish margin requirements for mortgage related debt securities (qualified under Section 3(a)(41) under the Act) because volatility data sufficient to assess the adequacy of the requirements on an ongoing basis is not available.

Under the proposal, the NYSE proposes to establish initial and/or maintenance margin requirements for short positions in OTC options overlying certain instruments which are equal to a specified percentage of the current value of the underlying component and the applicable multiplier, if any, plus any in-the-money amount. The required margin may be reduced by any out-of-the-money amount, but may not be less than the minimum amounts specified for each option category. The percentages of the current value of the underlying components[4] are as follows: (1) For stock and convertible corporate debt securities, 30%, with minimum margin of 10%; (2) for industry index stock groups, 30%, with minimum margin of 10%; (3) for broad index stock groups, 20%, with minimum margin of 10% (4) for U.S. government or U.S. government agency debt securities other than those exempted by Rule 3a12–7 under the Act, 5%, with minimum margin of 3%;[5] (5) for corporate debt securities registered on a national securities exchange and OTC margin bonds as defined in Section 220.2(r) of Regulation T under the Act, 15%, with minimum margin of 5%;[6] and (6) for all other OTC options, 45%, with minimum margin of 20%.

OTC options on U.S. government and U.S. government agency debt securities that qualify for exemption pursuant to Rule 3a12–7 under the Act must be for a principal amount of not less than $500,000 and the margin for such securities for exempt accounts[7] will be 3% of the current value of the underlying principal amount on 30-year U.S. Treasury bonds and 2% of the current value of the underlying principal amount on all other U.S. government and U.S. government agency debt securities, plus any in-the-money amount or minus any out-of-the-money amount. The amount of any deficiency between the equity in the account and the margin required shall be deducted in computing the net capital of the member organization under the NYSE's capital requirements on the following basis: (a) On any account or group of commonly controlled accounts to the extent the deficiency exceeds 5% of the member organization's tentative net capital (net capital before deductions on securities), 100% of such excess amount; and (b) on all accounts combined to the extent such deficiency exceeds 25% of a member organization's tentative net capital, 100% of such excess amount, reduced by any amount already deducted pursuant to paragraph (a).

For non-exempt accounts, the required margin will be 5% of the current value of the underlying principal amount on 30-year U.S. Treasury bonds and 3% of the current value of the underlying principal amount on all other U.S. government and U.S. government agency debt securities, plus any in-the-money amount or minus any out-of-the-money amount, provided the minimum margin shall not be less than 1% of the current value of the underlying principal amount.

In addition, the NYSE proposes to incorporate into NYSE Rule 431 the margin requirements for interest rate composites which were proposed by the Chicago Board Options Exchange, Inc. (''CBOE'') and approved by the Commission.[8] Specifically, for interest rate contracts, the initial and/or maintenance margin will be 10% of the underlying component value (*i.e.*, the product of the current interest rate measure and the applicable multiplier),

[3] See Securities Exchange Act Release No. 28219 (July 18, 1990), 55 FR 30348 (July 25, 1990).

[4] The proposal defines the ''underlying component'' as follows: for stocks, the equivalent number for shares; for industry and broad index stock groups, the current index group value and the applicable index multiplier; for U.S. Treasury bills, notes and bonds, the underlying principal amount; for foreign currencies, the units per foreign currency contract; and for interest rate contracts, the interest rate measure based on the yield of U.S. Treasury bills, notes, or bonds and the applicable multiplier. The ''interest rate measure'' for short-term U.S. Treasury bills represents the annualized discount yield of a specific issue multiplied by 10 or, for long-term U.S. Treasury notes and bonds, the average of the yield to maturity of the specific issues multiplied by 10.

[5] Option contracts in this category must be for a principal amount of not less than $500,000.

[6] Options transactions on private mortgage pass-through securities and mortgage-related debt securities qualified under Section 3(a)(41) under the Act are not eligible for the margin requirements contained in this provision. Margin requirements for such securities must be computed pursuant to the requirements in category six for all other OTC options.

[7] Under the proposal, an ''exempt account'' is a member organization, non-member broker/dealer, ''designated account,'' as defined in NYSE Rule 431(a)(3), any person having net tangible assets of at least $16 million, or in the case of mortgage-related debt securities transactions, an independently audited mortgage banker with both more than $1.5 million of net current assets (which may include ¾ of 1% maximum allowance on loan servicing portfolios) and with more than $1.5 million of net worth.

[8] *See* Securities Exchange Act Release No. 26938 (June 15, 1989), 54 FR 26285 (June 22, 1989) (ordering approving File No. SR–CBOE–87–30).

and the minimum required margin will be 5% of the underlying component value.

The Exchange has agreed to a system for periodic review to ensure the adequacy of the proposed margin requirements and for increasing the requirements on an expedited basis if necessary. The NYSE's monitoring plan will consist of the following:

- Semi-annual reviews of the seven-day price [9] movements will be done. These volatility reviews will cover both the last six months and the last three years.
- The semi-annual review must indicate a 97.5% confidence level (*i.e.*, the required margin level is adequate for seven-day price movements 97.5% of the time).
- For each option category, reports must be done by two member organizations using their own pricing data or by one member organization using an independent pricing source acceptable to the Exchange. These reports must be submitted to the Exchange.
- If one semi-annual review indicates the margin level is inadequate for an option category, the Exchange will increase the margin requirements by filing a proposal pursuant to Section 19(b)(3)(A) under the Act for immediate effectiveness.
- In order to lower the margin requirements, two consecutive six-month reviews must demonstrate that the lower requirement meets the 97.5% confidence level. Amendments to lower the requirement will be made by filing a proposed rule change pursuant to Section 19(b)(2) under the Act.
- In addition, before lowering the margin requirements, the Exchange will take into consideration other relevant factors, such as current market conditions, member organization views, and margin levels implied from other options products (where similar OCC-issued options exist).

(b) Basis

The NYSE believes that the proposed rule change is consistent with the requirements of the Act and, in particular, furthers the objectives of Section 6(b)(5), which provides that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public. The NYSE believes that the proposed rule change is also consistent with the rules and regulations of the Board of Governors of the Federal Reserve System for the purpose of preventing the excessive use of credit for the purchase or carrying of securities, pursuant to Section 7(a) under the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written date, 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 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, 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 organization. All submissions should refer to the file number in the caption above and should be submitted by April 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–8546 Filed 4–6–95; 8:45 am]

BILLING CODE 8010–01–M

[9] Because the Exchange will submit data covering seven-day price movements, the Exchange agreed to delete references to seven-day price/yield movements in order to clarify the proposal. March 22 conversation, *supra* note 2.

[10] 17 CFR 200.30–3(a)(12) (1994).

[Rel. No. IC–20981; File No. 812–9360]

American Skandia Life Assurance Corporation, et al.

March 31, 1995.

AGENCY: Securities and Exchange Commission (the ''Commission'' or the ''SEC'').

ACTION: Notice of application of exemption under the Investment Company Act of 1940 (the ''1940 Act'' or ''Act'').

APPLICANTS: American Skandia Life Assurance Corporation (''Skandia Life''); American Skandia Life Assurance Corporation Variable Account B (Class 3 Sub-Accounts) (the ''Account''); and Skandia Life Equity Sales Corporation (''SLESCO'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemption from Sections 26(a)(2)(C) and 27(c)(2) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of a mortality and expense risk charge from the assets of the Account with respect to certain flexible premium deferred variable annuity contracts (''Contracts'') and contracts offered in the future that are substantially similar in all material respects to the Contracts (''Future Contracts'') that are issued through the Account or any other Accounts established in the future by Skandia Life (''Future Accounts''). Applicants also request that the exemptive relief granted to SLESCO extend to any other National Association of Securities Dealers member broker-dealer controlling, controlled by, or under common control with Skandia Life (''Skandia Life Broker-Dealers''), that may serve in the future as distributor and/or principal underwriter for the Contracts or Future Contracts.

FILING DATE: The application was filed on December 13, 1994 and amended on February 27, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be

issued unless the Commission orders a hearing. Interested persons may request a hearing on this application, or ask to be notified if a hearing is ordered, by writing to the Commission's Secretary and serving the Applicants with a copy of the request, either personally or by mail. Hearing requests must be received by the SEC by 5:30 pm., on April 25, 1995 and should be accompanied by proof of service on the Applicants, either by affidavit, or, for lawyers, by certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o American Skandia Life Assurance Corporation, One Corporate Drive, P.O. Box 883, Shelton, Connecticut 06484–9932, Attention: Jeffrey M. Ulness, Esq.

FOR FURTHER INFORMATION CONTACT: Joyce Merrick Pickholz, Senior Counsel, or Wendy Finck Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Skandia Life is a stock life insurance company incorporated under the laws of Connecticut. It is wholly owned by American Skandia Investment Holding Corporation (''AHIHC'') which in turn is ultimately wholly owned by Skandia Insurance Company Ltd., a Swedish Corporation.

2. The Account was established by Skandia Life as a unitized separate account under the laws of Connecticut and is registered with the Commission under the Act as a unit investment trust.

3. SLESCO, a wholly owned subsidiary of AHIHC, will serve as the distributor and principal underwriter of the Contracts. SLESCO is registered under the Securities Exchange Act of 1934 and with the National Association of Securities Dealers, Inc. as a broker-dealer.

4. The Contracts are flexible premium deferred variable annuities. Contract owners may allocate premium payments or account value to one or more sub-accounts of the Account which will invest in shares of corresponding investment portfolios of American Skandia Trust or such other investment company as may be made available in the future.

5. During the accumulation phase, a death benefit is generally payable upon the death of the first Contract owner to die (if the Contract is held by one or more natural persons) or upon the death of the annuitant. If death occurs prior to the 70th birthday of the individual upon whose death the benefit is payable, the death benefit is the greater of a Contract's Account Value or the minimum death benefit (which is the sum of all Purchase Payments less the sum of all withdrawals). If death occurs on or after the 70th birthday of the individual on whose death the benefit is payable, the death benefit is the Account Value.

6. Prior to the annuity date and upon surrender, Skandia Life will deduct a maintenance fee of the lesser of 2% of Account Value or $35 per annuity year from the sub-account holdings attributable to any particular Contract in the same proportion that each sub-account holding bears to the Account Value of such Contract. Skandia Life states that this fee for maintaining the Contracts will not be greater than the anticipated costs. Also, during the accumulation period, Skandia Life will deduct from the Account, on a daily basis, an administration fee at the rate of 0.15% per annum of the average daily total value of assets of the Account. Applicants assert [1] that a relationship does not necessarily exist between the administration charge and maintenance fee upon a particular Contract and the expenses attributable to that particular Contract, however, the total administrative charge assessed against the Account will not be greater than the total anticipated cost of services to be provided over the life of the Contract(s) in accordance with the applicable standards in Rule 26a–1 under the 1940 Act. The administration and maintenance fees can be increased only for contracts issued subsequent to the effective date of any such change. In addition, Skandia Life deducts an amount equal to any premium taxes due either prior to allocation to the sub-accounts or upon annuitization. A charge of $10 is assessable for each transfer in excess of four transfers in each annuity year. Finally, a $10 charge is assessed for each transfer after the fourth in each annuity year and for each withdrawal after the first in each annuity year except for transfers from the fixed account, a death benefit, surrender medically-related surrender or annuity payment.

7. No deduction or charge will be made from Purchase Payments for sales or distribution expenses. However, a contingent deferred sales charge (''CDSC'') may be assessed on surrender or withdrawal. The Contract offers a free withdrawal privilege that, under certain circumstance, permits a Contract owner to withdraw funds without any CDSC being imposed. For purposes of the CDSC, amounts withdrawn as a free withdrawal are not considered a liquidation of purchase payments. For withdrawals of unliquidated new premiums that exceed the free withdrawal amount, the CDSC under the Contracts begins at 6% and declines to 0% in year eight in accordance with a schedule set forth in the application. However, Applicants represent that in no event will the total CDSC for a particular Contract or Future Contract exceed 9% of purchase payments under the Contract or Future Contract. CDSC's will be used to compensate Skandia Life for sales commissions and other promotional or distribution expenses incurred by Skandia Life which are associated with the marketing of the Contracts. Skandia Life does not anticipate that the CDSC will be sufficient to permit it to recoup all its sales and distribution expenses. To the extent the CDSC is not sufficient, Skandia Life will pay these expenses from its general assets which may include proceeds (if available) from the mortality and expense risk charges.

8. A mortality and expense risk charge will be deducted daily from the net asset value of the Account attributable to the Contracts at a rate of 0.85% per annum of the daily net assets in the Account. Of that amount, approximately 0.55% is allocable to Skandia Life's assumption of mortality risks and 0.30% is allocable to Skandia Life's assumption of administration and expense risks. The annuity rates incorporated in any issued Contracts cannot be changed. Skandia Life's assumption of mortality risks guarantees that the variable annuity payments made to Contract owners will not be affected by the mortality experience of persons receiving such payments or of the general population. Skandia Life assumes this risk by virtue of the annuity rates incorporated in the Contracts which cannot be changed. Additional mortality risks are assumed when the sub-accounts decline in the value resulting in losses to Skandia Life on paying death benefits. The expense risk undertaken by Skandia Life is that the administration and maintenance fees, which are guaranteed for current Contract owners, may be insufficient to cover the actual costs of maintaining the Contracts and the Account.

[1] An amendment will be filed during the notice period to confirm this representation.

9. If the charges for the mortality and expense risks prove insufficient to cover mortality, administration and maintenance costs, then the excess of the expenses over the charges made for these expenses will result in a loss, and such loss will be borne by Skandia Life. Conversely, if the charges prove more than sufficient to cover such costs, the excess will result in a profit to Skandia Life.

Applicants' Legal Analysis

1. Applicants request exemptive relief, pursuant to Section 6(c) of the 1940 Act from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the Act to permit the deduction of a mortality and expense risk charge from the assets of the Account or Future Accounts with respect to the Contracts and Future Contracts that are substantially similar in all material respects to the Contracts. Applicants also request that the exemptive relief granted to SLESCO extend to any other National Association of Securities Dealers member broker-dealer controlling, controlled by, or under common control with Skandia Life that may serve in the future as principal underwriter for the Contracts or Future Contracts.

2. Section 26(a)(2)(C) provides that no payment to the depositor of, or principal underwriter for a registered unit investment trust shall be allowed the trustee or custodian as an expense except compensation, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the trustee or custodian. Section 27(c)(2) prohibits a registered investment company or a depositor or underwriter for such company from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, on such certificates are deposited with a trustee or custodian having the qualifications prescribed in Section 26(a)(1), and are held by such trustee or custodian under an agreement containing substantially the provisions required by Sections 26(a)(2)(C) and 26(a)(3) of the 1940 Act. Applicants request exemption from those provisions to the extent necessary to permit the assessment of the charge for mortality and expense risks under the Contracts and Future Contracts.

3. Applicants submit that their request for an order that applies to Future Contracts, Future Accounts and Skandia Life Broker-Dealers is necessary and appropriate in the public interest. Applicants assert that the issuance of the requested order on a prospective basis would promote competitiveness in the variable annuity contract market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses, maximizing the efficient use of Skandia Life's resources, and enabling Skandia Life to take advantage of business opportunities as they arise. Further, if Skandia Life were required repeatedly to seek exemptive relief with respect to the same issues addressed in this Application, investors would not receive any benefit or additional protection thereby.

4. Applicants submit that Skandia Life is entitled to reasonable compensation for its assumptions of mortality and expense risks and that the charge provided for in the Contracts is a reasonable and proper insurance charge. Skandia Life further represents that the charge of 1.25% for mortality and expense risks assumed by Skandia Life is within the range of industry practice with respect to comparable annuity products. This representation is based on Skandia Life's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. Skandia Life will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

5. Similarly, prior to making available any Future Contracts through the Account, or through other Future Accounts, Applicants will represent that the mortality and expense risk charge under any such Future Contracts will be within the range of industry practice for comparable contracts. Applicants represent that Skandia Life will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey. Further, such mortality and expense risk charge would not exceed 1.25% of the daily net assets of the Account or Future Accounts.

6. Applicants acknowledge that the CDSC may be insufficient to cover all costs relating to the distribution of the Contracts and that if a profit is realized from the mortality and expense risk charge all or a portion of such profit may be viewed as being offset by distribution expenses. Nevertheless, Skandia Life has concluded that the proposed distribution financing arrangements will benefit the Account and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Skandia Life at its administrative offices and will be available to the Commission. Skandia Life also will maintain and make available to the Commission memoranda setting forth the basis for the same representation with respect to Future Contracts offered by the Account or Future Accounts.

7. Skandia Life represents that the Account, and all Future Accounts, shall invest only in management investment companies which undertake to have a Board of Directors, the majority of whom are not ''interested persons'' of such company as that term is used under Section 2(a)(19) of the Act, formulate and approve any plan adopted under Rule 12b–1 of the 1940 Act.[2]

Conclusion

Applicants submit that the exemptive relief requested is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–8544 Filed 4–6–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20980; File No. 812–9362]

American Skandia Life Assurance Corporation, et al.

March 31, 1995.

AGENCY: Securities and Exchange Commission (the ''Commission'' or the ''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''1940 Act'' or ''Act'').

APPLICANTS: American Skandia Life Assurance Corporation (''Skandia Life''); American Skandia Life Assurance Corporation Variable Account B (Class 1 Sub-Accounts) (the ''Account''); and Skandia Life Equity Sales Corporation (''SLESCO'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for

[2] An amendment will be filed during the notice period to confirm that the Board of Directors will formulate and approve any plan adopted under rule 12b–1.

exemption from Sections 26(a)(2)(C) and 27(c)(2) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of a mortality and expense risk charge from the assets of the Account with respect to certain flexible premium deferred variable annuity contracts (''Contracts'') and contracts offered in the future that are substantially similar in all material respects to the Contracts (''Future Contracts'') that are issued through the Account or any other Accounts established in the future by Skandia Life (''Future Accounts''). Applicants also request that the exemptive relief granted to SLESCO extend to any other National Association of Securities Dealers member broker-dealer controlling, controlled by, order common control with Skandia Life (''Skandia Life Broker-Dealers''), that may serve in the future as distributor and/or principal underwriter for the Contracts or Future Contracts.

FILING DATES: The application was filed on December 12, 1994 and amended on February 27, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application, or ask to be notified if a hearing is ordered, by writing to the Commission's Secretary and serving the Applicants with a copy of the request, either personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m., on April 25, 1995 and should be accompanied by proof of service on the Applicants, either by affidavit, or, for lawyers, by certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o American Skandia Life Assurance Corporation, One Corporate Drive, P.O. Box 883, Shelton, Connecticut 06484–9932, Attention: Jeffrey M. Ulness, Esq.

FOR FURTHER INFORMATION CONTACT:

Joyce Merrick Pickholz, Senior Counsel, or Wendy Finck Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Skandia Life is a stock life insurance company incorporated under the laws of Connecticut. It is wholly owned by American Skandia Investment Holding Corporation (''AHIHC'') which in turn is ultimately wholly owned by Skandia Insurance Company Ltd., a Swedish Corporation.

2. The Account was established by Skandia Life as a unitized separate account under the laws of Connecticut and is registered with the Commission under the Act as a unit investment trust.

3. SLESCO, a wholly owned subsidiary of AHIHC, will serve as the distributor and principal underwriter of the Contracts. SLESCO is registered under the Securities Exchange Act of 1934 and with the National Association of Securities Dealers, Inc. as a broker-dealer.

4. The Contracts are flexible premium deferred variable annuities. Contract owners may allocate premium payments or account value to one or more sub-accounts of the Account which will invest in shares of corresponding investment portfolios of American Skandia Trust or such other investment company as may be made available in the future.

5. During the accumulation phase, a death benefit is generally payable upon the death of the first Contract owner to die (if the Contract is held by one or more natural persons) or upon the death of the annuitant. If death occurs prior to the 90th birthday of the individual upon whose death the benefit is payable, the death benefit is the greater of a Contract's Account Value or the minimum death benefit (which is the sum of all Purchase Payments less the sum of all withdrawals). If death occurs on or after the 90th birthday of the individual on whose death the benefit is payable, the death benefit is the Account Value.

6. Prior to the annuity date and upon surrender, Skandia Life will deduct a maintenance fee of the lesser of 2% of Account Value or $30 per annuity year from the sub-account holdings attributable to any particular Contract in the same proportion that each sub-account holding bears to the Account Value of such Contract. Skandia Life states that this fee for maintaining the Contracts will not be greater than the anticipated costs. Also, during the accumulation period, Skandia Life will deduct from the Account, on a daily basis, an administration fee at the rate of 0.15% per annum of the average daily total value of assets of the Account. Applicants assert [1] that a relationship does not necessarily exist between the administration charge and maintenance fee upon a particular Contract and the expenses attributable to that particular Contract, however, the total administrative charge assessed against the Account will not be greater than the total anticipated cost of services to be provided over the life of the Contract(s) in accordance with the applicable standards in Rule 26a–1 under the 1940 Act. The administration and maintenance fees can be increased only for contracts issued subsequent to the effective date of any such change. In addition, Skandia Life deducts an amount equal to any premium taxes due either prior to allocation to the sub-accounts or upon annuitization. Finally, a charge of $10 is assessable for each transfer in excess of twelve transfers in each Annuity Year.

7. No deduction or charge will be made from Purchase Payments for sales or distribution expenses. However, a contingent deferred sales charge (''CDSC'') may be assessed on surrender or withdrawal. The Contract offers a free withdrawal privilege that, under certain circumstances, permits a Contract owner to withdraw funds without any CDSC being imposed. For purposes of the CDSC, amounts withdrawn as a free withdrawal are not considered a liquidation of purchase payments. For withdrawals of unliquidated new premiums that exceed the free withdrawal amount, the CDSC under the Contracts begins at 7.5% and declines to 0% in year eight in accordance with a schedule set forth in the application. However, Applicants represent that in no event will the total CDSC for a particular Contract or Future Contract exceed 9% of purchase payments under the Contract or Future Contract. CDSC's will be used to compensate Skandia Life for sales commissions and other promotional or distribution expenses incurred by Skandia Life which are associated with the marketing of the Contracts. Skandia Life does not anticipate that the CDSC will be sufficient to permit it to recoup all its sales and distribution expenses. To the extent the CDSC is not sufficient, Skandia Life will pay these expenses from its general assets which may include proceeds (if available) from the mortality and expense risk charges.

8. A mortality and expense risk charge will be deducted daily from the net asset value of the Account attributable to the Contracts at a rate of 1.25% per annum of the daily net assets in the

[1] An amendment will be filed during the notice period to confirm this representation.

Account. Of that amount, approximately 0.90% is allocable to Skandia Life's assumption of mortality risks and 0.35% is allocable to Skandia Life's assumption of administration and expense risks. The annuity rates incorporated in any issued Contracts cannot be changed. Skandia Life's assumption of mortality risks guarantees that the variable annuity payments made to Contract owners will not be affected by the mortality experience of persons receiving such payments or of the general population. Skandia Life assumes this risk by virtue of the annuity rates incorporated in the Contracts which cannot be changed. Additional mortality risks are assumed when the sub-accounts decline in value resulting in losses to Skandia Life on paying death benefits. The expense risk undertaken by Skandia Life is that the administration and maintenance fees, which are guaranteed for current Contract owners, may be insufficient to cover the actual costs of maintaining the Contracts and the Account.

9. If the charges for the mortality and expense risks prove insufficient to cover mortality, administration and maintenance costs, then the excess of the expenses over the charges made for these expenses will result in a loss, and such loss will be borne by Skandia Life. Conversely, if the charges prove more than sufficient to cover such costs, the excess will result in a profit to Skandia Life.

Applicants' Legal Analysis

1. Applicants request exemptive relief, pursuant to Section 6(c) of the 1940 Act from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the Act to permit the deduction of a mortality and expense risk charge from the assets of the Account or Future Accounts with respect to the Contracts and Future Contracts that are substantially similar in all material respects to the Contracts. Applicants also request that the exemptive relief granted to SLESCO extend to any other National Association of Securities Dealers member broker-dealer controlling, controlled by, or under common control with Skandia Life that may serve in the future as principal underwriter for the Contracts or Future Contracts.

2. Section 26(a)(2)(C) provides that no payment to the depositor of, or principal underwriter for a registered unit investment trust shall be allowed the trustee or custodian as an expense except compensation, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the trustee or custodian. Section 27(c)(2) prohibits a registered investment company or a depositor or underwriter for such company from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, on such certificates are deposited with a trustee or custodian having the qualifications prescribed in Section 26(a)(1), and are held by such trustee or custodian under an agreement containing substantially the provisions required by Sections 26(a)(2)(C) and 26(a)(3) of the 1940 Act. Applicants request exemption from those provisions to the extent necessary to permit the assessment of the charge for mortality and expense risks under the Contracts and Future Contracts.

3. Applicants submit that their request for an order that applies to Future Contracts, Future Accounts and Skandia Life Broker-Dealers is necessary and appropriate in the public interest. Applicants assert that the issuance of the requested order on a prospective basis would promote competitiveness in the variable annuity contract market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses, maximizing the efficient use of Skandia Life's resources, and enabling Skandia Life to take advantage of business opportunities as they arise. Further, if Skandia Life were required repeatedly to seek exemptive relief with respect to the same issues addressed in this Application, investors would not receive any benefit or additional protection thereby.

4. Applicants submit that Skandia Life is entitled to reasonable compensation for its assumptions of mortality and expense risks and that the charge provided for in the Contracts is a reasonable and proper insurance charge. Skandia Life further represents that the charge of 1.25% for mortality and expense risks assumed by Skandia Life is within the range of industry practice with respect to comparable annuity products. This representation is based on Skandia Life's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. Skandia Life will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

5. Similarly, prior to making available any Future Contracts through the Account, or through other Future Accounts, Applicants will represent that the mortality and expense risk charge under any such Future Contracts will be within the range of industry practice for comparable contracts. Applicants represent that Skandia Life will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey. Further, such mortality and expense risk change would not exceed 1.25% of the daily net assets of the Account or Future Accounts.

6. Applicants acknowledge the CDSC may be insufficient to cover all costs relating to the distribution of the Contracts and that if a profit is realized from the mortality and expense risk charge all or a portion of such profit may be viewed as being offset by distribution expenses. Nevertheless, Skandia Life has concluded that the proposed distribution financing arrangements will benefit the Account and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Skandia Life at its administrative offices and will be available to the Commission. Skandia Life also will maintain and make available to the Commission memoranda setting forth the basis for the same representation with respect to Future Contracts offered by the Account or Future Accounts.

7. Skandia Life represents that the Account, and all Future Accounts, shall invest only in management investment companies which undertake to have a Board of Directors, the majority of whom are not ''interested persons'' of such company as that term is used under Section 2(a)(19) of the Act, formulate and approve any plan adopted under Rule 12b–1 of the 1940 Act.[2]

Conclusion

Applicants submit that the exemptive relief requested is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

[2] An amendment will be filed during the notice period to confirm that the Board of Directors will formulate and approve any plan adopted under Rule 12b–1.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–8545 Filed 4–6–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 20982; 812–9166]

Pitcairn Group L.P., et al.; Notice of Application

March 31, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (''Act'').

APPLICANTS: Pitcairn Group L.P. (''Pitcairn''), and Johnstone L.P. (''Johnstone'').

RELEVANT ACT SECTIONS: Exemption requested under section 23(c)(3) from the provisions of section 23(c), and under section 57(c) from the provisions of section 57(a)(2).

SUMMARY OF APPLICATION: Applicants seek an order permitting Pitcairn to acquire 221,954 (approximately 39%) of its limited partnership units (the ''Units'') from Johnstone, a limited partnership formed by former Pitcairn unitholders to liquidate their ownership interests in Pitcairn, in exchange for a *pro rata* portion of the total assets of Pitcairn (the ''Redemption''). The order also would permit Johnstone to acquire assets from Pitcairn in the Redemption and to acquire a *pro rata* portion of the total assets of Moreland L.P. (''Moreland''), a limited partnership controlled by Pitcairn, in exchange for the 222,553 Moreland limited partnership units owned by Johnstone (the ''Related Transaction'').

FILING DATES: The application was filed on August 15, 1994, and amended on December 9, 1994, and March 29, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 25, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: Pitcairn, One Pitcairn Place, Suite 3000, 165 Township Line Road, Jenkintown, Pennsylvania 19046; Johnstone, 75 James Way, Southampton, Pennsylvania 18966.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Attorney, at (202) 942–0583, or Barry D. Miller, Senior Special Counsel, at (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 from the SEC's Public Reference Branch.

Applicants' Representations

1. Pitcairn, a Delaware limited partnership that has elected to be regulated as a business development company (''BDC'') under section 54 of the Act, was organized in 1986 as a vehicle for private investments for the Pitcairn family. It was capitalized with assets derived from the liquidation of The Pitcairn Company, a Delaware corporation formed in 1923 by members of the Pitcairn family to hold and manage the estate of John Pitcairn, one of the founders of Pittsburgh Plate Glass Company. Units in Pitcairn were distributed to the former shareholders of The Pitcairn Company.[1]

2. Pitcairn is the sole shareholder of Pitcairn Company (''Pitco''), an investment adviser formed in 1986 and registered under the Investment Advisers Act of 1940. Pitco serves as the managing general partner of Pitcairn. Pitcairn also has four individual general partners, each of whom is a member of the Pitcairn family. In addition, Pitco serves as the general partner of Moreland, a Pennsylvania limited partnership that owns undeveloped land in and near the Borough of Bryn Athyn, Pennsylvania (where a large number of Pitcairn family members reside), and One Place L. P. (''One Place''), a Pennsylvania limited partnership that owns the land and building in which the offices of Pitcairn, Pitco, and Pitcairn Trust Company (''PTC'') (a Pennsylvania chartered trust company formed as a subsidiary of Pitco in 1987 to provide trust and related services to the Pitcairn family and other high net worth individuals) are situated.[2]

3. As a result of general change in the Pitcairn family and divergence of points of view as to investment philosophy, among other things, it became apparent in the early 1990s that a separation of family members from the family partnerships would occur. Consequently, in February 1993, the board of directors of Pitco asked its management to recommend a plan for a buy-out of the interests of certain Pitcairn family members in certain family assets. This recommendation, through arms' length negotiations, resulted in the proposed Redemption and Related Transaction.

4. The series of transactions contemplated by the Redemption and the Related Transaction are as follows:

a. Four individuals formed Johnstone, a Pennsylvania limited partnership, for the purpose of receiving, with the intent to liquidate, their and other Pitcairn family members' (collectively, the ''Separating Members'') limited partnership interests in Pitcairn, Moreland, and One Place. The Separating Members, together with their spouses and related trusts, are no longer clients of PTC and have contributed their limited partnership interests in Pitcairn, Moreland, and One Place to Johnstone in exchange for limited partnership interests in Johnstone.[3] Accordingly, Johnstone has become a substitute limited partner in Pitcairn, Moreland, and One Place, owning approximately 39%, 38.6%, and 39%, respectively, of the limited partnership units. Assets received by Johnstone in the Redemption and the Related Transaction are intended to be held by Johnstone only until they can be liquidated and the proceeds distributed to the Separating Members.

b. In the Redemption, Johnstone will transfer to Pitcairn all of the Units

[1] There are 576,124 units of general and limited partnership interests of Pitcairn issued and outstanding, approximately 70% of which are held in irrevocable trusts for members of the Pitcairn family, and approximately 30% of which are owned directly by family members and their churches. The units are registered under section 12 of the Securities Exchange Act of 1934, but there is no market for the units, and there are generally fewer than ten transfers per year. These transfers typically arise from terminating trusts or estates, interfamily gifts, or similar transactions involving one or more members of the Pitcairn family or trusts for their benefit.

[2] Pitcairn was the sole initial limited partner of Moreland and One Place; it spun off its interests in the partnerships to the owners of its Units in 1992. As a result, ownership of Pitcairn, Moreland, and One Place is nearly identical.

[3] The only connection of the Separating Members with the remaining unitholders after consummation of the transactions described herein will be that two of the Separating Members will serve as trustees of trusts holding Units. These two Separating Members will continue to serve as trustees at the request of the beneficiaries of those trusts, notwithstanding their status as Separating Members.

owned by Johnstone, and Pitcairn will transfer to Johnstone approximately 39% of its total assets (consisting of certain limited partnership interests, a non-recourse note of Moreland and a related mortgage, and cash) in redemption of the Units.

c. In the Related Transaction, Johnstone will transfer to Moreland all the limited partnership interests in Moreland owned by Johnstone, and Moreland will transfer to Johnstone approximately 38.6% of its total assets (consisting of certain real estate, a mortgage, and cash) in redemption of these limited partnership interests.[4]

d. Johnstone will transfer to One Place all the limited partnership interests in One Place owned by Johnstone, and One Place will transfer cash in an amount equal to approximately 39% of the value of its total assets to Johnstone in redemption of these limited partnership interests.

e. Pitcairn has completed, in escrow, a private offering, in reliance on section 4(2) of the Securities Act of 1993 (the ''Securities Act'') and rules 502 and 506 of Regulation D under the Securities Act, and has received binding subscription agreements for $5,337,000 from a small group of qualified investors for additional Units. The proceeds of this offering will be used to replace capital used in the Redemption and to provide for additional working capital.

5. The redemptions of the Johnstone-owned limited partnership interests of Pitcairn, Moreland, and One Place will be effected at values that have been agreed upon by representatives of those Pitcairn family members who, with their spouses and related trusts, wish to continue to be clients of PTC and owners of Pitcairn (the ''Remaindermen'') and by representatives of the separating Members in arms' length negotiations conducted during 1993. A committee (the ''Sellers' Committee'') was formed to negotiate the value of the Separating Members' interests; the potential group of family members willing to buy the interests of the Separating Members also formed a committee (the ''Buyers' Committee). All family members were informed about the committees and were urged to contact them about buying or selling their interests.

6. Various methods were used to determine the value of the underlying assets held by Pitcairn, Moreland, and One Place.[5]

a. The assets of Pitcairn were valued on the basis of the methodologies utilized by its general partners in arriving at fair values for purposes of periodically computing the net asset value of the partnership. These methodologies included (i) valuation of limited partnership interests by the general partners of such partnerships; (ii) valuation of the stock of Pitco by an independent appraiser, adjusted to reflect subsequent business changes; (iii) valuation of land based upon values in a joint development agreement and the best judgment of the Pitcairn general partners, taking all relevant factors into consideration; (iv) valuation of a limited partnership interest in a tree nursery based upon the catalogue price of the tree stock less harvest and distribution costs; and (v) valuation of a limited partnership interest in an office building based upon discontinued cash flows from the rental stream generated by the property.

b. The land owned by Moreland was valued by Pitco as the general partner of Moreland on the basis of values assigned in a 1993 market research study by an independent firm familiar with the land and transactions in the vicinity of the Moreland land. This study was commissioned by the Real Estate Advisory Committee of the Pitco board, a committee comprised of both Remaindermen and Separating Members. The recommended values assigned in the study, together with data from an appraisal conducted in 1989 and from comparable sales (where appropriate), formed the basis of the values assigned by the parties.

c. With respect to One Place, Pitco obtained an independent appraisal of the land and office building (the primary asset of One Place), and the Sellers' Committee obtained its own independent appraisal. The board of directors of Pitco subsequently engaged an outside real estate consultant who, in June, 1993, reviewed the independent appraisal obtained by Pitco and validated the assumptions used by the appraiser.

7. On the evening of December 13, 1993, representatives from the Buyers' Committee, the Sellers' Committee, and Pitco (as managing general partner of Pitcairn and sole general partner of Moreland and One Place) met to allocate the assets between the Remaindermen and the Separating Members equitably. These negotiations, which were conducted by persons who were fully aware of the attributes, both positive and negative, of each of the assets of Pitcairn, Moreland, and One Place, culminated in the Agreement in Principle (the ''Agreement''). The Agreement provides for the allocation of assets and further provides that the costs of forming Johnstone will be borne by Johnstone and that all other transaction costs will be shared by Pitcairn (including certain affiliated entities) and Johnstone on a *pro rata* basis. Since it is anticipated that Johnstone will sell Pitcairn approximately 39% of the Units and buy approximately 39% of Pitcairn's assets, it would bear that percentage of the transaction costs (exclusive of any income taxes that each party will bear separately and of any additional legal expenses incurred by Johnstone) through the reduction in cash to be paid by Pitcairn to Johnstone at the closing of the Redemption. The Agreement was approved by Pitco (as managing general partner of Pitcairn and sole general partner of Moreland and One Place) and by individual representatives of the Remaindermen and Separating Members who, together, represented over 86% of the outstanding Units. The Remaindermen who did not sign the Agreement consisted of 94 ''persons'' who own approximately 13.9% of the Units.[6] These unitholders were informed, however, of the transactions contemplated by the Agreement (including the proposed allocation of assets), and have not objected.

8. There has been no vote of unitholders with respect to the Redemption and the Related Transaction inasmuch as such a vote is not required under the Pitcairn partnership agreement. However, a majority of the respective general partners of Pitcairn and Johnstone have approved the Redemption and the Related Transaction as being reasonable

[4] Prior to the redemption of the Moreland units owned by Johnstone, Pitcairn will lend to Moreland a total of $3,450,000 in exchange for two non-recourse notes. The first note, in the amount of $2,250,000, will be secured by the portion of Moreland's real estate that ultimately will be transferred to Johnstone in the Related Transaction. The second note, in the amount of $1,200,000, will be secured by a different parcel of real estate, which will remain the property of Moreland. Using a portion of the proceeds of the first note, Moreland will buy newly issued limited partnership interests in One Place for cash, enabling One Place to redeem its units owned by Johnstone for cash. In redeeming its units from Johnstone, Moreland will transfer the mortgage liability on the first parcel of real estate to Johnstone along with the real estate itself. When Pitcairn redeems its Units from Johnstone, Pitcairn will transfer to Johnstone the note secured by the mortgage on the real estate Johnstone received from Moreland, and Johnstone will be able to extinguish the mortgage and cancel the note.

[5] Lists of all assets held by Pitcairn and Moreland and information as to their allocation are contained in the application.

[6] Of these ''persons'' 61 are individuals owning approximately 10% of the Units; 4 are revocable trusts owning approximately 4% of the Units; 20 are irrevocable trusts (out of a total of 295 trusts that are Remaindermen) owning approximately .2%; one is a guardian account owning approximately .05% of the Units; and 8 are charitable organizations owning approximately 3% of the Units.

and fair to the unitholders, as not involving any overreaching of Pitcairn or its unitholders, and as serving the broader family purpose by permitting a complete separation of the Separating Members. Applicants state that, with one exception, no person who participated in the negotiations on behalf of Pitco or the Remaindermen have interests on both sides of the Redemption and the Related Transaction. One individual partner of Pitcairn, who has agreed to resign as such, has been aligned with the Separating Members and is a general and limited partner of Johnstone. Applicants represent that his alignment with the Separating Members was recognized, and he was not a member of the Sellers' Committee, nor did he participate in the negotiations except as a facilitator for the December 1993 meetings. He officially abstained from voting either on behalf of Pitcairn or Johnstone with respect to the Redemption and the Related Transaction, but has expressed his support for the transactions.

Applicants' Legal Conclusions

1. Section 23(c), made applicable to Pitcairn as a BDC by section 63 of the Act, generally prohibits BDCs from purchasing their securities except in the open market or pursuant to a tender offer. Absent such circumstances, section 23(c)(3) allows the SEC to issue an order for the protection of investors to ensure that such purchases are made in a way that does not unfairly discriminate against any holders of the class of securities to be purchased.

2. Applicants concede that the Redemption does not fall within the exceptions specified in section 23(c); consequently, Pitcairn must seek exemptive relief under section 23(c)(3). Applicants submit that the Redemption does not unfairly discriminate against either the Remaindermen or the Separating Members, and that the liquidity provided to Johnstone in the Redemption and the Related Transaction is not inappropriate under the circumstances, given the fairness of the values and the objectives of the Remaindermen to use the services of Pitco and PTC as a family office.

3. Section 57(a)(2), in conjunction with section 57(b), prohibits certain persons related to a BDC from purchasing any security or other property (with the exception of securities of which the seller is the issuer) from the BDC or a company controlled by the BDC. Section 57(b) provides, in part, that the persons affected by section 57(a) include any person that directly or indirectly controls the BDC. Section 2(a)(9) defines control as the power to exercise a controlling influence over the management or policies of a company, and establishes a rebuttable presumption that a person owning more than 25% of the voting securities of a company controls that company. Since Johnstone, which owns approximately 39% of the Units, could be deemed to control Pitcairn, section 57(a)(2) would prohibit the Redemption absent an exemption. As Moreland may be deemed to be controlled by Pitcairn by virtue of the fact that Pitco (a wholly-owned subsidiary of Pitcairn) is its sole general partner, section 57(a)(2) also would prohibit Johnstone from buying assets from Moreland in the Related Transaction.

4. Section 57(c) provides that a person may file an application for an exemption from the provisions of section 57(a) (1) through (3), and that the SEC shall exempt a proposed transaction from the prohibitions of section 57(a)(2) if: (a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of anyone involved; (b) the proposed transaction is consistent with the policy of the BDC as set forth in its filings with the SEC under the Securities Act and the Securities Exchange Act of 1934 (the ''Exchange Act''), and its reports to shareholders or partners; and (c) the proposed transaction is consistent with the general purpose of the Act.

5. Applicants submit that the Redemption and the Related Transaction meet the standards set forth in section 57(c) of the Act because: (a) The terms of the proposed purchase of assets by Johnstone in the Redemption and Related Transaction, including the consideration to be paid, will be reasonable and fair, and no individual will derive any personal financial gain from the proposed transaction other than benefits that will be realized by all unitholders of Pitcairn on a *pro rata* basis; (b) the proposed Redemption is consistent with Pitcairn's policy as set forth in section 4.13 of the partnership agreement, which specifically contemplates the withdrawal of limited partners on terms approved by the general partners of Pitcairn (which approval has been obtained), and also is consistent with Pitcairn's policy as recited in its filings with the SEC under the Exchange Act and its reports to unitholders; (c) the Redemption and the Related Transaction are both consistent with the general purposes of the Act; and (d) given the objective of the Remaindermen to continue to use Pitco and PTC as a family office for the management of their financial affairs and the concomitant desire of the Separating Members to terminate that association, it would be impossible to effect the Redemption by exchanging a portion of each of Pitcairn's assets for the Units held by Johnstone on a *pro rata* basis or by selling the Units held by Johnstone to a third party because no such market exists.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–8543 Filed 4–6–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26264]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

March 31, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 24, 1995, 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.

Indiana Michigan Power Company (70–6458)

Indiana Michigan Power Company (''I&M''), One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801, an electric utility subsidiary of American

Electric Power Company, Inc. (''AEP''), a registered holding company, has filed a post-effective amendment to its application-declaration under Sections 9(a), 10 and 12(d) of the Act and Rule 44(b) thereunder.

By order dated June 11, 1980 (HCAR No. 21618), I&M was authorized to dispose of and acquire certain pollution control systems (''Project'') at its Rockport Generating Station (''Plant''), under construction near the City of Rockport in Spencer County, Indiana (''City'') to comply with Indiana environmental control standards. I&M's disposition and acquisition was undertaken under an Agreement of Sale with the City, dated June 1, 1980, and in connection with the issuance by the City of pollution control revenue bonds in the amount of $40 million to finance the project (HCAR No. 21642, June 25, 1980). This represented a portion of I&M's then estimated cost of $150 million for its 50% obligation for the Project shared with AEP Generating Company.

By order dated December 4, 1984 (HCAR No. 23514), the Commission authorized I&M to enter another Agreement of Sale with the City providing for the disposition and acquisition of the Project in connection with the issuance by the City of $110 million principal amount of pollution control bonds (''Series 1984A Bonds'') to finance the Project (HCAR No. 23528, December 12, 1984). By order dated August 2, 1985 (HCAR No. 23781), the Commission authorized I&M to enter into a First Amendment to Agreement of Sale with the City providing for the issuance and sale of three additional series of pollution control bonds (''Series 1985 Bonds''), each in the principal amount of $50 million with a maturity of August 1, 2014. The second series of the Series 1985 Bonds consists of adjustable rate bonds bearing interest at a rate which is adjusted every five years based upon an index and payable semiannually (''Adjustable Rate Bonds'').

I&M now proposes to cause the City to issue and sell a series of refunding bonds (''Refunding Bonds'') in the aggregate principal amount of $50 million with an interest rate adjustment, as determined by I&M. The proceeds of Refunding Bonds will be used to redeem the Adjustable Rate Bonds. I&M could convert the interest rate on the Refunding Bonds between the various modes from changing daily to fixed for a term up to maturity. The Refunding Bonds will be issued under and secured by the Indenture and a sixth supplemental indenture and will mature at a date or dates not more than forty years from the date of issuance.

In connection with the issuance of the Refunding Bonds, I&M may enter into one or more interest rate hedging arrangements, including an interest rate swap, cap, collar, or similar agreement (collectively ''Hedging Facility'') with a bank or other financial institution (''Counterparty''). The Hedging Facility will be an interest rate conversion agreement designed to allow I&M to actively manage and limit its exposure to variable interest rates or to lower its overall borrowing cost on any fixed rate Refunding Bond. The Hedging Facility will set forth the specific terms upon which I&M will agree to pay the Counterparty payments and/or fees for limiting its exposure to interest rates or lowering its fixed rate borrowing cost, and the other terms and conditions of any rights or obligations thereunder. I&M may provide credit enhancement for the Refunding Bonds in the form of a letter of credit, surety bond or bond insurance and pay any related fees.

West Penn Power Company (70–6505)

West Penn Power Company (''West Penn''), 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601, an electric public-utility subsidiary company of Allegheny Power System, Inc., a registered holding company has filed a post-effective amendment to its declaration under Sections 6(a) and 7 of the Act.

By order dated May 3, 1985 (HCAR No. 23679), West Penn was authorized, among other things, to issue long-term promissory notes in connection with the issuance of pollution control revenue bonds series E (''Series E Bonds'') by the Washington County Development Authority (''County'') up to an aggregate principal amount of $18 million. The series E Bonds in the aggregate principal amount of $15.4 million were issued by the County, maturing April 1, 2014, along with West Penn's corresponding promissory note for $15.4 million. The proceeds of the Series E Bonds were applied by West Penn to the payment at maturity of the series D bonds and to the costs of issuance.

Due to changes in interest rates, the County proposes to refund the Series E Bonds by issuing a new series of pollution control revenue bonds (''Series G Bonds''). The County proposes to issue $15.4 million aggregate principal amount of Series G Bonds maturing on the corresponding day in the year 2014 that they are issued in 1995. The proceeds from the sale of the Series G Bonds will be used to refund Series E Bonds. The Series G Bonds will be issued under a supplemental trust indenture with a corporate trustee (''Trustee''), approved by West Penn, and will be sold at such time, interest rate, maturity and price as approved by West Penn pursuant to market conditions.

West Penn proposes to issue concurrently with the issuance of the Series G Bonds, its non-negotiable Pollution Control Note (''Note''), at any time on or before December 31, 1997, with terms and conditions corresponding to the Series G Bonds in respect to principal amount, interest rates and redemption provisions and having installments of principal corresponding to any mandatory sinking fund payments and stated maturities. Market conditions prevailing at the time of the offering may warrant the issuance of the Series G Bonds with floating interest rates during all or a portion of the stated life of the Series G Bonds. However, West Penn does not anticipate that to be the case. West Penn proposes that should it determine to use a floating interest rate, it will notify the Commission.

The Note will be secured by a second lien on the equipment and facilities at West Penn's Mitchell Power Station in Washington County (''Facilities'') and certain other properties, pursuant to the Mortgage and Security Agreement delivered by West Penn to the Trustee creating a mortgage security interest in the Facilities and certain other property. Payment on the Note will be made to the Trustee under and indenture and applied by the Trustee to pay the maturing principal and redemption price of and interest and other costs on the Series G Bonds as they become due. West Penn proposes to pay any Trustees' fees or other expenses incurred by the County.

American Electric Power Company, Inc., et al. (70–7022)

American Electric Power Company, Inc. (''AEP''), a registered holding company, and AEP Generating Company (''Generating''), an electric public-utility subsidiary of AEP, both of 1 Riverside Plaza, Columbus, Ohio 43215, have filed a post-effective amendment to their application-declaration filed under sections 9(a), 10, 12(b) and 12(d) of the Act and rules 44 and 45 thereunder.

By order dated August 17, 1984 (HCAR No. 23399), Generating acquired a ½ undivided interest in the Rockport Generating Station (''Plant'') with Indiana & Michigan Electric Company, now Indiana Michigan Power Company (''I&M''), also a subsidiary of AEP, including responsibility for 50% of the costs associated with acquiring certain

air and water pollution control devices (''Project'').

By order dated October 4, 1984 (HCAR No. 23445) (''October 1984 Order''), Generating was authorized to enter into an Agreement of Sale (''Agreement'') with the City of Rockport, Indiana (''City'') providing for the construction and installation of the Project by the City, and the issuance by the City of pollution control revenue bonds (''Series 1984 A Bonds'') to finance Generating's share of the Project. The October 1984 Order authorized the issuance of the Series 1984 A Bonds in a principal amount of $150 million.

The October 1984 Order contemplated that the proceeds of the sale of the Series 1984 A Bonds would be deposited by the City with Lincoln National Bank and Trust Company of Fort Wayne, as trustee under an Indenture of Trust (''Indenture'') dated as of October 1, 1984 between the City and Lincoln National Bank & Trust Company (now Norwest Bank Fort Wayne, N.A.), as trustee (''Trustee'') between the City and such Trustee, pursuant to which the Series 1984 A Bonds are to be issued and secured. The October 1984 Order also contemplated that such proceeds would be applied to payment of the cost of construction of the project. The Agreement also provided for the sale of the Project to Generating, the payment by Generating of the purchase price of the Project, and the assignment and pledge to the Trustee of the City's interest in, and of the monies receivable by the City under the Agreement.

The Agreement also provided that each installment of the purchase price for the Project payable by Generating would be in such amount (together with other monies held by the Trustee under the Indenture for that purpose) as would enable the City to pay, when due and payable, (i) the interest of the Series 1984 A Bonds, any additional bonds and any refunding bonds, (ii) the principal amount of the Series 1984 A Bonds, any additional bonds and any refunding bonds payable at the time of their respective stated maturities and (iii) amounts, including any accrued interest, payable in connection with any mandatory redemption of the Series 1984 A Bonds, any additional Bonds or any refunding bonds. In addition, the October 1984 Order reserved jurisdiction ''with respect to the fees and commissions to be incurred by [Generating] and AEP in connection with this transaction, and the terms of sale under the Agreement.''

By order dated September 6, 1985 (HCAR No. 23821) (''1985 Order''), Generating was authorized to enter into a First Amendment to Agreement of Sale (''1985 Agreement'') with the City providing for the issuance and sale of three additional series of pollution control bonds (collectively, ''Series 1985 Bonds''), each in the principal amount of $55 million with a maturity of September 1, 2014. One series of the Series 1985 Bonds was issued with a variable interest rate (''Variable Rate Bonds'') the rate of which was based upon an index and not to exceed 12% per annum, determined weekly and payable monthly. A second series of the Series 1985 Bonds was issued with the interest payable semi-annually at a rate which will be adjusted every five years based upon an index (''Adjustable Bonds''). A third series of the Series 1985 Bonds was issued with the interest rate fixed at 9⅜% per annum, payable semi-annually (''Fixed Rate Bonds''), and these Fixed Rate Bonds were issued subject to optional redemption following an initial period not to exceed ten years. The proceeds of the Series 1985 Bonds were used to cover a portion of the cost of construction of the Project and to refund the outstanding short-term Series 1984 A Bonds in the principal amount of $150 million. The 1985 Order included no reservation of jurisdiction.

AEP and Generating now propose that Generating enter into a Second Amendment to Agreement of Sale (''1995 Agreement'') with the City whereby the City will issue and sell one or more additional series of Pollution Control Revenue Refunding Bonds (''Refunding Bonds'') in the aggregate principal amount of up to $110 million with an interest rate adjustment (as determined by Generating). Generating could convert the interest rate on the Refunding Bonds between the various modes from changing daily to fixed for a term up to maturity. It is stated that the proceeds of such Refunding Bonds will be used to redeem the Fixed Rate Bonds and the Adjustable Bonds.

In connection with the issuance of the Refunding Bonds, Generating proposes to enter into one ore more interest rate hedging arrangements (including an interest rate swap, cap, collar or similar agreement) (''Hedging Facility'') with a bank or other financial institution (''Counterparty''). The Hedging Facility will be an interest rate conversion agreement designed to allow Generating to actively manage and limit its exposure to variable interest rates or to lower its overall borrowing cost on any fixed rate Refunding Bond. The Hedging Facility will set forth the specific terms upon which Generating will agree to pay the Counterparty payments and fees for limiting its exposure to interest rates or lowering its fixed rate borrowing cost, and the other terms and conditions of any rights or obligations thereunder. The terms of each Hedging Facility would be negotiated by Generating with the respective Counterparty and would be the most favorable terms that can be negotiated by Generating.

The Refunding Bonds will be issued pursuant to the Indenture between the City and the Trustee (now Norwest Bank Fort Wayne, N.A.), as supplemented by a Fifth Supplemental Indenture of Trust between the City and the Trustee (''Supplemental Indenture'') and the 1995 Agreement. Pursuant to the Indenture and the Fifth Supplemental Indenture, the proceeds of the sale of the Refunding Bonds will be deposited with the Trustee and applied by the Trustee, together with other funds supplied by Generating, to the redemption of: (i) The Fixed Rate Bonds at a price of 102% of the principal amount thereof; and (ii) the Adjustable Bonds at a price equal to their principal amount.

While Generating will not be a party to the underwriting arrangements for the Refunding Bonds, the 1995 Agreement provides that the Refunding Bonds shall have such terms as shall be specified by Generating. Generating understands that interest on the Refunding Bonds will be exempt from Federal income taxation under the provisions of section 103 of the Internal Revenue Code of 1986, as amended (except for interest on any Refunding Bond during a period in which it is held by a person who is a substantial user of the Project or a related person).

It is expected that the Refunding Bonds will mature at a date or dates not more than 40 years from the date of their issuance. The Refunding Bonds may be subject to mandatory or optional redemption under circumstances and terms specified at the time of pricing or change in interest rate. In addition, the Refunding Bonds may not, if it is deemed advisable, be redeemable at the option of the city in whole or in part at ant time for a period to be determined at the time of pricing or change in interest rate of the Refunding Bonds. It is stated that no Refunding Bond may bear interest at an initial interest rate higher than 9%.

It is stated that no series of Refunding Bonds will be issued at rates in excess of those generally obtained at the time of pricing for sales of substantially similar tax-exempt bonds (having the same maturity, issued by entities of comparable credit quality and having similar terms, conditions and features).

In connection with an adjustment in the interest rate, the Refunding Bonds may be tendered, or may be deemed to be tendered, to the Trustee, by the owners thereof. Generating intends to remarket any Refunding Bonds so tendered through a remarketing agent, and may have a Liquidity Provider back up Generating's obligations. The Refunding Bonds will be subject to redemption at the direction of Generating under certain circumstances.

AEP and Generating also propose that Generating provide some form of credit enhancement for the Refunding Bonds, a letter of credit, surety bond or bond insurance, and Generating may pay a fee in connection therewith. In addition, Generating may provide for a Liquidity Provider for interest payments, remarketing, redemption or maturity of the Refunding Bonds. Any letter of credit would not exceed $130 million.

The type of credit enhancement may change while the Refunding Bonds are outstanding. Unreimbursed drawings under the letter of credit would bear interest at not more than 2% above the bank's prime rate. Generating may pay an annual or up-front fee for the credit enhancement which would not exceed 1.25% annually of the face amount.

In addition, AEP and Generating propose that AEP guarantee payment of the principal of, premium, if any, and interest on the Refunding Bonds pursuant to a guaranty agreement (''Guaranty'') to be executed and delivered to the Trustee and the City. Under a Guaranty, AEP would unconditionally guarantee the obligations of Generating under the 1995 Agreement.

The Refunding Bonds could be payable from funds drawn under an irrevocable letter of credit, bond insurance policy, Standby Bond Purchase Agreement or other comparable obligation of a third party.

Generating will not agree to the issuance of any Refunding Bond by the City if: (i) The stated maturity of any such Bond shall be more than 40 years; (ii) the discount from the initial public offering price of any such Bond shall exceed 5% of the principal amount thereof; or (iii) the initial public offering price shall be less than 95% of the principal amount thereof. Generating will not enter into the proposed refunding transaction unless the estimated present value savings derived from the net difference between interest payments on a new issue of comparable securities and on the securities to be refunded is, on a after tax basis, greater than the present value of all redemption and issuing costs, assuming an appropriate discount rate. The discount rate used shall be the estimated after-tax interest rate on the Refunding Bonds to be issued.

AEP and Generating state that the transactions described above will be consummated no later than December 31, 1996.

EUA Energy Investment Corporation (70–8585)

EUA Energy Investment Corporation (''EEIC''), P.O. Box 2333, Boston, Massachusetts, 02107, a wholly owned subsidiary of Eastern Utilities Associates (''EUA''), a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10, 12 and 13(b) of the Act and rules 43, 45, 87, 90 and 91 thereunder.

EEIC proposes to incorporate a Massachusetts business corporation (''EEIC Subsidiary'') to be the general partner of a proposed joint venture limited partnership to be formed under Massachusetts law (''Home & Family''). EEIC Subsidiary, through Home & Family, intends to develop and commercialize, a home environmental audit and environmental remediation business including, but not limited to, home environmental testing of soil, air, water and substances found in or about the home and the remediation of home environmental problems (the ''Business Opportunity'').

EEIC, together with Home & Family Limited Partnership, a Massachusetts limited partnership (''H&F LP''), is developing certain trademarks, packaging designs, marketing materials, copyrighted materials, business plans and other materials relating to the Business Opportunity (''Proprietary Materials''). EEIC owns all right, title and interest in and to the Proprietary Materials. EEIC proposes to contribute such Proprietary Materials to EEIC Subsidiary in exchange for capital stock in EEIC Subsidiary. No other person or entity will own stock in EEIC Subsidiary.

Upon (i) EEIC's receipt of Commission authorization, and (ii) EEIC's determination to proceed with the Business Opportunity following successful completion of a research, development and test marketing pilot program, H&F LP will contribute the name ''Home & Family,'' its intellectual property and other proprietary materials to Home & Family in exchange for a limited partner interest therein. EEIC, proposes to then transfer the Proprietary Materials, with an agreed upon value of $2,100,000, to Home & Family and to provide certain financing (described below) to Home & Family in exchange for a general partner interest therein.

The initial authorized capitalization of EEIC Subsidiary shall be 200,000 shares of common stock, $.01 par value per share, and EEIC will be issued a portion of such common stock in exchange for its contribution to EEIC Subsidiary of the Proprietary Materials. References to EEIC hereinafter shall mean EEIC or EEIC Subsidiary, where the context so allows.

EEIC proposes to make additional capital contributions to Home & Family in an aggregate amount of up to $3,900,000 from time to time through December 31, 1997, in exchange for which EEIC's capital interest in Home & Family will increase correspondingly. In addition, from time to time through December 31, 1997, EEIC also proposes, at its discretion, to provide Home & Family with a working capital line of credit with a maximum availability of $3,000,000, at an annual interest rate equal to the base lending rate of The First National Bank of Boston, N.A., plus 2 percent, for a term of three years. All such loans and advances will be secured by all Home & Family assets, and will be used by Home & Family exclusively for its working capital needs.

EEIC also proposes that any activities that it needs to perform under certain agreements relating to the proposed transaction would be accomplished by employees of EUA Service Corporation (''EUASC''). EUASC may provide management services including but not limited to financial, accounting, environmental, data processing and records management services, as appropriate, to Home & Family. All such services would be rendered at cost pursuant to the standard service contract entered into between EUASC and the other EUA system companies. No employees of the EUA system's retail electric utilities will be assigned to any activities involving Home & Family.

The East Ohio Gas Company (70–8601)

The East Ohio Gas Company (''East Ohio''), 1717 East Ninth Street, Cleveland, Ohio 44101–0759, a gas public-utility subsidiary of Consolidated Natural Gas Company (''CNG''), 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222–3199, a registered holding company, and CNG have filed a declaration under section 12(d) of the Act and rule 44 thereunder.

East Ohio and CNG propose that East Ohio sell certain utility assets (''Assets''), including 378 production wells, connecting lines, leases, access rights, contract rights and records associated with the wells, to Belden & Blake Corporation (''Belden & Blake'') for $6.5 million. Belden & Blake is a

nonassociated oil and gas drilling and exploration company.

East Ohio and CNG state that the sale of the Assets is part of East Ohio's contribution towards the current effort of the CNG system to cut costs and increase profits. East Ohio and CNG additionally state that, as utility assets, the Assets provide less than ½ of 1% of East Ohio's total gas supply. Furthermore, by selling the Assets, East Ohio will save about $900,000 a year in maintenance costs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–8542 Filed 4–6–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster Loan Area #8499]

Massachusetts (and Contiguous Counties in Connecticut); Declaration of Disaster Loan Area

Hampden County and the contiguous counties of Berkshire, Hampshire, and Worcester in the Commonwealth of Massachusetts and Hartford, Litchfield, and Tolland in the State of Connecticut constitute an economic injury disaster area as a result of damages caused by a fire which occurred on January 17, 1995 in the town of Palmer, Massachusetts. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on January 3, 1996 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303 or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The economic injury number assigned to this disaster for the State of Connecticut is 850000.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: April 3, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–8574 Filed 4–6–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF HEALTH & HUMAN SERVICES

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on March 10, 1995.

(Call Reports Clearance Officer on (410) 965–4142 for copies of package.)

1. Subpoena-Disability Hearing—0960–0428. The information on form SSA–1272 is used by the Social Security Administration to subpoena evidence or testimony needed in disability hearings. The respondents are comprised of Federal and State disability determinations services officers.

Number of Respondents: 36
Frequency of Response: 1
Average Burden Per Response: 30 minutes
Estimated Annual Burden: 18 hours

2. Agency/Employer Questionnaire—0960–0470. The information on form SSA–4163 is used by the Social Security Administration to determine the need for and the amount of any offset of benefits for certain individuals receiving government pensions and also receiving or applying for Social Security benefits. The respondents are State governments or political subdivisions thereof.

Number of Respondents: 1,000
Frequency of Response: 1
Average Burden Per Response: 3 minutes
Estimated Annual Burden: 50 hours

3. Response to Notice of Revised Determination—0960–0347. The information on form SSA–765 is used by claimants to request a disability hearing and/or to submit additional information before a revised reconsideration determination is issued. The respondents are claimants for disability insurance benefits.

Number of Respondents: 1,925
Frequency of Response: 1
Average Burden Per Response: 30 minutes
Estimated Annual Burden: 963 hours

4. Notification of Projected Completion Date—0960–NEW. The form SSA–891 is used by the Social Security Administration and the State disability determination services to notify disability hearings units (DHU) that a specific hearing case will not be completed and forwarded to the DHU as originally scheduled. The respondents are State disability determination services staffs.

Number of Respondents: 20
Frequency of Response: 1
Average Burden Per Response: 5 minutes
mated Annual Burden: 2 hours

5. Student's Statement Regarding Resumption of School Attendance—0960–0143. The information on form SSA–1386 is used by the Social Security Administration to verify full-time attendance at educational institutions and to determine eligibility for student benefits. The respondents are student beneficiaries currently receiving SSA benefits.

Number of Respondents: 133,000
Frequency of Response: 1
Average Burden Per Response: 6 minutes
Estimated Annual Burden: 13,300 hours

6. Authorization for the Social Security Administration to Obtain Account Records from a Financial Institution and Request for Records—0960–0293. The information on form SSA–4641 is used by the Social Security Administration to determine whether an applicant meets the resources eligibility requirements for Supplemental Security Income and Aid to Families with Dependent Children (AFDC). In the AFDC program, this information is used only as part of the quality review of the program. The respondents are financial institutions.

Number of Respondents: 500,000
Frequency of Response: 1
Average Burden Per Response: 6 minutes
Estimated Annual Burden: 50,000 hours

7. Statement of Household Expenses and Contributions—0960–0456. The information on form SSA–8011 is used by the Social Security Administration (SSA) to obtain or corroborate the household expenses and contributions the claimant/recipient makes toward the expenses. SSA needs the information to correctly determine the amount of unearned income received by the claimant/recipient in order to determine the individual's eligibility and payment amount under the SSI program. The respondents are household members of SSI claimants/recipients.

Number of Respondents: 400,000
Frequency of Response: 1
Average Burden Per Response: 15 minutes
Estimated Annual Burden: 100,000 hours

OMB Desk Officer: Laura Oliven

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: Office of Management and Budget, OIRA New Executive Office Building, Room 10230, Washington, D.C. 20503.

Dated: April 3, 1995.

Charlotte Whitenight,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 95–8752 Filed 4–6–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

[Docket 37554]

Order Adjusting the Standard Foreign Fare Level Index

Section 41509(e) of Title 49 of the United States Code requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80–2–69 established the first interim SFFL, and Order 95–2–9 established the currently effective two-month SFFL applicable through March 31, 1995.

We will, however, no longer publish a SFFL for U.S.-Canada markets. Under the terms of the new Air Transport Agreement between the United States and Canada, effective February 24, 1995, transborder fares are no longer subject to unilateral disapproval by either government, and routine tariff-filing requirements are eliminated. Thus, there is no longer a need to compute a SFFL for the Canadian Entity.

In establishing the SFFL for the two-month period beginning April 1, 1995, we have projected non-fuel costs based on the year ended December 31, 1994 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 95–4–2 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic	1.4249
Latin America	1.4360
Pacific	1.6602

For further information contact: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation.

Dated: April 3, 1995.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–8549 Filed 4–6–95; 8:45 am]

BILLING CODE 4910–62–P

Order Adjusting International Cargo Rate Flexibility Level

Policy Statement PS–109, implemented by Regulation ER–1322 of the Civil Aeronautics Board and adopted by the Department, established geographic zones of cargo pricing flexibility within which certain cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances.

The Standard Foreign Rate Level (SFRL) for a particular market is the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the applicable ratemaking entity. The first adjustment was effective April 1, 1983. By Order 95–2–8, the Department established the currently effective SFRL adjustments.

In establishing the SFRL for the two-month period beginning April 1, 1995, we have projected non-fuel costs based on the year ended December 31, 1994 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 95–4–1 cargo rates may be adjusted by the following adjustment factors over the April 1, 1982 level:

Atlantic	1.2505
Western Hemisphere	1.1483
Pacific	1.2965

For further information contact: Keith A. Shangraw (202) 366–2439.

Dated: April 3, 1995.

By the Department of Transportation.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation.and International Affairs.

[FR Doc. 95–8550 Filed 4–6–95; 8:45 am]

BILLING CODE 4910–62–P

Office of the Secretary

Application of Western Pacific Airlines, Inc., for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (Order 95–4–4, Docket 49941).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Western Pacific Airlines, Inc., fit, willing, and able and awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than April 10, 1995.

ADDRESSES: Objections and answers to objections should be filed in Docket 49941 and addressed to the Documentary Services Division (C–55, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Lusby Cooperstein, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2337.

Dated: April 3, 1995.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–8626 Filed 4–6–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Highway Administration

Environmental Impact Statement: Knox County, TN

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 project in Knoxville, Knox County, Tennessee.

FOR FURTHER INFORMATION CONTACT: Mr. Wright B. Aldridge, Jr., Planning, Environment and Research Engineer, Federal Highway Administration, 249 Cumberland Bend Drive, Metro Center, Nashville, Tennessee 37228, telephone (615) 736–7106.

SUPPLEMENTAL INFORMATION: The FHWA in cooperation with the Tennessee Department of Transportation will prepare an environmental impact statement (EIS) and section 4(f) Statement on a proposal to improve a section of Interstate 40 from Interstate 275 to East of the Broadway Interchange in Knoxville, Tennessee. The proposed project is considered necessary to improve the operation and safety of this section of the Interstate.

Alternatives to be considered include: (1) Taking no action; (2) five build alternatives consisting of different design concept; (3) other alternatives

that may arise from public input; and (4) alternatives that avoid use of the historic properties located in the area will be studied. The impacts of the project on the Fourth and Gill Historic District will be evaluated.

Initial Coordination letters describing the proposed action and soliciting comments have been sent to appropriate federal, state and local agencies. A public hearing will be held. Public notice will be given of the time and place of this hearing. The draft environmental impact statement (EIS) will be available for public and agency review and comment. Comments from the initial coordination letters and a public meeting will be considered in determining the scope of the EIS.

To insure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions concerning the proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and Local intergovernmental review of Federal and federally assisted programs and projects apply to this program).

Issued on: March 31, 1995.

Wright B. Aldridge, Jr.,

Planning, Environment and Research Engineer, Tennessee Division, Nashville, Tennessee.

[FR Doc. 95–8528 Filed 4–6–95; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. 95–23; Notice 1]

Receipt of Petition for Decision That Nonconforming 1992 Kenworth T800 Trucks Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1992 Kenworth T800 trucks are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1992 Kenworth T800 truck that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is May 8, 1995.

ADDRESS: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automative Conversion, Inc. of Santa Ana, California (''G&K'') (Registered Importer 90–007) has petitioned NHTSA to decide whether 1992 Kenworth T800 trucks manufactured by Kenworth Mexicana, SA of Mexicali, Mexico, are eligible for importation into the United States. The vehicle which G&K believes is substantially similar is the 1992 Kenworth T800 that was manufactured for sale in the United States and certified by its manufacturer, PACCAR of Bellevue, Washington (the corporate parent of Kenworth Mexicana), as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1992 Kenworth T800 to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that the non-U.S. certified 1992 Kenworth T800, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1992 Kenworth T800 is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * *., 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 108 *Lamps, Reflective Devices and Associated Equipment*, 111 *Rearview Mirrors*, 113 *Hood Latch Systems*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 121 *Air Brake Systems*, 124 *Accelerator Control Systems*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 208 *Occupant Crash Protection*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: Inscription of the word ''Brake'' on the brake failure indicator lamp.

Standard No. 115 *Vehicle Identification Number:* Installation of the required certification label.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles other than Passenger Cars*: Installation of a tire information placard.

Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and

will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 3, 1995.

Harry Thompson,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–8551 Filed 4–6–95; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 95–22; Notice 1]

Receipt of Petition for Decision That Nonconforming 1992 Mercedes-Benz 300E Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1992 Mercedes-Benz 300E passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision, that a 1992 Mercedes-Benz 300E that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is May 8, 1995.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. (Docket hours are from 9:30 am to 4 pm.).

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Liphardt & Associates of Ronkonkoma, New York (''Liphardt'') (Registered Importer 93–016) has petitioned NHTSA to decide whether 1992 Mercedes-Benz 300E (Model ID 124.031) passenger cars are eligible for importation into the United States. The vehicle which Liphardt believes is substantially similar is the 1992 Mercedes-Benz 300E that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Daimler Benz A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1992 Mercedes-Benz 300E to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Liphardt submitted information with its petition intended to demonstrate that the non-U.S. certified 1992 Mercedes-Benz 300E, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1992 Mercedes-Benz 300E is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 107 *Reflecting Surfaces,* 109 *New Pneumatic Tires,* 111 *Rearview Mirror,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver From the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 211 *Wheel Nuts, Wheel Discs and Hubcaps,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that the non-U.S. certified 1992 Mercedes-Benz 300E complies with the Bumper Standard found in 49 CFR part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked ''Brake'' for a lens with an ECE symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlight assemblies and mounting hardware; (b) installation of U.S.-model taillamp assemblies and rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 114 *Theft Protection:* Installation of a buzzer relay and a warning buzzer in the steering lock electrical circuit.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 228 *Power Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a seat belt warning buzzer; (b) installation of knee bolsters and mounting hardware to

augment the vehicle's air bag based passive restraint system, which has the identical part number to that found on the U.S. certified 1992 Mercedes-Benz 300E.

Standard No. 214 *Side Impact Protect:* Installation of reinforcement tubes.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a) (1) (A) and (b) (1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 3, 1995.

Harry Thompson,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–8552 Filed 4–6–95; 8:45 am]

BILLING CODE 4910–59–M

UNITED STATES INFORMATION AGENCY

North-South Center External Research Grant Program

ACTION: Notice—request for proposals.

SUMMARY: The United States Information Agency's Bureau of Education and Cultural Affairs invites applications from eligible institutions under the auspices of the North-South Center's 1995 Research Grant Program. The North-South Center is located at the University of Miami and is funded largely through a Congressional appropriation managed by the United States Information Agency's Bureau of Educational and Cultural Affairs. The Center's Research Grant Programs support select research activities which are of importance to the people and governments of the Western Hemisphere. Through grant awards, the Center brings together human and technical resources to address major themes relevant to policy-making in the region.

Overall grant-making authority for this program is contained in the grant awarded to the North-South Center by the United States Information Agency. The mission of the North-South Center is to promote better relations and serve as a people of the hemisphere.

The purposes of the External Research Grant Program are to support scholarship in various fields of research among institutions throughout the hemisphere, stimulate discussion of policy-relevant issues, and promote scholarship from which policy solutions may derive. Since 1991, approximately 150 External Research Grants have been awarded involving over 300 institutions throughout the hemisphere.

Short-term Field Research Grant Program on Migration and Refugee Issues: In response to increasing migration pressures in the region, the North-South Center seeks to further the state of understanding of the social, political, and economic impulses for and consequences of migration. Research initiatives concerning this theme can be investigated from a variety of disciplinary perspectives from within the social sciences and other relevant fields. Research proposals will be accepted from various disciplines to conduct research projects or field research which investigates contemporary issues in relation to themes such as the following: The formation, functioning, and consequences of transnational communities; the processes of return migration resulting from political reconciliation and democratization; the consequences of neoliberal economic reforms on international migration and return migration; new migratory currents within the Americas; and demographic changes brought about by migration.

ANNOUNCEMENT NAME: All communications with the North-South Center concerning this announcement should refer to the title of Research Grant Program on Migration and Refugee Issues.

DEADLINE FOR PROPOSALS: The External Research Grant Program requires that one original and nineteen (19) copies of final proposal, written in English, be received at the Office of Grant Programs, North-South Center by 5 p.m. Miami time on Friday, May 12, 1995. Please conserve paper by making copies double-sided. Documents sent by facsimile will not be accepted, nor will documents postmarked on May 12, 1995 but received on a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadlines. Project activities should begin no earlier than July 1, 1995 and should run no longer than December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Grant Programs Office where an applicant can obtain the application package, which contains submission deadlines. Draft and final proposals will be accepted only in the format requested in the application package and only until May 12, 1995. Once the RFP deadline has passed, the North-South Center will not inform the applicant on the status of his/her application—except to acknowledge its receipt—until after the Center's proposal review process has been completed.

Organizations/institutions/individuals should contact the Office of Grant Programs at the address listed below or by telephone at (305) 284–8951, facsimile (305) 284–6370, or electronic mail escott@umiami.ir.miami.edu to request a detailed application packet. Application packets include award criteria not mentioned in this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

ADDRESSES: Twenty (20) complete proposals written in English should be received by the May 12, 1995 deadline addressed to: Mary Uebersax, Director of Grant Programs, North-South Center, 1500 Monza Avenue, Coral Gables, FL 33146–3027.

The ensure timely delivery, a reliable courier should be used to envoy the project proposals. The Center will not reimburse the cost of such delivery.

SUPPLEMENTARY INFORMATION: Proposals from all parts of the world, except where prohibited by U.S. law that are consistent with the mission of the North-South Center and are of sound intellectual justification will be considered. Funding will not be authorized for any private for-profit institutions, profit-oriented individuals' initiatives, projects of a proprietary nature, or for projects of a partisan political nature. The applicant should be the project's principal investigator and should have completed advanced degrees and be affiliated with an institution. Pre-doctoral scholars are eligible to compete for the Program.

However, pre-doctoral scholars must currently be affiliated with an institution of higher learning and have the support of their research advisor or department chair to conduct the proposed research project. The Center and its External Grant Review Panel will not use political tests or political qualifications and will not discriminate in any manner whatsoever in selecting grantees.

Pursuant to the authorizing legislation of the United States Information Agency's Bureau of Educational and Cultural Affairs, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

The recipient organization will be responsible for arrangements associated with the program. These include organization a coherent progression of activities, providing international and domestic travel arrangements for all participants, making lodging and local transportation arrangements for visitors, orienting and debriefing participants, preparing any necessary support material, and working with host institutions and individuals to achieve maximum program effectiveness.

Funding Limitations

The maximum award for this program is $20,000. Support will include international travel expenses, domestic transportation, limited living expenses, and research and pre-publication expenses.

The grant awards should not be used in lieu of salary or to support projects which could be funded by private foundations or government. In addition, applicants are encouraged to seek supplemental funding for projects.

Successful projects will be funded by means of a cost reimbursement subcontract agreement between the North-South Center, the University of Miami, and the applicant's institution. All current policies and requirements that govern federal research grants will be applied to the grant award.

Guidelines

The Center gives priority to projects involving the collaboration of institutions in more than one country. The Program provides funding for projects that demonstrate a clear analytical focus, a solid method to achieve research goals in a timely manner, and relevance to contemporary policy. Research activities should generate a product of enduring value such as a publication or a series of publications.

Proposals must be structured in accordance with the instructions contained in the application package. Confirmation letters from U.S. and foreign co-sponsors noting their intention to participate in the program will enhance a proposal.

Proposed Budget

Applicants must submit a comprehensive line-item budget for which specific details are available in the application packet. The Center does not pay for indirect costs or costs that are not directly related to the specific project being funded. No support will be given for the purchase or lease of capital equipment (e.g., facsimile machines, computers), or other related infrastructural costs. Some degree of institutional support should be reflected in the proposed project budget. It is not permissible to request support in lieu of responsibilities for university course instruction.

Review Process

Grants made through the North-South Center External Research Grant Program are awarded through a competitive review process. The Grant Programs Office will acknowledge receipt of all proposals, and the Center's Executive Staff will review every proposal for eligibility, completeness, and competitiveness. Outside reviewers with expertise in a particular subject area may be called upon to provide critique on proposals. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. All eligible and complete proposals will be submitted to the Center's Grant Review Panel, comprised of a multi-disciplinary group of distinguished experts from major university centers for Latin American and Caribbean Studies as well as Latin America specialists from the non-academic international community.

Review Criteria

Applications which meet the aforementioned technical requirements will be competitively reviewed according to the following criteria:

1. *Contribution to the field of study:* Proposals should demonstrate a distinct theoretical, political, or applied academic significance to the stated subject area. The outcome of the research endeavor should be useful and applicable to the academic, government, and policy making and/or governmental sectors.

2. *Research cohesiveness and quality:* Clearly defined research hypotheses, including the specific questions which will be asked through this investigation, and an explanation of the means of testing and evaluating the research objectives should be provided. A detailed research agenda and relevant work plan should demonstrate substantive rigor and a logistical capacity to implement the work plan. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

3. *Clarity and focus:* Proposals should illustrate that the research has been sufficiently developed prior to the request for funding, to ensure that its aims are clear and specific. Proposals should clearly demonstrate the process by which the applicant will meet the program's objectives and research plan.

4. *Concrete and lasting impact of the investigation:* Proposed programs should strengthen enduring mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages. Proposals should provide a plan for continued follow-up activity which insures that the Center's supported programs are not isolated events. Effective dissemination of the project's results should be planned to reach the widest possible and most relevant audience.

5. *Potential:* Proposals should demonstrate the potential for fostering cooperation and understanding among peoples of the region. Research output should provide clear and sound analysis of or tools for policy making.

6. *Applicant's ''track record'':* Applicants should demonstrate a history of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past research grants, where applicable. The Center will consider the past performance of prior grantees and the demonstrated potential of new applicants.

7. *Support of Diversity:* Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity throughout the program.

8. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. Award-receiving organizations/ institutions will be expected to submit intermediate reports after each project

component and a final report at the conclusion. Grantees must be willing to comply with evaluation requirements of the granting institution.

9. *Cost-effectiveness:* The administrative components of grants should be kept as low as possible. All other research costs should be necessary, appropriate, and justified in the budget narrative.

10. *Cost-sharing:* Proposals should maximize cost-sharing through other private support as well as direct funding contributions (such as full-time salaries) from the home institutions.

Notice

The terms and conditions published in the RFP are binding and may not be modified by any North-South Center or United States Information Agency representative. Explanatory information provided by USIA or the North-South Center that contradicts published language will not be binding. This RFP combined with the application packet which is obtainable by calling the North-South Center, constitutes the entire terms and conditions for application to this grant program. Issuance of the RFP does not constitute an award commitment on the part of the Center. Programs and projects must conform with the Center's requirement and guidelines outlined in the Application Packet. The Center's project and programs are subject to the availability of funds. Final awards cannot be made until funds have been made available through the U.S. Government's appropriation and contracting process and allocated and committed through internal North-South Center and University of Miami procedures.

Notification

All applicants will be notified in writing of the results of the review process. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: March 13, 1995.

Dell Pendergrast,

Deputy Associate Director, Education and Cultural Affairs.

[FR Doc. 95–8520 Filed 4–6–95; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 67

Friday, April 7, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the ''Government in the Sunshine Act'' (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 2:30 p.m., Thursday, April 13, 1995.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *In Re: Contests of Respirable Dust Sample Alteration Citations,* and *Keystone Coal Mining Corp.,* Master Docket No. 91–1 and Docket Nos. PENN 91–451–R, etc. (Issues include whether the judge erred in his framing of the Secretary's burden of proof and in finding that the Secretary failed to carry his burden of proving that the weight of 75 cited filters from the Urling No. 1 Mine was intentionally altered by Keystone Coal Mining Corp.)

It was determined by a unanimous vote of the Commissioners that these matters be discussed in closed session.

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: April 3, 1995.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 95–8685 Filed 4–4–95; 4:22 pm]

BILLING CODE 6735–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, April 12, 1995.

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: April 5, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–8693 Filed 4–5–95; 9:57 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10:00 a.m., April 17, 1995.

PLACE: 4th Floor, Conference Room, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the March 20, 1995, Board meeting.

2. Thrift Savings Plan activity report by the Executive Director.

3. Recommended increase in interfund transfers.

4. Review of Arthur Andersen annual financial audit.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: April 3, 1995.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 95–8691 Filed 4–4–95; 4:44 pm]

BILLING CODE 6760–01–M

INTERSTATE COMMERCE COMMISSION

TIME AND DATES: 10:00 a.m., Tuesday, April 18, 1995.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue, NW., Washington, DC 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Ex Parte No. MC–220, *The Municipality of Anchorage, AK—Notices For Rate Increases For Alaska Intermodal Motor/Water Traffic—Petition For Rulemaking.*

Ex Parte No. 346 (Sub-No. 35), *Rail General Exemption Authority—Exemption of Ferrous Recyclables.*

Docket No. 40774, *American Rail Heritage, Ltd. D/B/A Crab Orchard & Egyptian Railroad, Transportation Concepts, Inc., And The Grafton & Upton Railroad Company v. CSX Transportation, Inc.*

Finance Docket No. 32127, *Brotherhood of Locomotive Engineers v. Union Pacific Railroad Company and Chicago Central And Pacific Railroad Company.*

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of Congressional and Press Services, Telephone: (202) 927–5350, TDD: (202) 927–5721.

Vernon A. Williams,

Secretary.

[FR Doc. 95–8710 Filed 4–5–95; 11:44 am]

BILLING CODE 7035–01–P

Friday
April 7, 1995

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Federal Property Suitable as Facilities To Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–95–1917; FR–3778–N–31]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact David Pollack, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to David Pollack at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: Elaine Sims, CECPW–FP, U.S. Army Center for Public Works, 7701 Telegraph Road, Alexandria, VA 22310–3862; (703) 355–3475; (This is not a toll-free number).

Dated: March 31, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM, FEDERAL REGISTER REPORT FOR 04/07/95

Suitable/Available Properties

Buildings (by State)

Alabama

Bldg. 8913, Fort Rucker
7th Avenue
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 219140025
Status: Unutilized
Comment: 3100 sq. ft., 1 story wood, most recent use—chaplain's conference room, off-site use only

Bldg. 8914, Fort Rucker
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 219140026
Status: Unutilized
Comment: 2250 sq. ft., 1 story wood, most recent use—chaplain's headquarters, off-site use only

Bldgs. TO3202–TO3203, TO3206–TO3208, TO3211, TO3213, TO3216
Cowboy & Crusader Street
Fort Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Numbers: 219210001–219210008
Status: Unutilized
Comment: 5310 sq. ft. each, two story wood structure, most recent use—barracks, presence of asbestos, off-site use only

Bldg. TO3214, Fort Rucker
Cowboy & Crusader Streets
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 219230001
Status: Unutilized
Comment: 3306 sq. ft., 1-story wood structure, most recent use—storehouse, presence of asbestos, off-site use only

Bldg. TO3215, Fort Rucker
Cowboy & Crusader Streets
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 219230002
Status: Unutilized
Comment: 3452 sq. ft., 1-story wood structure, most recent use—storehouse, presence of asbestos, off-site use only

Bldgs. 3502, 3702–3704, 3707–3708, 3714, 3717, 3803
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Numbers: 219340181, 219340183–219340185, 219340188–219340192
Status: Unutilized
Comment: 5310 sq. ft. ea., 2 story wood frame, needs rehab, presence of asbestos, most recent use—instruction bldgs., off-site use only

Bldgs. 3705–3706
Ft. Rucker Co: Dale AL 36392–5138
Landholding Agency: Army
Property Numbers: 219340186–219340187
Status: Unutilized

Comment: 2975 sq. ft. ea., 1 story wood frame, needs rehab, most recent use—general purpose, off-site use only

Bldg. T274, Fort McClellan
Ft. McClellan, AL, Calhoun, Zip: 36205–5000
Landholding Agency: Army
Property Number: 219440389
Status: Unutilized
Comment: 3967 sq. ft., 1-story, most recent use—clinic, needs rehab, off-site use only

Bldg. T407, Fort McClellan
Ft. McClellan, AL, Calhoun, Zip: 36205–5000
Landholding Agency: Army
Property Number: 219440390
Status: Unutilized
Comment: 2524 sq. ft., 1-story, most recent use—classroom, needs rehab, off-site use only

Bldg. T408, Fort McClellan
Ft. McClellan, AL, Calhoun, Zip: 36205–5000
Landholding Agency: Army
Property Number: 219440391
Status: Unutilized
Comment: 1150 sq. ft., 1-story, most recent use—admin., needs rehab, off-site use only

Bldg. T417, Fort McClellan
Ft. McClellan, AL, Calhoun, Zip: 36205–5000
Landholding Agency: Army
Property Number: 219440392
Status: Unutilized
Comment: 432 sq. ft., 1-story, most recent use—admin., off-site use only

Bldg. T421, Fort McClellan
Ft. McClellan, AL, Calhoun, Zip: 36205–5000
Landholding Agency: Army
Property Number: 219440393
Status: Unutilized
Comment: 1602 sq. ft., 1-story, most recent use—support activity, needs rehab, off-site use only

Bldgs. T614, T692
Fort McClellan
Ft. McClellan, AL, Calhoun, Zip: 36205–5000
Landholding Agency: Army
Property Number: 219440394
Status: Unutilized
Comment: 2314 sq. ft. & 2685 sq. ft., 1-story bldgs., most recent use—admin., off-site use only

7 Bldgs.
Fort McClellan
#829–831, 833, 835–836, 844
Ft. McClellan, AL, Calhoun, Zip: 36205–5000
Landholding Agency: Army
Property Number: 219440395
Status: Unutilized
Comment: 4425 sq. ft. each, 2-story, most recent use—barracks, off-site use only

Bldg. T00893
Fort McClellan
Ft. McClellan, AL, Calhoun, Zip: 36205–5000
Landholding Agency: Army
Property Number: 219440396
Status: Unutilized
Comment: 3269 sq. ft., 1-story, most recent use—chapel, off-site use only

Bldgs. T903, T909
Fort McClellan
Ft. McClellan, AL, Calhoun, Zip: 36205–5000
Landholding Agency: Army
Property Number: 219440397
Status: Unutilized
Comment: 1677 sq. ft. and 1166 sq. ft. bldgs., most recent use—classroom, off-site use only

Bldgs. T916–T917, T925
Fort McClellan
Ft. McClellan, AL, Calhoun, Zip: 36205–5000
Landholding Agency: Army
Property Number: 219440398
Status: Unutilized
Comment: 3075–4500 sq. ft., 1-story, most recent use—barracks, off-site use only

Bldg. T1398
Fort McClellan
Ft. McClellan, AL, Calhoun, Zip: 36205–5000
Landholding Agency: Army
Property Number: 219440399
Status: Unutilized
Comment: 3108 sq. ft., 1-story, most recent use—classroom, needs rehab, off-site use only

Alaska

Bldgs, 400, 402, 407
Fort Richardson, AK 99505–
Landholding Agency: Army
Property Numbers: 219440400–219440402
Status: Excess
Comment: 13056 sq. ft. ea., 2 story wood frame, presence of lead paint and asbestos, off-site use only

Arizona

Bldgs. 70117–70120
Fort Huachuca
Sierra Vista Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Numbers: 219120306–219120309
Status: Excess
Comment: 3434 sq. ft. each, 1 story wood structures, presence of asbestos, most recent use—general instructional

Bldg. 70225
Fort Huachuca
Sierra Vista Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219120310
Status: Excess
Comment: 3813 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose

Bldg. 83006
Fort Huachuca
Sierra Vista Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219120311
Status: Excess
Cmment: 2062 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose

Bldg. 83007
Fort Huachuca
Sierra Vista Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219120312
Status: Excess
Comment: 2000 sq. ft., 2 story wood structure, presence of asbestos, most recent use—admin. gen. purpose

Bldg. 83008
Fort Huachuca
Sierra Vista Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219120313
Status: Excess
Comment: 2192 sq. ft., 2 story wood structure, presence of asbestos, most recent use—admin. gen. purpose

Bldg. 83015
Fort Huachuca
Sierra Vista, CO: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219120314
Status: Excess
Comment: 2325 sq. ft., 1-story wood structure, presence of asbestos, most recent use—admin. gen. purpose

Bldg. 81001
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240720
Status: Unutilized
Comment: 4386 sq. ft., 2-story wood frame, possible asbestos, most recent use—administrative, off-site use only

Bldg. 81020
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240722
Status: Unutilized
Comment: 4386 sq. ft., 2-story wood frame, possible asbestos, most recent use—administrative, off-site use only

Bldg. 67204
Fort Huachuca
Sierra Vista, CO: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219240723
Status: Unutilized
Comment: 4332 sq. ft., 2-story wood frame, possible asbestos, most recent use—administration, off-site use only

Bldg. 66151
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240728
Status: Unutilized
Comment: 4194 sq. ft., 2-story wood frame, possible asbestos, most recent use—barracks, off-site use only

Bldg. 72219
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240729
Status: Unutilized
Comment: 2730 sq. ft., 1-story wood frame, possible asbestos, most recent use—barracks, off-site use only

Bldg. 72220
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240730
Status: Unutilized
Comment: 2879 sq. ft., 1-story wood frame, possible asbestos, most recent use—barracks, off-site use only

Bldg. 72221
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240731
Status: Unutilized
Comment: 3736 sq. ft., 1-story wood frame, possible asbestos, most recent use—barracks, off-site use only

Bldg. 67108
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–

Landholding Agency: Army
Property Number: 219240733
Status: Unutilized
Comment: 2403 sq. ft., 1-story wood frame, possible asbestos, most recent use—classrooms, off-site use only

Bldg. 70226
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240734
Status: Unutilized
Comment: 1868 sq. ft., 1-story wood frame, possible asbestos, most recent use—classrooms, off-site use only

Bldg. 71116
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240735
Status: Unutilized
Comment: 3470 sq. ft., 1-story wood frame, possible asbestos, most recent use—classrooms, off-site use only

Bldg. 71215
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240736
Status: Unutilized
Comment: 4854 sq. ft., 1-story wood frame, possible asbestos, most recent use—classrooms, off-site use only

Bldg. 70110
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240739
Status: Unutilized
Comment: 2675 sq. ft., 1-story wood frame, possible asbestos, most recent use—offices, off-site use only

Bldg. 70111
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240740
Status: Unutilized
Comment: 2800 sq. ft., 1 story wood frame, possible asbestos, most recent use—offices, off-site use only

Bldg. 70113
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240741
Status: Unutilized
Comment: 2800 sq. ft., 1 story wood frame, possible asbestos, most recent use—offices, off-site use only

Bldg. 70114
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240742
Status: Unutilized
Comment: 2544 sq. ft., 1 story wood frame, possible asbestos, most recent use—offices, off-site use only

Bldg. 70115
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240743
Status: Unutilized
Comment: 2544 sq. ft., 1 story wood frame, possible asbestos, most recent use—offices, off-site use only

Bldg. 70123
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240744
Status: Unutilized
Comment: 3298 sq. ft., 1 story wood frame, possible asbestos, most recent use—offices, off-site use only

Bldg. 70124
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240745
Status: Unutilized
Comment: 3298 sq. ft., 1 story wood frame, possible asbestos, most recent use—offices, off-site use only

Bldg. 70126
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240746
Status: Unutilized
Comment: 3343 sq. ft., 1 story wood frame, possible asbestos, most recent use—offices, off-site use only

Bldg. 70210
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240747
Status: Unutilized
Comment: 3258 sq. ft., 1 story wood frame, possible asbestos, most recent use—offices, off-site use only

Bldg. 70211
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240748
Status: Unutilized
Comment: 2966 sq. ft., 1 story wood frame, possible asbestos, most recent use—offices, off-site use only

Bldg. 70221
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240749
Status: Unutilized
Comment: 2526 sq. ft., 1 story wood frame, possible asbestos, most recent use—offices, off-site use only

Bldg. 70222
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240750
Status: Unutilized
Comment: 1627 sq. ft., 1 story wood frame, possible asbestos, most recent use—offices, off-site use only

Bldg. 70214
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240751
Status: Unutilized
Comment: 3779 sq. ft., 1 story wood frame, possible asbestos, most recent use—offices, off-site use only

Bldg. 82013
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240752
Status: Unutilized
Comment: 2193 sq. ft., 1 story wood frame, possible asbestos, most recent use—offices, off-site use only

Bldg. 90327
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240753
Status: Unutilized
Comment: 279 sq. ft., 1 story wood frame, possible asbestos, most recent use—offices, off-site use only

Bldg. 71213
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240754
Status: Unutilized
Comment: 3779 sq. ft., 1 story wood frame, possible asbestos, most recent use—storehouse, off-site use only

Bldg. 82007
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240755
Status: Unutilized
Comment: 4386 sq. ft., 2 story wood frame, possible asbestos, most recent use—storehouse, off-site use only

Bldg. 82009
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240756
Status: Unutilized
Comment: 2444 sq. ft., 2-story wood frame, possible asbestos, most recent use—storehouse, off-site use only

Bldg. 70216, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310287–
Status: Excess
Comment: 3725 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only

Bldg. 70215, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310288
Status: Excess
Comment: 3706 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only

Bldg. 70214, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310289
Status: Excess
Comment: 3142 sq. ft., 1-story wood structure, presence of asbestos, most recent use—admin., off-site use only

Bldg. 70212, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–

Landholding Agency: Army
Property Number: 219310290
Status: Excess
Comment: 3534 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only

Bldg. 70220, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310291
Status: Excess
Comment: 1249 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only

Bldg. 70218, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310292
Status: Excess
Comment: 3475 sq. ft., 1-story wood, presence of asbestos, most recent use—classroom, off-site use only

Bldg. 70217, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310293
Status: Excess
Comment: 304 sq. ft., 1-story concrete block, presence of asbestos, most recent use—storage, off-site use only

Bldg. 80010, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310294
Status: Excess
Comment: 2318 sq. ft., 1-story wood, presence of asbestos, most recent use—admin.

Bldg. 84103, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310296
Status: Excess
Comment: 984 sq. ft., 1-story, presence of asbestos and lead paint, most recent use—admin.

Bldg. 67101, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310297
Status: Excess
Comment: 2216 sq. ft., 1-story wood, presence of asbestos and lead paint, most recent use—classroom

Bldg. 30012, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310298
Status: Excess
Comment: 237 sq. ft., 1-story block, most recent use—storage

Bldg. 90328, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310299
Status: Excess
Comment: 144 sq. ft., 1-story wood, most recent use—storage

Bldg. S–120
Yuma Proving Ground
Yuma Co: Yuma/LaPaz, AZ 85365–9104
Landholding Agency: Army
Property Number: 219320202
Status: Underutilized
Comment: 6845 sq. ft., 1-story wood frame, presence of asbestos, most recent use—bowling center

Bldg. 67221
U.S. Army Intelligence Center
Fort Huachuca
Sierra Vista Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219330235
Status: Unutilized
Comment: 1068 sq. ft., 1-story wood, presence of asbestos, most recent use—office, off-site use only

Bldg. 83102
U.S. Army Intelligence Center
Fort Huachuca
Sierra Vista Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219330236
Status: Unutilized
Comment: 984 sq. ft., 1-story wood, presence of asbestos, most recent use—office, off-site use only

Bldg. 84010
U.S. Army Intelligence Center
Fort Huachuca
Sierra Vista Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219330237
Status: Unutilized
Comment: 2147 sq. ft., 1-story wood, presence of asbestos, most recent use—office, off-site use only

Bldg. S–1005
Yuma Proving Ground
Yuma Co: Yuma/La Paz, AZ 85365–9104
Landholding Agency: Army
Property Number: 219340198
Status: Unutilized
Comment: 176 sq. ft., 1-story, cold storage bldgs., need repairs, off-site use only

Bldg. 67116
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219410243
Status: Unutilized
Comment: 1784 sq. ft.; 1-story; wood; most recent use—admin.; off-site use only

Bldg. 67205
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219410244
Status: Unutilized
Comment: 2166 sq. ft.; 2 story; wood; most recent use—admin.; off-site use only

Bldg. 67207
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219410245
Status: Unutilized
Comment: 2166 sq. ft.; 2 story; wood; most recent use—admin.; off-site use only

Bldg. 67213
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219410246
Status: Unutilized
Comment: 2594 sq. ft.; 1 story; wood; most recent use—admin.; off-site use only

Bldg. 73913
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219410247
Status: Unutilized
Comment: 910 sq. ft.; 1 story; wood; most recent use—admin.; off-site use only

Bldg. 80001
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219410248
Status: Unutilized
Comment: 1958 sq. ft.; 2 story; wood; most recent use—admin.; off-site use only

Bldg. 83027
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219410249
Status: Unutilized
Comment: 1993 sq. ft.; 2 story; wood; most recent use—admin.; off-site use only

Bldg. 84007
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219410250
Status: Unutilized
Comment: 2000 sq. ft.; 2 story; wood; most recent use—admin.; off-site use only

Bldg. 68320
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219410251
Status: Unutilized
Comment: 1531 sq. ft.; 1 story; wood; most recent use—recreation center; off-site use only

Bldg. 30126
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219410252
Status: Unutilized
Comment: 9324 sq. ft.; 1 story; wood; most recent use—maintenance; off-site use only

Bldg. 84014
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219410253
Status: Unutilized
Comment: 2260 sq. ft.; 1 story; wood; most recent use—maintenance; off-site use only

Bldg. S–106
Yuma Proving Ground
Yuma, AZ, Yuma/La Paz, Zip: 85365–9104
Landholding Agency: Army
Property Number: 219420345
Status: Unutilized
Comment: 1101 sq. ft.; 1-story, cold storage bldg., needs repair

Bldgs. 67210, 67217
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219420347
Status: Unutilized
Comment: 1165 sq. ft.; 1-story wood, presence of asbestos, most recent use—office, off-site use only

Bldg. 80005

Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219430245
Status: Unutilized
Comment: 1718 sq. ft, 1-story, wood frame, most recent use—instructional bldg., needs repair, off-site use only

Bldg. 80006
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219430246
Status: Unutilized
Comment: 1628 sq. ft, 1-story, wood frame, most recent use—instructional bldg., needs repair, off-site use only

Bldg. 83023
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219430247
Status: Unutilized
Comment: 1648 sq. ft., 1-story, wood frame, most recent use—instructional bldg., needs repair, off-site use only

Bldg. 81027
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219430248
Status: Unutilized
Comment: 2193 sq. ft., 2-story, wood frame, most recent use—admin., needs repairs, off-site use only

Bldg. 81028
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219430249
Status: Unutilized
Comment: 2193 sq. ft., 2-story, wood frame, most recent use—admin., needs repair, off-site use only

Bldg. 80111
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219430250
Status: Unutilized
Comment: 2032 sq. ft., 1-story, wood frame, most recent use—instructional bldg., needs repair, off-site use only

Colorado

Bldg. P–1388
Fort Carson
Colorado Springs Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 219430134
Status: Unutilized
Comment: 240 sq. ft., 1 story steel structure, needs rehab, secured area w/alternate access, off-site use only

Georgia

Bldgs. 5390, 5392, 5391
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219010137, 219010151–219010152
Status: Unutilized
Comment: 2432 sq. ft. ea; most recent use—dining room; needs rehab.

Bldg. 5362
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219010147
Status: Unutilized
Comment: 5559 sq. ft.; most recent use—service club; needs rehab.

Bldg. 4605
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011493
Status: Unutilized
Comment: 915 sq ft., building in poor condition, major construction needed to be made habitable.

Bldg. 4487
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011681
Status: Unutilized
Comment: 1868 sq. ft.; most recent use—telephone exchange bldg.; needs substantial rehabilitation; 1 floor.

Bldg. 4319
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011683
Status: Unutilized
Comment: 2584 sq. ft.; most recent use—vehicle maintenance shop; needs substantial rehabilitation; 1 floor.

Bldg. 3400
Fort Benning, GA Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011694
Status: Unutilized
Comment: 2570 sq. ft.; most recent use—fire station; needs substantial rehabilitation; 1 floor.

Bldg. 2285
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011704
Status: Unutilized
Comment: 4574 sq. ft.; most recent use—clinic; needs substantial rehabilitation; 1 floor.

Bldg. 4092
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency; Army
Property Number: 219011709
Status: Unutilized
Comment: 336 sq. ft.; most recent use—inflammable materials storage; needs substantial rehabilitation; 1 floor.

Bldg. 4089
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011710
Status: Unutilized
Comment: 176 sq. ft.; most recent use—gas station; needs substantial rehabilitation; 1 floor.

Bldgs. 1235, 1236
Fort Benning Co: Muscogee GA 31905—
Landholding Agency: Army
Property Numbers: 219014887–219014888
Status: Unutilized
Comment: 9367 sq. ft.; 1 story building; needs rehab; most recent use—General Storehouse.

Bldg. 1251
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014889
Status: Unutilized
Comment: 18385 sq. ft.; 1 story building; needs rehab; most recent use—Arms Repair Shop.

Bldg. 4491
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014916
Status: Unutilized
Comment: 18240 sq. ft.; 1 story building; needs rehab; most recent use—Vehicle maintenance shop.

Bldg. 4633
Fort Benning Co: Muscogee GA 319053–
Landholding Agency: Army
Property Number: 219014919
Status: Unutilized
Comment: 5069 sq. ft.; 1 story building; needs rehab; most recent use—Training Building.

Bldg. 4649
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014922
Status; Unutilized
Comment: 2250 sq. ft.; 1 story building; needs rehab; most recent use—Headquarters Building.

Bldg. 2150
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120258
Status: Unutilized
Comment: 3909 sq. ft., 1 story, needs rehab, most recent use—general inst. bldg.

Bldg. 2409
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120263
Status: Unutilized
Comment: 9348 sq. ft., 1 story, needs rehab, most recent use—general purpose warehouse.

Bldg. 2590
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120265
Status: Unutilized
Comment: 3132 sq. ft., 1 story, needs rehab, most recent use—vehicle maintenance shop.

Bldg. 3828
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120266
Status: Unutilized
Comment: 628 sq. ft., 1 story, needs rehab, most recent use—general storehouse.

Bldgs. 3086, 3089, 3092
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219220688–219220690
Status: Unutilized
Comment: 4720 sq. ft. ea., 2 story, most recent use—barracks, needs major rehab, off-site removal only.

Bldg. 1252, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220694
Status: Unutilized

Comment: 583 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 1678, Fort Benning
Ft. Benning GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220697
Status: Unutilized
Comment: 9342 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 1733, Fort Benning
Ft. Benning Co: Muscogee, GA 31905
Landholding Agency: Army
Property Number: 219220698
Status: Unutilized
Comment: 9375 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 3083, Fort Benning
Ft. Benning Co: Muscogee, GA 31905
Landholding Agency: Army
Property Number: 219220699
Status: Unutilized
Comment: 1372 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 3856, Fort Benning
Ft. Benning Co: Muscogee, GA 31905
Landholding Agency: Army
Property Number: 219220703
Status: Unutilized
Comment: 4111 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 4881, Fort Benning
Ft. Benning Co: Muscogee, GA 31905
Landholding Agency: Army
Property Number: 219220707
Status: Unutilized
Comment: 2449 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 4963, Fort Benning
Ft. Benning Co: Muscogee, GA 31905
Landholding Agency: Army
Property Number: 219220710
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storehouse, needs repair, off-site removal only.

Bldg. 2396, Fort Benning
Ft. Benning Co: Muscogee, GA 31905
Landholding Agency: Army
Property Number: 219220712
Status: Unutilized
Comment: 9786 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only.

Bldg. 3085, Fort Benning
Ft. Benning Co: Muscogee, GA 31905
Landholding Agency: Army
Property Number: 219220715
Status: Unutilized
Comment: 2253 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only.

Bldg. 2537, Fort Benning
Ft. Benning Co: Muscogee, GA 31905
Landholding Agency: Army
Property Number: 219220726
Status: Unutilized
Comment: 820 sq. ft., 1 story, most recent use—storage, needs major rehab, off-site removal only.

Bldgs. 4882, 4967, Fort Benning
Ft. Benning Co: Muscogee, GA 31905
Landholding Agency: Army
Property Numbers: 219220727–219220728
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storage, needs repair, off-site removal only.

Bldg. 5396, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220734
Status: Unutilized
Comment: 10944 sq. ft., 1 story, most recent use—general instruction bldg., needs major rehab, off-site removal only.

Bldg. 247, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220735
Status: Unutilized
Comment: 1144 sq. ft., 1 story, most recent use—offices, needs major rehab, off-site removal only.

Bldgs. 4977, 4978, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219220736–219220737
Status: Unutilized
Comment: 192 sq. ft. ea. 1 story, most recent use—offices, needs repairs, off-site removal only.

Bldg. 4944, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220747
Status: Unutilized
Comment: 6400 sq. ft., 1 story, most recent use—vehicle maintenance shop, needs repairs, off-site removal only.

Bldg. 4960, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220752
Status: Unutilized
Comment: 3335 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only.

Bldg. 4969, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220753
Status: Unutilized
Comment: 8416 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only.

Bldg. 1758, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220755
Status: Unutilized
Comment: 7817 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.

Bldg. 1680, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220756
Status: Unutilized
Comment: 9243 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.

Bldg. 3817, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220758
Status: Unutilized
Comment: 4000 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.

Bldgs. 4884, 4964, 4966, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219220762–219220764
Status: Unutilized
Comment: 2000 sq. ft. ea., 1 story, most recent use—headquarters bldgs., needs repairs, off-site removal only.

Bldg. 4679, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220767
Status: Unutilized
Comment: 8657 sq. ft., 1 story, most recent use—supply bldg., needs major rehab, off-site removal only.

Bldg. 4883, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220768
Status: Unutilized
Comment: 2600 sq. ft., 1 story, most recent use—supply bldg., needs repairs, off-site removal only.

Bldg. 4965, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220769
Status: Unutilized
Comment: 7713 sq. fit., 1 story, most recent use—supply bldg., needs repairs, off-site removal only.

Bldg. 2513, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220770
Status: Unutilized
Comment: 9483 sq. ft., 1 story, most recent use—training center, needs major rehab, off-site removal only.

Bldg. 2526, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220771
Status: Unutilized
Comment: 11855 sq. ft., 1 story, most recent use—training center, needs major rehab, off-site removal only.

Bldg. 2589, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220772
Status: Unutilized
Comment: 146 sq. ft., 1 story, most recent use—training bldg., needs major rehab, off-site removal only.

Bldg. 4976, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220778
Status: Unutilized
Comment: 192 sq. ft., 1 story, most recent use—gas station, needs repairs, off-site removal only.

Bldg. 4945, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220779

Status: Unutilized
Comment: 220 sq. ft., 1 story, most recent use—gas station, needs major rehab, off-site removal only.

Bldg. 4979, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220780
Status: Unutilized
Comment: 400 sq. ft., 1 story, most recent use—oil house, need repairs, off-site removal only.

Bldg. 4627, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220786
Status: Unutilized
Comment: 1676 sq. ft., 1 story, most recent use—sentry station, needs major rehab, off-site removal only.

Bldgs. 4114, 4117–4118, 4125–4126, 4129–4130, 4137–4138, 4140, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310407–219310416
Status: Unutilized
Comment: 4425 sq. ft. ea., 2-story, needs rehab, most recent use-barracks, off-site use only

Bldgs. 4002, 4004, 4008–4010, 4012, 4015, 4020 4106, 4115–4116, 4127–4128, 4139, 4149–4150, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310417–219310432
Status: Unutilized
Comment: 4720 sq. ft. ea., 2-story needs rehab, most recent use—barracks, off-site use only

Bldg. 4017, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310435
Status: Unutilized
Comment: 7700 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only

Bldgs. 4112, 4119, 4124, 4141, 4136, 4131, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310436–219310441
Status: Unutilized
Comment: 1144 sq. ft. ea., 1-story, needs rehab, most recent use—day room, off-site use only

Bldg. 4108, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310442
Status: Unutilized
Comment: 1171 sq. ft. 1-story, needs rehab, most recent use—day room, off-site use only

Bldg. 1835, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310443
Status: Unutilized
Comment: 1712 sq. ft. 1-story, needs rehab, most recent use—day room, off-site use only

Bldgs. 4013, 4007 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310444
Status: Unutilized
Comment: 1884 sq. ft. ea., 1-story, needs rehab, most recent use—day room, off-site use only

Bldg. 4107, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310446
Status: Unutilized
Comment: 4720 sq. ft. ea., 2-story, needs rehab, most recent use—day room, off-site use only

Bldg. 3072, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310447
Status: Unutilized
Comment: 479 sq. ft. 1-story, needs rehab, most recent use—hdqtrs. bldg., off-site use only

Bldgs. 4001, 4103 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310448–219310449
Status: Unutilized
Comment: 1635 sq. ft. ea., 1-story, needs rehab, most recent use—hdqtrs bldg., off-site use only

Bldg. 3004, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310450
Status: Unutilized
Comment: 2794 sq. ft. 1-story, needs rehab, most recent use—hdqtrs bldg., off-site use only

Bldgs. 4019, 4018, 3003, 3002 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310451–219310454
Status: Unutilized
Comment: 3270 sq. ft. 2-story, needs rehab, most recent use—hdqtrs bldg., off-site use only

Bldg. 4109, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310455
Status: Unutilized
Comment: 2253 sq. ft. 1-story, needs rehab, most recent use—dining facility, off-site use only

Bldg. 4014, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310456
Status: Unutilized
Comment: 2794 sq ft., 1-story, needs rehab, most recent use—dining facility, off-site use only

Bldg. 4006, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310457
Status: Unutilized
Comment: 3023 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only

Bldgs. 4135, 4123, 4111, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310458–219310460
Status: Unutilized
Comment: 3755 sq. ft. ea., 1-story, needs rehab, most recent use—dining facility, off-site use only

Bldg. 4023, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310461
Status: Unutilized
Comment: 2269 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only

Bldg. 4024, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310462
Status: Unutilized
Comment: 3281 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only

Bldg. 4040, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310463
Status: Unutilized
Comment: 1815 sq. ft., 1-story, needs rehab, most recent use—admin., off-site use only

Bldg. 4026, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310464
Status: Unutilized
Comment: 2330 sq. ft., 1-story, needs rehab, most recent use—admin., off-site use only

Bldg. 4067, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310465
Status: Unutilized
Comment: 4406 sq. ft., 1-story, needs rehab, most recent use—admin., off-site use only

Bldg. 4025, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310466
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—admin., off-site use only

Bldgs. 4110, 4122, 4134 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310467–219310469
Status: Unutilized
Comment: 1017 sq. ft. ea., 1-story, needs rehab, most recent use—storehouse, off-site use only

Bldg. 4021, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310470
Status: Unutilized
Comment: 1416 sq. ft., 1-story, needs rehab, most recent use—storehouse, off-site use only

Bldg. 4113, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310473
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—storeage, off-site use only

Bldg. 10439, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310474

Status: Unutilized
Comment: 1010 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only

Bldg. 10304, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310475
Status: Unutilized
Comment: 1040 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only

Bldg. 10847, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310476
Status: Unutilized
Comment: 1056 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only

Bldg. 10768, Fort Benning
Ft. Benning, GA. Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310477
Status: Unutilized
Comment: 1230 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only

Bldg. 2683, Fort Benning
Ft. Benning, GA. Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310478
Status: Unutilized
Comment: 1816 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only

Bldg. 2504, Fort Benning
Ft. Benning, GA. Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310479
Status: Unutilized
Comment: 729 sq. ft., 1-story, needs rehab, most recent use—snack bar, off-site use only

Bldg. 4121, 4133, 4143, Fort Benning
Ft. Benning, GA. Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310487–219310489
Status: Unutilized
Comment: 1017 sq. ft. ea., 1-story, needs rehab, most recent use—arms bldgs., off-site use only

Bldg. 4105, 4005, Fort Benning
Ft. Benning, GA. Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310490–219310491
Status: Unutilized
Comment: 1416 sq. ft. ea., 1-story, needs rehab, most recent use—arms bldgs., off-site use only

Bldgs. 13503, 14502, Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number 219320209–219320210
Status: Unutilized
Comment: 7036 sq. ft., 2 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use—residential.

Bldgs. 481, Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number 219320211
Status: Unutilized
Comment: 1325 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-sit use only, most recent use—offices.

Bldgs. 14503, Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number 219320216
Status: Unutilized
Comment: 1075 sq. ft., 1 story wood frame, presence of asbestos, off-site use only, most recent use—offices.

Bldgs. 25304, Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number 219320223
Status: Unutilized
Comment: 2788 sq. ft., 1 story wood frame, presence of asbestos, off-site use only, most recent use—office/storage.

Bldgs. 26306, Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number 219320225
Status: Unutilized
Comment: 1272 sq. ft., 1 story wood frame, possible asbestos, need repairs, off-site use only, most recent use—storage.

Bldgs. 33436, Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number 219320228
Status: Unutilized
Comment: 2632 sq. ft., 1 story wood frame, presence of asbestos, need repairs, off-site use only, most recent use—office.

Bldgs. 33438, Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number 219320229
Status: Unutilized
Comment: 2668 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use—storage.

Bldgs. 39502, Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number 219320230
Status: Unutilized
Comment: 1316 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use—office.

Bldgs. 45308, Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number 219320231
Status: Unutilized
Comment: 6044 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use—community center.

Bldgs. 26301, 27301
Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219320234–219320235
Status: Unutilized
Comment: 2788 sq. ft., 1 story wood frame, presence of asbestos, needs roof repairs, off-site use only, most recent use—storage.

Bldgs. 354–356, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330259–219330262
Status: Unutilized
Comment: 4237 sq. ft., 1-story wood, possible termite damage, needs repair, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 377, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330263
Status: Unutilized
Comment: 4768 sq. ft., 1-story wood, needs repair, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 13501, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330264
Status: Unutilized
Comment: 2516 sq. ft., 1-story wood, needs rehab, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 18704, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330265
Status: Unutilized
Comment: 4524 sq. ft., 2-story wood, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 18717, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330266
Status: Unutilized
Comment: 2468 sq. ft., 1-story wood, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 19601, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330268
Status: Unutilized
Comment: 2132 sq. ft., 1-story wood, possible termite damage, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 19602, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330269
Status: Unutilized
Comment: 1555 sq. ft., 1-story wood, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 24501, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330270
Status: Unutilized
Comment: 3580 sq. ft., 1-story wood, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 25103, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330271
Status: Unutilized
Comment: 2100 sq. ft., 1-story wood, needs rehab, most recent use—offices, off-site use only.

Bldg. 25105, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330272
Status: Unutilized

Comment: 1025 sq. ft., 1-story wood, needs rehab, most recent use—offices, off-site use only.

Bldg. 25503, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330273
Status: Unutilized
Comment: 6816 sq. ft., 1-story wood, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 33415, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330275
Status: Unutilized
Comment: 2036 sq. ft., 1-story wood, needs rehab, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 34502, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330276
Status: Unutilized
Comment: 7036 sq. ft., 2-story wood, needs rehab, most recent use—offices, off-site use only.

Bldg. 35503, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330277
Status: Unutilized
Comment: 2500 sq. ft., 1-story wood, needs rehab, most recent use—offices, off-site use only.

Bldg. 37505, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330278
Status: Unutilized
Comment: 17370 sq ft., 2-story wood, needs rehab, possible asbestos, most recent use—offices, off-site use only

Bldg. 39503, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330279
Status: Unutilized
Comment: 1316 sq ft., 1-story wood, needs rehab, possible asbestos, most recent use—offices, off-site use only

Bldg. 18707, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330280
Status: Unutilized
Comment: 2468 sq ft., 1-story wood, presence of asbestos, most recent use—classrooms, off-site use only

Bldg. 18708, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330281
Status: Unutilized
Comment: 3772 sq ft., 1-story wood, presence of asbestos, most recent use—classrooms, off-site use only

Bldg. 18718, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330282
Status: Unutilized
Comment: 2468 sq ft., 1-story wood, presence of asbestos, most recent use—classrooms, off-site use only

Bldg. 18720, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330283
Status: Unutilized
Comment: 2632 sq ft., 1-story wood, presence of asbestos, most recent use—classrooms, off-site use only

Bldgs. 18721–18724, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330284–219330287
Status: Unutilized
Comment: 4524 sq ft., 2-story wood, presence of asbestos, most recent use—classrooms, off-site use only

Bldg. 12712, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330288
Status: Unutilized
Comment: 15500 sq ft., 1-story concrete block, needs rehab, presence of asbestos, most recent use—gymnasium, off-site use only

Bldgs. 332–333, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330289–219330290
Status: Unutilized
Comment: 5340 sq ft., 1-story wood, needs repair, presence of asbestos, most recent use—laboratory, off-site use only

Bldg. 334, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330291
Status: Unutilized
Comment: 4279 sq ft., 1-story wood, possible termite damage, presence of asbestos, most recent use—medical admin., off-site use only

Bldg. 335, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330292
Status: Unutilized
Comment: 4300 sq ft., 1-story wood, possible termite damage, needs repair, presence of asbestos, most recent use—laboratory, off-site use only

Bldg. 353, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330293
Status: Unutilized
Comment: 5157 sq ft., 1-story wood, presence of asbestos, most recent use—laboratory, off-site use only

Bldg. 352, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330294
Status: Unutilized
Comment: 560 sq ft., 1-story metal, presence of asbestos, most recent use—equip. storage, off-site use only

Bldg. 18703, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330295
Status: Unutilized
Comment: 4524 sq ft., 2-story wood, presence of asbestos, most recent use—storage, off-site use only

Bldg. 18705, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330296
Status: Unutilized
Comment: 2632 sq ft., 1-story, presence of asbestos, off-site use only

Bldg. 10501
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410264
Status: Unutilized
Comment: 2516 sq. ft.; 1 story; wood; needs rehab.; most recent use—office; off-site use only

Bldg. 10601
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410265
Status: Unutilized
Comment: 1334 sq. ft.; 1 story; wood; most recent use—office; off-site use only

Bldg. 20303
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410266
Status: Unutilized
Comment: 2376 sq. ft.; 1 story; wood; needs rehab.; most recent use—office; off-site use only

Bldg. 41504
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410267
Status: Unutilized
Comment: 2516 sq. ft.; 1 story; wood; needs rehab.; most recent use—store; off-site use only

Bldg. 963
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410268
Status: Unutilized
Comment: 18,471 sq. ft.; 1 story; wood; needs rehab.; most recent use—warehouse; off-site use only

Bldg. 11813
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410269
Status: Unutilized
Comment: 70 sq. ft.; 1 story; metal; needs rehab.; most recent use—storage; off-site use only

Bldg. 21314
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410270
Status: Unutilized
Comment: 85 sq. ft.; 1 story; needs rehab.; most recent use—storage; off-site use only

Bldg. 951
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410271
Status: Unutilized

Comment: 17,825 sq. ft.; 1 story; wood; needs rehab.; most recent use—workshop; off-site use only

Bldg. 12809
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410272
Status: Unutilized
Comment: 2788 sq. ft.; 1 story; wood; needs rehab.; most recent use—maintenance shop; off-site use only

Bldg. 10306
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410273
Status: Unutilized
Comment: 195 sq. ft.; 1 story; wood; most recent use—oil storage shed; off-site use only

Bldg. P–8582
Hunter Army Airfield
Savannah, GA, Chatham, Zip: 31409–
Landholding Agency: Army
Property Number: 219420355
Status: Unutilized
Comment: 5892 sq. ft.; 2-story; steel; needs major repairs; most recent use—radar tower; off-site use only

Bldg. T–723
Hunter Army Airfield
Savannah, GA, Chatham, Zip: 31409–
Landholding Agency: Army
Property Number: 219440403
Status: Unutilized
Comment: 9190 sq. ft.; 1-story wood frame; needs rehab; most recent use—storage; off-site use only

Bldg. T–121
Hunter Army Airfield
Savannah, GA, Chatham, Zip: 31409–
Landholding Agency: Army
Property Number: 219440404
Status: Unutilized
Comment: 1842 sq. ft.; 1-story wood frame; needs rehab; most receent use—admin.; off-site use only

Bldg. T154
Fort Stewart
Hinesville, GA, Liberty, Zip: 31314–
Landholding Agency: Army
Property Number: 219440405
Status: Unutilized
Comment: 1440 sq. ft.; 1-story aluminum frame; needs rehab; most recent use—aces. facility; off-site use only

Bldg. T155
Fort Stewart
Hinesville, GA, Liberty, ZIP: 31314–
Landholding Agency: Army
Property Number: 219440406
Status: Unutilized
Comment: 1440 sq. ft.; 1-story aluminum frame; needs rehab; most reent use—aces. facility; off-site use only

Bldg. T284
Fort Stewart
Hinesville, GA, Liberty, Zip: 31314–
Landholding Agency: Army
Property Number: 219440407
Status: Unutilized
Comment: 960 sq. ft.; 1-story metal frame; needs rehab; most recent use—gen. storehouse; off-site use only

Bldg. TT0791
Fort Stewart
Hinesville, GA, Liberty, Zip: 31314–
Landholding Agency: Army
Property Number: 219440408
Status: Unutilized
Comment: 1440 sq. ft.; 1-story aluminum frame; needs rehab; most recent use—aces. facility; off-site use only

Bldg. TT0792
Fort Stewart
Hinesville, GA, Liberty, Zip: 31314–
Landholding Agency: Army
Property Number: 219440409
Status: Unutilized
Comment: 1440 sq. ft., 1-story aluminum frame, needs rehab, most recent use—aces. facility, off-site use only

Bldg. TT0793
Fort Stewart
Hinesville, GA, Liberty, Zip: 31314–
Landholding Agency: Army
Property Number: 219440410
Status: Unutilized
Comment: 1440 sq. ft., 1-story aluminum frame, needs rehab, most recent use—aces. facility, off-site use only

Bldg. T8041
Fort Stewart
Hinesville, GA, Liberty, Zip: 31314–
Landholding Agency: Army
Property Number: 219440411
Status: Unutilized
Comment: 1296 sq. ft., 1-story wood frame, needs rehab, most recent use—storehouse, off-site use only

Bldg. T9591
Fort Stewart
Hinesville, GA, Liberty, Zip: 31314–
Landholding Agency: Army
Property Number: 219440412
Status: Unutilized
Comment: 11462 sq. ft., 1-story wood frame, needs rehab, most recent use—theater w/ dressing room, off-site use only.

Hawaii

P–88
Aliamanu Military Reservation
Honolulu Co: Honolulu, HI 96818
Location: Approx. 600 feet from Main Gate on Aliamanu Drive
Landholding Agency: Army
Property Number: 219030324
Status: Unutilized
Comment: 45216 sq. ft. underground tunnel complex, pres. of asbestos, clean-up required of contamination, use of respirator required by those entering property, use limitations

Bldg. 302
Fort Shafer
Honolulu, HI 96818
Landholding Agency: Army
Property Number: 219320236
Status: Unutilized
Comment: 39 sq. ft., most recent use—sentry station, off-site use only

Facility T–119
Fort Shafter
Honolulu, HI 96818
Landholding Agency: Army
Property Number: 219430252
Status: Unutilized
Comment: 10205 sq. ft., wood structure, some termite damage, most recent use—above ground swimming pool, off-site use only

Indiana

Bldg. 703–1C
Indiana Army Ammunition Plant
Charlestown Co: Clark, IN
Location: Gate 22 off Highway 22
Landholding Agency: Army
Property Number: 219013761
Status: Unutilized
Comment: 4000 sq. ft.; 2 story brick frame; possible asbestos; most recent use, exercise area.

Bldg. 1011 (Portion of)
Indiana Army Ammunition Plant
Charlestown Co: Clark, IN
Location: East of State Highway 62 at Gate 3
Landholding Agency: Army
Property Number: 219013762
Status: Unutilized
Comment: 4040 sq. ft.; 1 story concrete block frame; possible asbestos; secured area with alternate access; most recent use—office

Bldg. 1001 (Portion of)
Indiana Army Ammunition Plant
Charlestown Co: Clark, IN
Location: South end of 3rd Street, East of Highway 62 at entrance gate.
Landholding Agency: Army
Property Number: 219013763
Status: Unutilized
Comment: 55630 sq. ft.; 1 story concrete block; possible asbestos; secured area with alternate access; most recent use—cloth bag manufacturing.

Bldg. 2542
Indiana Army Ammunition Plant
Charlestown Co: Clark, IN 47111
Landholding Agency: Army
Property Number: 219240717
Status: Unutilized
Comment: 1954 sq. ft., 1 story concrete block, secured area w/alternate access, asbestos, most recent use—heating facility

Bldg. 2531
Indiana Army Ammunition Plant
Charlestown Co: Clark, IN 47111
Landholding Agency: Army
Property Number: 219240718
Status: Unutilized
Comment: 119746 sq. ft., 1 story concrete block, secured area w/alternate access, asbestos, most recent use—storage

Bldgs. 7215, 7216
Indiana Army Ammunition Plant
Charlestown Co: Clark, IN 47111
Landholding Agency: Army
Property Number: 219330297
Status: Unutilized
Comment: roadside shelters, no utilities, located on Indiana State Highway Right of Way

Kansas

Bldg. T–2549, Fort Riley
Ft. Riley, KS, Geary, Zip: 66442
Landholding Agency: Army
Property Number: 219310251
Status: Unutilized
Comment: 3082 sq. ft., 1-story wood frame, needs rehab, presence of asbestos, most recent use—storage

Bldg. 166, Fort Riley

Ft. Riley, KS, Geary, Zip: 66442–
Landholding Agency: Army
Property Number: 219410325
Status: Unutilized
Comment: 3803 sq. ft., 3-story brick residence, needs rehab, presence of asbestos, located within National Registered Historic District

Bldg. 184, Fort Riley
Ft. Riley, KS, Zip: 66442–
Landholding Agency: Army
Property Number: 219430146
Status: Unutilized
Comment: 1959 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—boiler plant, historic district

Bldg. T–1030
Fort Leavenworth
Ft. Leavenworth, KS, Leavenworth, Zip: 66027–
Landholding Agency: Army
Property Number: 219440413
Status: Unutilized
Comment: 19377 sq. ft., 1-story wood frame, most recent use—storage off-site use only

Bldg. T–1035
Fort Leavenworth
Ft. Leavenworth, KS, Leavenworth, Zip: 66027–
Landholding Agency: Army
Property Number: 219440414
Status: Unutilized
Comment: 496 sq. ft., 1-story wood frame, most recent use—storage, off-site use only

Bldg. 1362
Fort Leavenworth
Ft. Leavenworth, KS, Leavenworth, Zip: 66027–
Landholding Agency: Army
Property Number: 219440415
Status: Unutilized
Comment: 863 sq. ft., wood frame, asbestos cement shingles, most recent use—office, off-site use only

Bldg. 1457
Fort Leavenworth
Ft. Leavenworth, KS, Leavenworth, Zip: 66027–
Landholding Agency: Army
Property Number: 219440416
Status: Unutilized
Comment: 863 sq. ft., 1-story wood frame, asbestos cement shingles, most recent use—office, off-site use only

Bldg. 1458
Fort Leavenworth
Ft. Leavenworth, KS, Leavenworth, Zip: 66027–
Landholding Agency: Army
Property Number: 219440417
Status: Unutilized
Comment: 863 sq. ft., wood frame, asbestos cement shingles, most recent use—office, off-site use only

Bldg. 1462
Fort Leavenworth
Ft. Leavenworth, KS, Leavenworth, Zip: 66027–
Landholding Agency: Army
Property Number: 219440418
Status: Unutilized
Comment: 863 sq. ft., 1-story wood frame, asbestos cement shingles, most recent use—office, off-site use only

Bldg. 1464
Fort Leavenworth
Ft. Leavenworth, KS, Leavenworth, Zip: 66027–
Landholding Agency: Army
Property Number: 219440419
Status: Unutilized
Comment: 863 sq. ft., 1-story wood frame, asbestos cement shingles, most recent use—office, off-site use only

Bldg. 1358
Fort Leavenworth
Ft. Leavenworth, KS, Leavenworth, Zip: 66027–
Landholding Agency: Army
Property Number: 219440420
Status: Unutilized
Comment: 1075 sq. ft., 1-story wood frame, asbestos cement shingles, most recent use—office, off-site use only

Bldg. 1359
Fort Leavenworth
Ft. Leavenworth, KS, Leavenworth, Zip: 66027–
Landholding Agency: Army
Property Number: 219440421
Status: Unutilized
Comment: 1075 sq. ft., 1-story wood frame, asbestos cement shingles, most recent use—office, off-site use only

Bldg. 1454
Fort Leavenworth
Ft. Leavenworth, KS, Leavenworth, Zip: 66027–
Landholding Agency: Army
Property Number: 219440422
Status: Unutilized
Comment: 1075 sq. ft., 1-story wood frame, asbestos cement shingles, most recent use—office, off-site use only

Bldg. 1455
Fort Leavenworth
Ft. Leavenworth, KS, Leavenworth, Zip: 66027–
Landholding Agency: Army
Property Number: 219440423
Status: Unutilized
Comment: 1075 sq. ft., 1-story wood frame, asbestos cement shingles, most recent use—office, off-site use only

Bldg. 1461
Fort Leavenworth
Ft. Leavenworth, KS, Leavenworth, Zip: 66027–
Landholding Agency: Army
Property Number: 219440424
Status: Unutilized
Comment: 1075 sq. ft., 1-story wood frame, asbestos cement shingles, most recent use—office, off-site use only

Bldg. T–2038, Fort Riley
Ft. Riley, KS, Geary, Zip: 66442–
Landholding Agency: Army
Property Number: 219440443
Status: Unutilized
Comment: 1324 sq. ft., 1 story wood frame, needs rehab, presence of asbestos, most recent use—storage

Bldg. T–2049, Fort Riley
Ft. Riley, KS, Geary, Zip: 66442–
Landholding Agency: Army
Property Number: 219440444
Status: Unutilized
Comment: 3255 sq. ft., 1 story wood frame, needs rehab, presence of asbestos, most recent use—storage

Bldg. T–2449, Fort Riley
Ft. Riley, KS, Geary, Zip: 66442–
Landholding Agency: Army
Property Number: 219440445
Status: Unutilized
Comment: 3057 sq. ft., 1 story wood frame, needs rehab, presence of asbestos, most recent use—storage

Kentucky

Bldg. 109
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430150
Status: Unutilized
Comment: 24164 sq. ft., 2-story, needs repair, presence of asbestos, most recent use—transient family quarters

Bldg. 234
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430152
Status: Unutilized
Comment: 8042 sq. ft., 2-story, needs repair, presence of asbestos, most recent use—admin., off-site use only

Bldg. 236
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430153
Status: Unutilized
Comment: 7020 sq. ft., 2-story, needs repair, presence of asbestos, most recent use—admin., off-site use only

Bldg. 238
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430154
Status: Unutilized
Comment: 7020 sq. ft., 2-story, needs repair, presence of asbestos, most recent use—Educ. center, off-side use only

Bldg. 240
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430155
Status: Unutilized
Comment: 7020 sq. ft., 2-story, needs repair, presence of asbestos, most recent use—educ. center, off-site use only

Bldgs. 242, 244
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430156
Status: Unutilized
Comment: 7020 sq. ft., 2-story, needs repair, presence of asbestos, most recent use—educ. center, off-site use only

Bldg. 2104
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430158
Status: Unutilized
Comment: 2000 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—classroom, off-site use only

Bldg. 2107
Fort Campbell

Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430160
Status: Unuitilized
Comment: 7528 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—classroom, off-site use only

Bldg. 2108
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430161
Status: Unutilized
Comment: 3823 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—classroom, off-site use only

Bldg. 2739
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430163
Status: Unutilized
Comment: 2750 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—office, off-site use only

Bldg. 2737
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430164
Status: Unutilized
Comment: 2500 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—office, off-site use only

Bldg. 2951
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430165
Status: Unutilized
Comment: 2500 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—office, off-site use only

Bldg. 2230
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430166
Status: Unutilized
Comment: 5310 sq. ft., 2-story, needs repair, presence of asbestos, most recent use—storage, off-site use only

Bldg. 2788
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430167
Status: Unutilized
Comment: 1813 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—storage, off-site use only

Bldg. 3184
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430168
Status: Unutilized
Comment: 2625 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—storage, off-site use only

Bldg. 6412
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223-
Landholding Agency: Army
Property Number: 219430169
Status: Unutilized
Comment: 10944 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—storage, off-site use only

Bldg. 6126
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223-
Landholding Agency: Army
Property Number: 219430170
Status: Unutilized
Comment: 3376 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—storage, off-site use only

Bldg. 2756
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223-
Landholding Agency: Army
Property Number: 219430171
Status: Unutilized
Comment: 5310 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—housing, off-site use only

Bldg. 3170
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223-
Landholding Agency: Army
Property Number: 219430172
Status: Unutilized
Comment: 2750 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—maint. shop, off-site use only

Bldg. 5343
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223-
Landholding Agency: Army
Property Number: 219430173
Status: Unutilized
Comment: 3376 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—maint. shop, off-site use only

Bldg. 6408
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223-
Landholding Agency: Army
Property Number: 219430174
Status: Unutilized
Comment: 1350 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—admin., off-site use only

Bldg. 5345
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223-
Landholding Agency: Army
Property Number: 219430175
Status: Unutilized
Comment: 2957 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—maint. shop, off-site use only

Bldg. 6127
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223-
Landholding Agency: Army
Property Number: 219430176
Status: Unutilized
Comment: 4020 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—maint. shop, off-site use only

Bldg. 6351
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223-
Landholding Agency: Army
Property Number: 219430177
Status: Unutilized
Comment: 3108 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—maint. shop, off-site use only

50 Bldgs.
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223-
Landholding Agency: Army
Property Number: 219420365
Status: Unutilized
Location: #2750, 2752, 2754, 2758, 2943, 2945, 2947, 2970, 2972, 2974, 2976, 2978, 2980, 2982, 2984, 2986, 2988, 3111, 3113, 3115, 3119, 3121, 3123, 3125, 3127, 3129, 3138, 3140, 3150–3169, 3178, 3188
Comment: 5310 sq. ft. each, 2-story, presence of asbestos, most recent use—barracks and training, off-site use only

13 Bldgs.
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223-
Landholding Agency: Army
Property Number: 219420367
Status: Unutilized
Location: #2776, 2946, 3130–3131, 3136–3137, 3139, 3144–3147, 3176, 3186
Comment: 2750 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only

Bldgs. 2778, 2786, 2939
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223-
Landholding Agency: Army
Property Number: 219420368
Status: Unutilized
Comment: 3250 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only

Bldg. 2941
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223-
Landholding Agency: Army
Property Number: 219420369
Status: Unutilized
Comment: 2950 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only

Bldg. 2944
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420370
Status: Unutilized
Comment: 3000 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only

Bldg. 2957
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420371
Status: Unutilized
Comment: 2500 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only

Bldg. 2959
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420372
Status: Unutilized
Comment: 2500 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only

Bldg. 2965

Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420373
Status: Unutilized
Comment: 2505 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only

Bldg. 2967
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420374
Status: Unutilized
Comment: 3000 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only

Bldgs. 2774, 2940
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420375
Status: Unutilized
Comment: 2950 sq. ft., 1-story, presence of asbestos, most recent use—dining facilities, off-site use only

Bldgs. 3134, 3148
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420376
Status: Unutilized
Comment: 2350 sq. ft., 1-story, presence of asbestos, most recent use—dining facilities, off-site use only

Bldg. 2969
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420377
Status: Unutilized
Comment: 3340 sq. ft., 1-story, presence of asbestos, most recent use—dining facility, off-site use only

Bldg. 3132
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420378
Status: Unutilized
Comment: 2200 sq. ft., 1-story, presence of asbestos, most recent use—dining facility, off-site use only

Bldg. 3142
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420379
Status: Unutilized
Comment: 2310 sq. ft., 1-story, presence of asbestos, most recent use—dining facility, off-site use only

Bldg. 3143
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420380
Status: Unutilized
Comment: 2750 sq. ft., 1-story, presence of asbestos, most recent use—dining facility, off-site use only

Bldg. 3149
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420381
Status: Unutilized
Comment: 2365 sq. ft., 1-story, presence of asbestos, most recent use—dining facility, off-site use only

Bldg. 2782
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420382
Status: Unutilized
Comment: 2950 sq. ft., 1-story, presence of asbestos, most recent use—training, off-site use only

Bldgs. 2907–2908
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420383
Status: Unutilized
Comment: 4800 sq. ft., 2-story, presence of asbestos, most recent use—training, off-site use only

Bldg. 2938
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420384
Status: Unutilized
Comment: 3250 sq. ft., 1-story, presence of asbestos, most recent use—training, off-site use only

Bldg. 2942
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420385
Status: Unutilized
Comment: 2950 sq. ft., 1-story, presence of asbestos, most recent use—training, off-site use only

Bldg. 2953
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420386
Status: Unutilized
Comment: 1900 sq. ft., 1-story, presence of asbestos, most recent use—training, off-site use only

Bldg. 3182
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420387
Status: Unutilized
Comment: 2550 sq. ft., 1-story, presence of asbestos, most recent use—training, off-site use only

Bldg. 2948
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420388
Status: Unutilized
Comment: 2350 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only

Bldg. 2961
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420389
Status: Unutilized
Comment: 1800 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only

Bldg. 2955
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420390
Status: Unutilized
Comment: 1890 sq. ft., 1-story, presence of asbestos, most recent use—conf. room, off-site use only

Bldg. 6550
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410300
Status: Unutilized
Comment: 25,701 sq. ft., most recent use—storage, off-site use only

Bldg. 7162
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410301
Status: Unutilized
Comment: 1256 sq. ft., most recent use—storage, off-site use only

Bldg. 5417
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410309
Status: Unutilized
Comment: 8208 sq. ft., 1-story: needs rehab.; presence of asbestos; most recent use—vehicle maintenance shop, off-site use only

Bldg. 05451
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410337
Status: Unutilized
Comment: 200 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—military vehicle gas station

Bldg. 05624
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410338
Status: Unutilized
Comment: 2732 sq. ft., 1-story, need rehab, presence of asbestos, most recent use—maintenance shop

Bldg. 05625
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410339
Status: Unutilized
Comment: 2732 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop

Bldg. 05811
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410342
Status: Unutilized
Comment: 1010 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—dispatch bldg.

Bldg. 05813, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410343
Status: Unutilized
Comment: 2700 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—vehicle shop

Bldg. 05815, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410344
Status: Unutilized
Comment: 1350 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop

Bldg. 05817, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410345
Status: Unutilized
Comment: 3108 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop

Bldg. 05819, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410346
Status: Unutilized
Comment: 3376 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop

Bldg. 05823, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410347
Status: Unutilized
Comment: 2732 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop

Bldg. 05829, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410348
Status: Unutilized
Comment: 3376 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop

Bldg. 5712
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410354
Status: Unutilized
Comment: 2732 sq. ft., 1-story, needs rehab.; presence of asbestos, most recent use—vehicle maintenance shop; off-site use only

Bldg. 5730
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410364
Status: Unutilized
Comment: 9000 sq. ft., 1-story, needs rehab.; presence of asbestos, most recent use—vehicle maintenance shop; off-site use only

Bldg. 01472, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219440278
Status: Unutilized
Comment: 8029 sq. ft., 1-story, most recent use—scout bldg., needs rehab, presence of asbestos, off-site use only

Bldg. 02234, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219440279
Status: Unutilized
Comment: 5310 sq. ft., 2-story, most recent use—storage, needs rehab, presence of asbestos, off-site use only

Bldg. 02238, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219440280
Status: Unutilized
Comment: 5310 sq. ft., 2-story, most recent use—storage, needs rehab, presence of asbestos, off-site use only

Bldg. 02239, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219440281
Status: Unutilized
Comment: 5310 sq. ft., 2-story, most recent use—storage, needs rehab, presence of asbestos, off-site use only

Bldg. 02240, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219440282
Status: Unutilized
Comment: 5310 sq. ft., 2-story, most recent use—storage, needs rehab, presence of asbestos, off-site use only

Bldg. 02241, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219440283
Status: Unutilized
Comment: 5310 sq. ft., 2-story, most recent use—storage, needs rehab, presence of asbestos, off-site use only

Bldg. 02243, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219440284
Status: Unutilized
Comment: 5310 sq. ft., 2-story, most recent use—storage, needs rehab, presence of asbestos, off-site use only

Bldg. 02247, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219440285
Status: Unutilized
Comment: 5310 sq. ft., 2-story, most recent use—storage, needs rehab, presence of asbestos, off-site use only

Bldg. 02748, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219440286
Status: Unutilized
Comment: 2950 sq. ft., 1-story, most recent use—storage, needs rehab, presence of asbestos, off-site use only

Bldg. 02268, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219440287
Status: Unutilized
Comment: 2250 sq. ft., 1-story, most recent use—classroom, needs rehab, presence of asbestos, off-site use only

Bldg. 02951, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219440288
Status: Unutilized
Comment: 2500 sq. ft., 1-story, most recent use—admin., needs rehab, presence of asbestos, off-site use only

Bldg. 05632, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219440289
Status: Unutilized
Comment: 2232 sq. ft., 1-story, most recent use—veh. maint. shop, needs rehab, presence of asbestos, off-site use only

Bldg. 05634, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219440290
Status: Unutilized
Comment: 2232 sq. ft., 1-story, most recent use—veh. maint. shop, needs rehab, presence of asbestos, off-site use only

Bldg. 05638, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219440291
Status: Unutilized
Comment: 2232 sq. ft., 1-story, most recent use—veh. maint. shop, needs rehab, presence of asbestos, off-site use only

Bldg. 05642, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219440292
Status: Unutilized
Comment: 2232 sq. ft., 1-story, most recent use—veh. maint. shop, needs rehab, presence of asbestos, off-site use only

Bldg. 05644, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219440293
Status: Unutilized
Comment: 2232 sq. ft., 1-story, most recent use—veh. maint. shop, needs rehab, presence of asbestos, off-site use only

Maryland

Bldgs. E5878, E5879
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Hardford MD 21010–5425
Landholding Agency: Army
Property Numbers: 219012652, 219012653
Status: Unutilized
Comment: 213 sq. ft. each; structural deficiencies; possible asbestos; and contamination.

Bldg. 10302
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Hardford MD 21010–5425
Landholding Agency: Army
Property Number: 219012666
Status: Unutilized
Comment: 42 sq. ft.; possible asbestos; most recent use—pumping station.

Bldg. E5975
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Number: 219012677
Status: Unutilized

Comment: 650 sq. ft.; possible contamination; structural deficiencies most recent use—training exercises/chemicals and explosives; potential use—storage.

Bldg. 6687
Fort George G. Meade
Mapes and Zimborski Roads
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219220446
Status: Unutilized
Comment: 1150 sq. ft., presence of asbestos, wood frame, most recent use—veterinarian clinic, off-site removal only

Bldgs. 303–308, 323–328, 333–337
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219320293
Status: Unutilized
Comment: 4720 sq. ft. ea., 2 story wood frame, possible asbestos, most recent use—barracks/classrooms, fair to good condition, off-site use only

Bldg. 309
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219320294
Status: Unutilized
Comment: 2324 sq. ft., 1 story wood frame, possible asbestos, fair to good condition, off-site use only.

Bldgs. 312, 319
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219320295
Status: Unutilized
Comment: 2594 sq. ft., 1 story wood frame, possible asbestos, most recent use—storage, fair condition, off-site use only

Bldgs. 313–314, 317–318
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219320296
Status: Unutilized
Comment: 1144 sq. ft., 1 story wood frame, possible asbestos, most recent use—storage, fair to good condition, off-site use only

Bldgs. 302, 329, 332, 339
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219320297
Status: Unutilized
Comment: 2208 sq. ft., 1 story wood frame, possible asbestos, most recent use—storage, fair condition, off-site use only

Bldg. 2239
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219320298
Status: Unutilized
Comment: 24528 sq. ft., 1 story concrete, poss. asbestos, most recent use—mess hall, needs rehab, off-site use only

Bldg. 3036
Aberdeen Proving Ground
Harford County MD 21005–5001
Landholding Agency: Army
Property Number: 219320302
Status: Unutilized
Comment: 11016 sq. ft., 1 story, needs rehab, most recent use—gym, presence of asbestos

Bldg. E4890
Aberdeen Proving Ground
Harford County MD 21005–5001
Landholding Agency: Army
Property Number: 219330434
Status: Unutilized
Comment: 6250 sq. ft., 1 story, needs rehab, presence of asbestos

Bldgs. 2251, 2252
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219430180
Status: Unutilized
Comment: 648 & 3594 sq. ft., 1 story, concrete/metal structure, needs rehab, presence of asbestos, most recent use—heating plant & admin.

Michigan

Bldg. 300, Arsenal Acres
24140 Mound Road
Warren, MI 48091
Landholding Agency: Army
Property Number: 219220448
Status: Unutilized
Comment: 52 sq. ft., sentry station, secured area w/alternate access.

Bldg. 301, Arsenal Acres
24140 Mound Road
Warren, MI 48091
Landholding Agency: Army
Property Number: 219220449
Status: Unutilized
Comment: 3125 sq. ft., 2-story colonial style home, secured area w/alternate access.

Bldgs. 302, 303
24140 Mound Road
Warren, MI 48091
Landholding Agency: Army
Property Numbers: 219220450–219220451
Status: Unutilized
Comment: 2619 sq. ft. ea., 2-story colonial style home, secured area w/alternate access.

Bldgs. 304, 305
24140 Mound Road
Warren, MI 48091
Landholding Agency: Army
Property Numbers: 219220452–219220787
Status: Unutilized
Comment: 2443 sq. ft. ea., 2-story colonial style home, secured area w/alternate access.

Bldgs. 306, 307, Arsenal Acres
24140 Mound Road
Warren, MI 48091
Landholding Agency: Army
Property Numbers: 219410326, 219410327
Status: Unutilized
Comment: 2443 sq. ft. ea., 2-story colonial style homes, secured area w/alternate access

Bldg. 308, Arsenal Acres
24140 Mound Road
Warren, MI 48091
Landholding Agency: Army
Property Number: 219410328
Status: Unutilized
Comment: 205 sq. ft., 1-story brick, secured area w/alternate access

Mississippi

Bldg. VB201
Vicksburg Reserve Center
Vicksburg, MS 39180–0055
Landholding Agency: Army
Property Number: 219330308
Status: Unutilized
Comment: 15444 sq. ft., 1 story metal frame, most recent use—army reserve center, off-site use only

Bldg. VB202
Vicksburg Reserve Center
Vicksburg MS 39180–0055
Landholding Agency: Army
Property Number: 219330309
Status: Unutilized
Comment: 800 sq. ft., 1 story metal frame, most recent use—admin., off-site use only

Bldg. VB213
Vicksburg Reserve Center
Vicksburg MS 39180–0055
Landholding Agency: Army
Property Number: 219330310
Status: Unutilized
Comment: 180 sq. ft., 1 story concrete block, most recent use—storehouse, off-site use only

Missouri

Bldg. T3057
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219220580
Status: Underutilized
Comment: 2650 sq. ft., 1 story wood frame, presence of asbestos, off-site use only, not handicapped accessible, most recent use—admin/general purpose

Bldg. T2383
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219230228
Status: Underutilized
Comment: 9267 sq. ft., 1 story presence of asbestos, off-site use only, most recent use—general purpose

Bldg. T1376
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219230237
Status: Underutilized
Comment: 1296 sq. ft., 1 story, presence of asbestos, off-site use only, most recent use—Hdqtrs building

Bldg. T599
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219230260
Status: Underutilized
Comment: 18270 sq. ft., 1 story, presence of asbestos, off-site use only, most recent use—storehouse

Bldg. T1311
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219230261
Status: Underutilized
Comment: 2740 sq. ft., 1 story, presence of asbestos, off-site use only, most recent use—storehouse

Bldg. T1333
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219230263
Status: Underutilized
Comment: 1144 sq. ft., 1 story, presence of asbestos, off-site use only, most recent use—storehouse

Bldgs. T1270, T1329
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Numbers: 219320307, 219330300
Status: Unutilized
Comment: 1296 sq. ft., 1 story, most recent use—admin., possible asbestos, off-site use only

Bldg. T427
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219330299
Status: Underutilized
Comment: 10245 sq. ft., 1 story, presence of asbestos, most recent use—post office, off-site use only

Bldg. T2206
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219330302
Status: Unutilized
Comment: 1440 sq. ft., 1 story, presence of asbestos and contamination, most recent use—storage, off-site use only

Bldg. T2368
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219330306
Status: Underutilized
Comment: 3663 sq. ft., 1 story, presence of asbestos, off-site use only

Bldg. T3005
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219330307
Status: Underutilized
Comment: 2220 sq. ft., 1 story, presence of asbestos, most recent use—motor repair shop, off-site use only

Bldg. T2171
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219340212
Status: Unutilized
Comment: 1296 sq. ft., 1 story wood frame, no handicap fixtures, lead based paint, off-site use only, most recent use

Bldg. T1258
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219340213
Status: Underutilized
Comment: 2360 sq. ft. ea., 1 story wood frame, no handicap fixtures, possible asbestos, lead based paint, off-site use only, most recent use—warehouses

Bldg. T2312
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219340217
Status: Underutilized
Comment: 1403 sq. ft., 1 story wood frame, lead based paint, no handicap fixtures, off-site use only, most recent—use—paint shop

Bldg. T6822
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219340219
Status: Underutilized
Comment: 4000 sq. ft., 1 story wood frame, no handicap fixtures, off-site use only, most recent use—storage

Bldg. T1363
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420392
Status: Underutilized
Comment: 1296 sq. ft., 1-story, presence of lead base paint, most recent use—storage, off-site use only

Bldg. T1364
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420393
Status: Underutilized
Comment: 1144 sq. ft., 1-story, presence of lead base paint, most recent use—storage, off-site use only

Bldg. T1687
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski MO, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420395
Status: Underutilized
Comment: 2646 sq. ft., 1-story, presence of lead base paint, most recent use—sotrage, off-site use only

Bldg. T2550
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski MO, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420396
Status: Underutilized
Comment: 224 sq. ft., l-story, presence of lead base paint, most recent use—storage, off-site use only

Bldg. T281
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420397
Status: Underutilized
Comment: 4230 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T282
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420398
Status: Underutilized
Comment: 15923 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T283
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420431
Status: Underutilized
Comment: 6163 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T407
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420432
Status: Underutilized
Comment: 2265 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T408
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420433
Status: Underutilized
Comment: 0296 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T409
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420434
Status: Underutilized
Comment: 2450 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T410
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420435
Status: Underutilized
Comment: 2664 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T411
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420436
Status: Underutilized
Comment: 4720 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T412
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army

Property Number: 219420437
Status: Underutilized
Comment: 1296 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only
Bldg. T415
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420438
Status: Underutilized
Comment: 1144 sq. ft. 1-story, presence of lead base paint, most recent use—admin/gen., purpose, off-site use only
Bldg. T429
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420439
Status: Underutilized
Comment: 2475 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only
Bldg. T1100
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420440
Status: Underutilized
Comment: 3236 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only
Bldg. T1497
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420441
Status: Underutilized
Comment: 4720 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only
Bldg. T2056
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420442
Status: Underutilized
Comment: 3600 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only
Bldg. T2057
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420443
Status: Underutilized
Comment: 3200 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only
Bldg. T2066
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420444
Status: Underutilized
Comment: 3307 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only
Bldg. T2138
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420445
Status: Underutilized
Comment: 1676 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only
Bldg. T2139
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420446
Status: Underutilized
Comment: 3663 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only
Bldg. T–2143
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219440324
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead base paint, most recent use—barracks
Bldg. T–2144
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219440325
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead base paint, most recent use—barracks
Bldg. T–2158
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219440326
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead base paint, most recent use—barracks
Bldg. T–2159
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219440327
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead base paint, most recent use—barracks
Bldg. T–2161
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219440328
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead base paint, most recent use—barracks
Bldg. T–2162
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219440329
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks
Bldg. T–2173
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219440330
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks
Bldg. T–2188
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219440331
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks
Bldg. T–2189
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219440332
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks
Bldg. T–2190
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219440333
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks
Bldg. T–2191
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219440334
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks
Bldg. T–2197
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219440335
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks

Montana

USARC Bozeman Reserve Center

Bozemand Co: Gallatin MT
Landholding Agency: Army
Property Number: 219420391
Status: Unutilized
Comment: 15236 sq. ft., 3 story reserve center on .54 acres, bldg. on Natl. Register of Historic Places, secured area w/alternate access

Nevada

Bldgs. 00425–00449
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219011946
Status: Unutilized
Comment: 1310–1640 sq. ft. each, one floor residential, semi/wood construction, good condition.

New Jersey

Bldg. 421, Fort Monmouth
Ft. Monmouth Co: Monmouth NJ 07703
Landholding Agency: Army
Property Number: 219330435
Status: Unutilized
Comment: 4720 sq. ft., 2 story, most recent use—office

Bldg. 2529, Fort Monmouth
Charles Wood Area
Landholding Agency: Army
Property Number: 219330436
Status: Unutilized
Comment: 4413 sq. ft., 2 story, needs rehab, most recent use—administration

Bldg. 197
Fort Monmouth
Ft. Monmouth Co: Monmouth NJ 07703
Landholding Agency: Army
Property Number: 219440442
Status: Unutilized
Comment: 1240 sq. ft., 1 story, most recent use—motor repair shop

New Mexico

Bldgs. 108–109, 118–119
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Numbers: 219330327–219330328, 219330330–219330331
Status: Unutilized
Comment: 3561 sq. ft. ea., 2-story, presence of asbestos, most recent use—admin., off-site use only

Bldg. 117
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330329
Status: Unutilized
Comment: 1688 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only

Bldgs. 148–150
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Numbers: 219330332–219330334
Status: Unutilized
Comment: 3570 sq. ft. ea., 2-story, needs rehab, presence of asbestos, most recent use—admin., off-site use only

Bldg. 357
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330335
Status: Unutilized
Comment: 3600 sq. ft., 2-story, presence of asbestos, most recent use—admin., off-site use only

Bldg. 1758
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330336
Status: Unutilized
Comment: 1620 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only

Bldg. 1768
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330337
Status: Unutilized
Comment: 15333 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only

Bldg. 28281
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330338
Status: Unutilized
Comment: 1856 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only

Bldg. 28282
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330339
Status: Unutilized
Comment: 1850 sq. ft., 3-story, needs rehab, presence of asbestos, most recent use—admin., off-site use only

Bldg. 32980
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330340
Status: Unutilized
Comment: 451 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only

Bldg. 34252
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330341
Status: Unutilized
Comment: 720 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only

Bldg. 418
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330342
Status: Unutilized
Comment: 3690 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only

Bldg. 420
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330343
Status: Unutilized
Comment: 2407 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only

Bldg. 890
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330344
Status: Unutilized
Comment: 9011 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only

Bldg. 1348
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330345
Status: Unutilized
Comment: 720 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—storage, off-site use only

Bldg. 1738
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330346
Status: Unutilized
Comment: 1500 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only

Bldg. 1765
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330347
Status: Unutilized
Comment: 600 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only

Bldg. 21542
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330348
Status: Unutilized
Comment: 945 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only

Bldg. 22118
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330349
Status: Unutilized
Comment: 1341 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only

Bldg. 22253
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330350
Status: Unutilized
Comment: 216 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only

Bldg. 28267
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330351
Status: Unutilized

Comment: 617 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only

Bldg. 29195
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330352
Status: Unutilized
Comment: 56 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only

Bldgs. 34219, 34221
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Numbers: 219330353–219330354
Status: Unutilized
Comment: 720 sq. ft. ea., 1-story, presence of asbestos, most recent use—storage, off-site use only

Bldg. 145
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330355
Status: Unutilized
Comment: 2954 sq. ft., 1-story, presence of asbestos, most recent use—chapel, off-site use only

Bldg. 1754
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330356
Status: Unutilized
Comment: 6974 sq. ft., 1-story, presence of asbestos, most recent use—maintenance shop, off-site use only

Bldg. 19242
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330357
Status: Unutilized
Comment: 450 sq. ft., 1-story, presence of asbestos, most recent use—maintenance shop, off-site use only

Bldg. 34227
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330358
Status: Unutilized
Comment: 675 sq. ft., 1-story, presence of asbestos, most recent use—maintenance shop, off-site use only

Bldg. 34244
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330359
Status: Unutilized
Comment: 720 sq. ft., 1-story, presence of asbestos, most recent use—maintenance shop, off-site use only

Bldg. 21105
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330360
Status: Unutilized
Comment: 239 sq. ft., presence of asbestos, most recent use—veterinarian facility, off-site use only

Bldg. 21106
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330361
Status: Unutilized
Comment: 405 sq. ft., 1-story, presence of asbestos, most recent use—veterinarian facility, off-site use only

Bldg. 21310
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330362
Status: Unutilized
Comment: 1006 sq. ft., 1-story, presence of asbestos, most recent use—transmitter bldg., off-site use only

Bldg. 29890
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330363
Status: Unutilized
Comment: 450 sq. ft., 1-story, presence of asbestos, most recent use—frequency monitoring station, off-site use only

Bldg. 1868
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330364
Status: Unutilized
Comment: 41 sq. ft., 1-story, presence of asbestos, most recent use—scale house, off-site use only

Bldg. 528
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330365
Status: Unutilized
Comment: 225 sq. ft., 1-story, presence of asbestos, most recent use—decontamination shelter, off-site use only

Bldg. 1834
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330366
Status: Unutilized
Comment: 150 sq. ft., 1-story, presence of asbestos, most recent use—animal kennel, off-site use only

Bldg. 1300
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330367
Status: Unutilized
Comment: 1500 sq. ft., 1-story, presence of asbestos, most recent use—indoor small arms range, off-site use only

Bldg. 23100
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330368
Status: Unutilized
Comment: 40 sq. ft., 1-story, presence of asbestos, most recent use—sentry station, off-site use only

Bldg. 29196
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330369
Status: Unutilized
Comment: 38 sq. ft., 1-story, presence of asbestos, most recent use—power plant bldg., off-site use only

Bldg. 30774
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330370
Status: Unutilized
Comment: 176 sq. ft., 1-story, presence of asbestos, off-site use only

Bldg. 33136
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330371
Status: Unutilized
Comment: 18 sq. ft., off-site use only

New York

Bldg. 323
Fort Totten
Story Avenue
Bayside Co: Queens, NY 11359–
Landholding Agency: Army
Property Number: 219012567
Status: Underutilized
Comment: 30000 sq. ft., 3 floors, most recent use—barracks & mess facility, needs major rehab

Bldg. 304
Fort Totten
Shore Road
Bayside Co: Queens, NY 11359–
Landholding Agency: Army
Property Number: 219012570
Status: Underutilized
Comment: 9610 sq. ft., 3 floors, most recent use—hospital, needs major rehab/utilities disconnected

Bldg. 211
Fort Totten
211 Totten Avenue
Bayside Co: Queens, NY 11359–
Landholding Agency: Army
Property Number: 219012573
Status: Underutilized
Comment: 6329 sq. ft., 3 floors, most recent use—family housing, needs major rehab, utilities disconnected

Bldg. 332
Fort Totten
Theater Road
Bayside Co.: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012578
Status: Underutilized
Comment: 6288 sq.. ft., 1 floor, most recent use—theater w/stage, needs major rehab, utilities disconnected.

Bldg. 322
Fort Totten
322 Story Avenue
Bayside Co.: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012583
Status: Underutilized
Comment: 30,000 sq. ft., 3 floors, most recent use—barracks, mess & administration, utilities disconnected, needs rehab.

Bldg. 326

Fort Totten
326 Pratt Avenue
Bayside Co.: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012586
Status: Underutilized
Comment: 6000 sq. ft., 2 floors, most recent use—storage, offices & residential, utilities disconnected/needs rehab.

23 Residential Apartment Bldgs
Stewart Gardens, Stewart Army Subpost
Army Sherry Family Housing
New Windsor Co.: Orange NY 12553
Location: Y and Garden Loop Streets
Landholding Agency: Army
Property Number: 219330315
Status: Unutilized
Comment: 2 story family housing, concrete block/wood, needs rehab, scheduled to be vacated in 1996

5 Detached Garages
Stewart Gardens, Stewart Army Subpost
Army Wherry Family Housing
New Windsor Co.: Orange NY 12553
Property Number: 219330316
Status: Unutilized
Comment: 1 story garages, concrete block/wood, needs rehab, scheduled to be vacated in 1996

30 Storage Sheds
Stewart Gardens, Stewart Army Subpost
Army Wherry Family Housing
New Windsor Co.: Orange NY 12553
Property Number: 219330317
Status: Unutilized
Comment: 1 story aluminum/wood storage sheds, good condition, scheduled to be vacated in 1996

Bldg. 100, Fort Hamilton
Bellmore, NY, Nassau, Zip: 11710–
Landholding Agency: Army
Property Number: 219340254
Status: Unutilized
Comment: 155 sq.. ft., 1-story, most recent use—storage

Bldg. 200, Fort Hamilton
Bellmore, NY, Nassau, Zip: 11710–
Landholding Agency: Army
Property Number: 219340255
Status: Unutilized
Comment: 12,000 sq.. ft., 1-story, most recent use—office

Bldg. 300, Fort Hamilton
Bellmore, NY, Nassau, Zip: 11710–
Landholding Agency: Army
Property Number: 219340256
Status: Underutilized
Comment: 11,000 sq. ft., 1-story, most recent use—reserve center

Bldgs. S–2341, S–2342
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430183
Status: Unutilized
Comment: 266–484 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. S–2800
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430184
Status: Unutilized
Comment: 671 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. S–2801
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430185
Status: Unutilized
Comment: 3182 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldgs. T–196, T–197
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430186
Status: Unutilized
Comment: 3576–3809 sq. ft., 1-story, needs rehab, most recent use—maint. shop, off-site use only

Bldg. T–901
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430187
Status: Unutilized
Comment: 2305 sq. ft., 1-story, needs rehab, most recent use—admin./gen. purpose, off-site use only

Bldg. T–902
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430188
Status: Unutilized
Comment: 3350 sq. ft., 1-story, needs rehab, most recent use—training, off-site use only

Bldg. T–916
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430190
Status: Unutilized
Comment: 840 sq. ft., 1-story, needs rehab, most recent use—training facility, off-site use only

Bldg. T–2320
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430191
Status: Unutilized
Comment: 5310 sq. ft., 2-story, needs rehab, most recent use—barracks/annual training, off-site use only

Bldg. T–2321
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430192
Status: Unutilized
Comment: 5310 sq. ft., 2-story, needs rehab, most recent used—barracks/annual training, off-site use only

Bldg. T–2322
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430193
Status: Unutilized
Comment: 5310 sq ft., 2-story, needs rehab, most recent use—admin. & supply, off-site use only

Bldg. T–2406
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430194
Status: Unutilized
Comment: 4712 sq. ft., 1-story, needs rehab, most recent use—medical admin./training, off-site use only

Bldg. T–2410
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430195
Status: Unutilized
Comment: 5034 sq ft., 2-story, needs repair, 30% in runway clear zone, most recent use—housing/training, off-site use only

Bldg. T–2427
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430196
Status: Unutilized
Comment: 4345 sq. ft., 1-story, needs rehab, most recent use—storage/training, off-site use only

Bldg. T–2425
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430197
Status: Unutilized
Comment: 4340 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldgs. T–4854, T–4859
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430198
Status: Unutilized
Comment: 2592 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. T–224
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430199
Status: Unutilized
Comment: 2750 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. T–234
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430200
Status: Unutilized
Comment: 1296 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. T–239
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430201
Status: Unutilized
Comment: 2588 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. T–2338
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430202
Status: Unutilized
Comment: 159 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. T–2405

Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430203
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. T–231
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430204
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. T–232
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430205
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. T–237
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430206
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. T–238
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430207
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. T–220
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430208
Status: Unutilized
Comment: 2360 sq. ft., 1-story, needs rehab, most recent use—mess hall/training, off-site use only.

Bldg. T–225
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430209
Status: Unutilized
Comment: 2360 sq. ft., 1-story, needs rehab, most recent use—mess hall/training, off-site use only.

Bldg. T–229
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430210
Status: Unutilized
Comment: 2360 sq. ft., 1-story, needs rehab, most recent use—mess hall/training, off-site use only.

Bldg. T–240
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430211
Status: Unutilized
Comment: 2360 sq. ft., 1-story, needs rehab, most recent use—mess hall/training, off-site use only.

Bldg. T–249
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430212
Status: Unutilized
Comment: 2360 sq. ft., 1-story, needs rehab, most recent use—mess hall/training, off-site use only.

Bldg. T–2323
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430213
Status: Unutilized
Comment: 2500 sq. ft., 1-story, needs rehab, most recent use—mess hall/training, off-site use only.

Bldg. T–4834
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430214
Status: Unutilized
Comment: 2250 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

13 Bldgs.
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430215
Status: Unutilized
Location: T221–T223, T226–T228, T241–T244, T246–T248
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks/training, off-site use only.

Bldg. T–1011
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430216
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—officers quarters/training, off-site use only.

Bldg. T–1012
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430217
Status: Unutilized
Comment: 3720 sq. ft., 2-story, needs rehab, most recent use—officers quarters/training, off-site use only.

Bldg. T–2270
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430218
Status: Unutilized
Comment: 7670 sq. ft., 2-story, needs rehab, most recent use—officers quarters/training, off-site use only.

Bldg. T–2271
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430219
Status: Unutilized
Comment: 8044 sq. ft., 2-story, needs rehab, most recent use—officers quarters/training, off-site use only.

Bldg. T–2276
Fort Drum
Ft. Drum, NY, Jefferson, Zip:13602–
Landholding Agency: Army
Property Number: 219430220
Status: Unutilized
Comment: 5310 sq. ft., 2-story, needs rehab, most recent use—officers quarters/training, off-site use only.

Bldg. T–2277
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430221
Status: Unutilized
Comment: 8044 sq. ft., 2-story, needs rehab, most recent use—officers quarters, off-site use only.

Bldg. T–2402
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430222
Status: Unutilized
Comment: 5034 sq. ft., 2-story, needs rehab, most recent use—officers quarters/training, off-site use only.

Bldg. T–2404
Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219430223
Status: Unutilized
Comment: 5034 sq. ft., 2-story, needs rehab, most recent use—officers quarters/training, off-site use only.

Bldg. 900, Fort Hamilton
Bellmore, NY, Nassau, Zip: 11710–
Landholding Agency: Army
Property Number: 219430259
Status: Underutilized
Comment: 400 sq. ft., 1-story, needs rehab, most recent use—material storage

Bldg. T–12, Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219440425
Status: Unutilized
Comment: 4720 sq. ft., 2-story, most recent use—office, needs rehab, off-site use only

Bldg. T–467, Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219440426
Status: Unutilized
Comment: 1144 sq. ft., 1-story, most recent use—storage, needs rehab, off-site use only

Bldg. T–468, Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219440427
Status: Unutilized
Comment: 1144 sq. ft., 1-story, most recent use—storage, needs rehab, off-site use only

Bldg. T–683, Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219440428
Status: Unutilized
Comment: 4160 sq. ft., 1-story, most recent use—storage, needs rehab, off-site use only

Bldg. P–2012, Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219440429

Status: Unutilized
Comment: 450 sq. ft., most recent use—water distribution bldg., off-site use only

Bldg. T–2408, Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219440430
Status: Unutilized
Comment: 3202 sq. ft., 1-story, most recent use—dental clinic, needs rehab, off-site use only

Bldg. T–2420, Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219440431
Status: Unutilized
Comment: 4340 sq. ft., 1-story, most recent use—warehouse, needs rehab, off-site use only

Bldg. T–2421, Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219440432
Status: Unutilized
Comment: 4340 sq. ft., 1-story, most recent use—warehouse, needs rehab, off-site use only

Bldg. T–2422, Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219440433
Status: Unutilized
Comment: 4340 sq. ft., 1-story, most recent use—warehouse, needs rehab, off-site use only

Bldg. T–2423, Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219440434
Status: Unutilized
Comment: 4340 sq. ft., 1-story, most recent use—warehouse, needs rehab, off-site use only

Bldg. T–2426, Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219440435
Status: Unutilized
Comment: 4340 sq. ft., 1-story, most recent use—warehouse, needs rehab, off-site use only

Bldg. T–2430, Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219440436
Status: Unutilized
Comment: 4837 sq. ft., 1-story, most recent use—clinic w/o beds, needs rehab, off-site use only

Bldg. T–2441, Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219440437
Status: Unutilized
Comment: 4340 sq. ft., 1-story, most recent use—clinic w/o beds, needs rehab, off-site use only

Bldg. T–4886, Fort Drum
Ft. Drum, NY, Jefferson, Zip: 13602–
Landholding Agency: Army
Property Number: 219440438
Status: Unutilized
Comment: 1144 sq. ft., 1-story, most recent use—office, needs rehab, off-site use only

North Carolina

Bldg. O–9710
Ft. Bragg, Co: Cumberland NC 28307
Landholding Agency: Army
Property Number: 219330312
Status: Unutilized
Comment: 974 sq. ft., metal trailer, needs repairs, most recent use—living quarters, off-site use only

Bldg. 4–2402, Fort Bragg
Ft. Bragg, NC, Cumberland, Zip: 28307–
Landholding Agency: Army
Property Number: 219420447
Status: Unutilized
Comment: 1532 sq. ft., 1-story masonry block, needs rehab, possible asbestos, most recent use—auto rental facility, off-site use only

Bldg. 8–4139, Fort Bragg
Ft. Bragg, NC, Cumberland, Zip: 28307–
Landholding Agency: Army
Property Number: 219420448
Status: Unutilized
Comment: 3154 sq. ft., 1-story wood, needs repair, possible asbestos, most recent use—carpentry shop, educ. center., off-site use only

Bldg. 8–4343, Fort Bragg
Ft. Bragg, NC, Cumberland, Zip: 28307–
Landholding Agency: Army
Property Number: 219420449
Status: Unutilized
Comment: 4720 sq. ft., 2-story wood, needs repair, possible asbestos, most recent use—carpentry shop, educ. center, off-site use only

Bldg. 8–4546, Fort Bragg
Ft. Bragg, NC, Cumberland, Zip: 28307–
Landholding Agency: Army
Property Number: 219420450
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, possible asbestos, most recent use—storage, off-site use only

Bldg. M–5351, Fort Bragg
Ft. Bragg, NC, Cumberland, Zip: 28307–
Landholding Agency: Army
Property Number: 219420452
Status: Unutilized
Comment: 4141 sq. ft., 1-story wood, needs repair, possible asbestos, most recent use—shopette, off-site use only

Bldg. O–9025, Fort Bragg
Ft. Bragg, NC, Cumberland, Zip: 28307–
Landholding Agency: Army
Property Number: 219420454
Status: Unutilized
Comment: 1964 sq. ft., metal, needs rehab, possible asbestos, most recent use—admin., off-site use only

Bldg. H–1838, Fort Bragg
Ft. Bragg, NC, Cumberland, Zip: 28307–
Landholding Agency: Army
Property Number: 219440318
Status: Excess
Comment: 3145 sq. ft., 1 story wood frame, needs rehab, off-site removal only, most recent use—parachute packing

Bldg. H–1839, Fort Bragg
Ft. Bragg, NC, Cumberland, Zip: 28307–
Landholding Agency: Army
Property Number: 219440319
Status: Excess
Comment: 4094 sq. ft., 1 story wood frame, needs rehab, off-site removal only, most recent use—parachute packing

Bldg. 2–3208, Fort Bragg
Ft. Bragg, NC, Cumberland, Zip: 28307–
Landholding Agency: Army
Property Number: 219440320
Status: Excess
Comment: 800 sq. ft., 1 story metal frame, needs rehab, off-site removal only, most recent use—storage

Bldg. 2–3309, Fort Bragg
Ft. Bragg, NC, Cumberland, Zip: 28307–
Landholding Agency: Army
Property Number: 219440321
Status: Excess
Comment: 22636 sq. ft., 1 story wood frame, needs rehab, off-site removal only, most recent use—vehicle maintenance shop

Bldg. 0–9045, Fort Bragg
Ft. Bragg, NC, Cumberland, Zip: 28307–
Landholding Agency: Army
Property Number: 219440322
Status: Excess
Comment: 7680 sq. ft., 1 story metal frame, needs rehab, off-site removal only, most recent use—open end barn

Bldg. 6–9273, Fort Bragg
Ft. Bragg, NC, Cumberland, Zip: 28307–
Landholding Agency: Army
Property Number: 219440323
Status: Excess
Comment: 2284 sq. ft., 1 story wood frame, needs rehab, off-site removal only, most recent use—fire station admin.

Ohio

15 Units
Military Family Housing
Ravenna Army Ammunition Plant
Ravenna Co: Portage, OH 44266–9297
Landholding Agency: Army
Property Number: 219230354
Status: Excess
Comment: 3 bedroom (7 units)—1824 sq. ft. ea., 4 bedroom (8 units)—2430 sq. ft. ea., 2-story wood frame, presence of asbestos, off-site use only

7 Units
Military Family Housing
Ravenna Army Ammunition Plant
Landholding Agency: Army
Property Number: 219230355
Status: Excess
Comment: 1–4 staff garage and 6–3 stall garages, presence of asbestos, off-site use only

Bldg. P–3
Doan U.S. Army Reserve Center
Portmonth Co: Scioto OH 45662
Landholding Agency: Army
Property Number: 219320311
Status: Unutilized
Comment: 10752 sq. ft., 1 story brick, most recent use—office, possible asbestos.

Bldg. P–4
Doan U.S. Army Reserve Center
Portmonth Co: Scioto OH 45662
Landholding Agency: Army
Property Number: 219320312
Status: Unutilized
Comment: 2508 sq. ft., 1 story brick, most recent use—vehicle maintenance shop.

Bldg. P–2
Hayes U.S. Army Reserve Center
Fremont Co: Sandusky OH 43420
Landholding Agency: Army
Property Number: 219320314

Status: Unutilized
Comment: 3956 sq. ft., 1 story brick, most recent use—office, possible asbestos.

Bldg. P–3
Hayes U.S. Army Reserve Center
Fremont Co: Sandusky OH 43420
Landholding Agency: Army
Property Number: 219320315
Status: Unutilized
Comment: 1259 sq. ft., 1 story brick, most recent use—vehicle maintenance shop, possible asbestos.

Oklahoma

Bldg. T–2545, Fort Sill
2544 Sheridan Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219011255
Status: Unutilized
Comment: 1994 sq. ft.; asbestos; wood frame; 2 floors, no operating sanitary facilities; most recent use—barracks.

Bldg. T–2606
Fort Sill
2606 Currie Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219011273
Status: Unutilized
Comment: 2722 sq. ft.; possible asbestos, one floor wood frame; most recent use—Headquarters Bldg.

Bldg. T–3507
Fort Sill
3507 Sheridan Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219011315
Status: Unutilized
Comment: 2904 sq. ft.; possible asbestos; potential heavy metal contamination; wood frame; most recent use—chapel

Bldg. T–4919 Fort Sill
4919 Post Road
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219014842
Status: Unutilized
Comment: 603 sq. ft., 1 story mobile home trailer; possible asbestos; needs rehab.

Bldg. T–4523, Fort Sill
4523 Wilson Road
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219014933
Status: Unutilized
Comment: 1639 sq. ft., 1 story wood frame, needs rehab, possible asbestos, most recent use—storage.

Bldg. T–838, Fort Sill
838 Macomb Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219220609
Status: Unutilized
Comment: 151 sq. ft., wood frame, 1 story, off-site removal only, most recent use—vet facility (quarantine stable).

Bldg. T–2702, Fort Sill
2702 Thomas Street
Lawton OK, Comanche Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240655
Status: Unutilized
Comment: 5520 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—admin.

Bldg. T–3311, Fort Sill
3311 Naylor Road
Lawton OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240656
Status: Unutilized
Comment: 1468 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—admin.

Bldg. T–954, Fort Sill
954 Quinette Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240659
Status: Unutilized
Comment: 3571 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—motor repair shop.

Bldg. T–1050, T–1051, Fort Sill
1050 Quinette Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Numbers: 219240660–219240661
Status: Unutilized
Comment: 6240 sq. ft. ea., 2 story wood frame, needs rehab, off-site use only, most recent use—barracks.

Bldgs. T–2703, T–2704, Fort Sill
2703 Thomas Street
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Numbers: 219240667–219240668
Status: Unutilized
Comment: 5520 sq. ft. ea., 2 story wood frame, needs rehab, off-site use only, most recent use—enlisted barracks.

Bldg. T–2740, Fort Sill
2740 Miner Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240669
Status: Unutilized
Comment: 8210 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—enlisted barracks.

Bldg. T–2745, Fort Sill
2745 Miner Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240670
Status: Unutilized
Comment: 8288 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—enlisted barracks.

Bldg. T–2633, Fort Sill
2633 Miner Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240672
Status: Unutilized
Comment: 19455 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—enlisted mess.

Bldg. T–2701, Fort Sill
2701 Thomas Street
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240673
Status: Unutilized
Comment: 5520 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—storage.

Bldg. T–2907, Fort Sill
2907 Marcy Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240674
Status: Unutilized
Comment: 3861 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage.

Bldg. T–2928, Fort Sill
2928 Custer Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240675
Status: Unutilized
Comment: 2315 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage.

Bldg. T–4050, Fort Sill
4050 Pitman Street
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240676
Status: Unutilized
Comment: 3177 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage.

Bldg. P–3032, Fort Sill
3032 Haskins Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240678
Status: Unutilized
Comment: 101 sq. ft., 1-story wood frame, needs rehab, off-site use only, most recent use—general storehouse.

Bldg. T–3325, Fort Sill
3325 Naylor Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240681
Status: Unutilized
Comment: 8832 sq. ft., 1-story wood frame, needs rehab, off-site use only, most recent use—warehouse.

Bldg. T–260, Fort Sill
260 Corral Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240776
Status: Unutilized
Comment: 4838 sq. ft., 2-story wood frame, off-site use only, possible asbestos, most recent use—administration.

Bldg. T–3641, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 219320324
Status: Unutilized
Comment: 1255 sq. ft., 1-story wood frame, possible asbestos, off-site use only, needs rehab, most recent use—day room.

Bldg. T–3644, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 2193320327
Status: Unutilized
Comment: 1-story wood frame, possible asbestos, off-site use only.

Bldg. T–5122, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Status: Unutilized
Comment:

Bldg. P–6220, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 219320335
Status: Unutilized
Comment: 848 sq. ft., 1-story wood frame, possible asbestos, most recent use—construction bldg., off-site use only.

Bldg. S–6228, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 219320336
Status: Unutilized
Comment: 352 sq. ft., 1-story wood frame, possible asbestos, most recent use—range house, off-site use only.

Bldg. P–2610, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219330372
Status: Unutilized
Comment: 512 sq. ft., 1-story, possible asbestos, most recent use—classroom, off-site use only.

Bldg. 4722, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219330373
Status: Unutilized
Comment: 3375 sq. ft., 2-story, possible asbestos, most recent use—administration, off-site use only.

Bldg. T–232, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219330377
Status: Unutilized
Comment: 2868 sq. ft. ea., 1-story wood, possible asbestos, most recent use—storage, off-site use only.

Bldg. T–312, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219330379
Status: Unutilized
Comment: 1970 sq. ft., 2-story wood, possible asbestos, most recent use—storage, off-site use only.

Bldg. T–1652, Fort Sill
Lawton OK, Comanche ZIP: 73503–5100
Landholding Agency: Army
Property Number: 219330380
Status: Unutilized
Comment: 1505 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only.

Bldg. T–1665, Fort Sill
Lawton OK, Comanche, ZIP: 73503–5100
Landholding Agency: Army
Property Number: 219330381
Status: Unutilized
Comment: 1305 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only.

Bldg. T2034, Fort Sill
Lawton OK, Comanche, ZIP: 73503–5100
Landholding Agency: Army
Property Number: 219330383
Status: Unutilized
Comment: 401 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only.

Bldg. T2705, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330384
Status: Unutilized
Comment: 1601 sq. ft., 2-story wood, possible asbestos, most recent use—storage, off-site use only

Bldg. T2706, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330385
Status: Unutilized
Comment: 2156 sq. ft., 2-story, possible asbestos, most recent use—storage, off-site use only

Bldg. T2708, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330387
Status: Unutilized
Comment: 2153 sq. ft., 2-story, possible asbestos, most recent use—storage, off-site use only

Bldg. T2709, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330388
Status: Unutilized
Comment: 2112 sq. ft., 2-story wood, possible asbestos, most recent use—storage, off-site use only

Bldgs. T2756, T2757 Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330390–219330391
Status: Unutilized
Comment: 5172 sq. ft. ea., 1-story wood, possible asbestos, most recent use—storage, off-site use only

Bldg. T3026, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330392
Status: Unutilized
Comment: 2454 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only

Bldg. T3651, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330393
Status: Unutilized
Comment: 2770 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only

Bldg. T3706, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330394
Status: Unutilized
Comment: 1947 sq. ft., 2-story wood, possible asbestos, most recent use—storage, off-site use only

Bldg. T3710, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330396
Status: Unutilized
Comment: 1176 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only

Bldg. T3712, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330397
Status: Unutilized
Comment: 1021 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only

Bldg. T3713, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330398
Status: Unutilized
Comment: 1013 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only

Bldg. T4035, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330401
Status: Unutilized
Comment: 867 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only

Bldg. T4474, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330402
Status: Unutilized
Comment: 159 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only

Bldg. T5011, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330403
Status: Unutilized
Comment: 1556 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only

Bldg. T5120, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330405
Status: Unutilized
Comment: 1471 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only

Bldg. T5123, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330406
Status: Unutilized
Comment: 1 story, possible asbestos, most recent use—storage, off-site use only

Bldg. T5124, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330407
Status: Unutilized
Comment: 1287 sq. ft, 1 story, possible asbestos, most recent use—storage, off-site use only

Bldgs. T5245 thru T5248, T5252 Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Numbers: 219330410–219330413, 219330417
Status: Unutilized
Comment: 3081 sq. ft. ea., 1 story, possible asbestos, most recent use—storage, off-site use only

Bldg. T5249 Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330414
Status: Unutilized

Comment: 2920 sq. ft., 1 story, possible asbestos, most recent use—storage, off-site use only

Bldgs. T5250 thru T5251 Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Numbers: 219330415–219330416
Status: Unutilized
Comment: 3257 sq. ft. ea., 1 story, possible asbestos, most recent use—storage, off-site use only

Bldg. T5628, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330418
Status: Unutilized
Comment: 2016 sq. ft., 1 story, possible asbestos, most recent use—storage, off-site use only

Bldg. T5637, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330419
Status: Unutilized
Comment: 1606 sq. ft., 1 story, possible asbestos, most recent use—storage, off-site use only

Bldg. T–282, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219410236
Status: Unutilized
Comment: 2420 sq. ft.; 2 story; wood frame; most recent use—admin., off-site use only

Bldg. T–268, Fort Sill
268 Corral Road
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440338
Status: Excess
Comment: 4836 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.

Bldg. T–269, Fort Sill
268 Corral Road
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440339
Status: Excess
Comment: 7840 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks

Bldg. T–281, Fort Sill
281 Corral Road
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440340
Status: Excess
Comment: 48365 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks

Bldg. T–3731, Fort Sill
3731 Webster Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440341
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks

Bldg. T–3632, Fort Sill
3632 Scott Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440342
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks

Bldg. T–3656, Fort Sill
3656 Swartz Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440343
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks

Bldg. T–3657, Fort Sill
3657 Swartz Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440344
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks

Bldg. 3719, Fort Sill
3719 Webster Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440345
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks

Bldg. 3720, Fort Sill
3720 Webster Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440346
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks

Bldg. T–3723, Fort Sill
3723 Webster Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440347
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks

Bldg. T–3724, Fort Sill
3724 Webster Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440348
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks

Bldg. T–3725, Fort Sill
3725 Webster Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440349
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks

Bldg. T–3726, Fort Sill
3726 Webster Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440350
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks

Bldg. T–3728, Fort Sill
3728 Webster Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440351
Status: Excess
Comment: 3162 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—storage

Bldg. T–3732, Fort Sill
3732 Webster Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440352
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks

Bldg. T–3733, Fort Sill
3733 Webster Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440353
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks

Bldg. T–3734, Fort Sill
3734 Webster Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440354
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks

Bldg. T–3735, Fort Sill
37354 Webster Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440355
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks

Bldg. T–3736, Fort Sill
3736 Webster Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440356
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks

Bldg. T–3739, Fort Sill
3739 Webster Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440357
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks

Bldg. T–3750, Fort Sill
3750 Wilson Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440358
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks

Bldg. T–3752, Fort Sill
3752 Wilson Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440359
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks

Bldg. T–3753, Fort Sill
3753 Wilson Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440360
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks

Bldg. T–3754, Fort Sill
3754 Wilson Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440361
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks

Bldg. T–3755, Fort Sill
3755 Wilson Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440362
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks

Bldg. T–3756, Fort Sill
3756 Wilson Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440363
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks

Bldg. T–5216, Fort Sill
5216 Conklin Road
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440364
Status: Excess
Comment: 4900 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks

Bldg. T–5217, Fort Sill
5217 Conklin Road
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440365
Status: Excess
Comment: 4900 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks

Bldg. T–5218, Fort Sill
5218 Conklin Road
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440366
Status: Excess
Comment: 4900 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks

Bldg. T–3738, Fort Sill
3738 Webster Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440367
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks

Bldg. T–2441, Fort Sill
2441 Miner Road
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440368
Status: Excess
Comment: 1686 sq. ft., 1 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—admin.

Bldg. T–3645, Fort Sill
3645 Tacy Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440369
Status: Excess
Comment: 1311 sq. ft., 1 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—admin.

Bldg. T–3715, Fort Sill
3715 Tacy Street
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440370
Status: Excess
Comment: 1311 sq. ft., 1 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—admin.

Bldg. T–3740
Fort Sill
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440371
Status: Unutilized
Comment: 1311 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—admin. off-site use only

Bldg. T–3744
Fort Sill
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440372
Status: Unutilized
Comment: 1311 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—admin., off-site use only

Bldg. T–3745
Fort Sill
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440373
Status: Unutilized
Comment: 1311 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—admin., off-site use only

Bldg. T–3748
Fort Sill
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440374
Status: Unutilized
Comment: 1311 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—admin. off-site use only

Bldg. T–3757
Fort Sill
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440375
Status: Unutilized
Comment: 4525 sq. ft., 2-story wood frame, possible asbestos and lead paint, most recent use—admin., off-site use only

Bldg. T–5215
Fort Sill
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440376
Status: Unutilized
Comment: 2797 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—admin., off-site use only

Bldg. T–3721
Fort Sill
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440377
Status: Unutilized
Comment: 3042 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—mess hall, off-site use only

Bldg. T–3737
Fort Sill
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440378
Status: Unutilized
Comment: 2964 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—mess hall, off-site use only

Bldg. T–3758
Fort Sill
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440379
Status: Unutilized
Comment: 3132 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—mess hall, off-site use only

Bldg. T–3751
Fort Sill
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440380
Status: Unutilized
Comment: 3141 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—classroom, off-site use only

Bldg. T–5219
Fort Sill
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440381
Status: Unutilized
Comment: 2662 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—classroom, off-site use only

Bldg. T–3631
Fort Sill
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440382
Status: Unutilized
Comment: 4530 sq. ft., 2-story wood frame, possible asbestos and lead paint, most recent use—dayroom, off-site use only

Bldg. P–2938
Fort Sill
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440383
Status: Unutilized

Comment: 23 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only

Bldg. T–4226
Fort Sill
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440384
Status: Unutilized
Comment: 114 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only

Bldg. T–5009
Fort Sill
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440385
Status: Unutilized
Comment: 114 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only

Bldg. T–3749
Fort Sill
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440386
Status: Unutilized
Comment: 4525 sq. ft., 2-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only

Bldg. T–280
Fort Sill
Lawton, OK, Comanche, Zip: 73503–
Landholding Agency: Army
Property Number: 219440387
Status: Unutilized
Comment: 7834 sq. ft., 2-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only

Bldg. P–1815
Fort Sill
Lawton, OK, Comanche, Zip 73503–
Landholding Agency: Army
Property Number: 219440388
Status: Unutilized
Comment: 14392 sq. ft., 2-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only

Pennsylvania

Bldg. T–1–10
Fort Indiantown Gap
Pine Grove Street
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420010
Status: Excess
Comment: 4503 sq. ft., 2 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—barracks

Bldg. T–1–15
Fort Indiantown Gap
Pine Grove Street
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420011
Status: Excess
Comment: 4503 sq. ft., 2 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—barracks

Bldg. T–1–18
Fort Indiantown Gap
Pine Grove Street
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420012
Status: Excess
Comment: 4503 sq. ft., 2 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—barracks

Bldg. T–14–402
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420013
Status: Excess
Comment: 4247 sq. ft., 2 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—barracks

Bldg. T–14–406
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420014
Status: Excess
Comment: 4247 sq. ft., 2 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—barracks

Bldg. T–14–408
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420015
Status: Excess
Comment: 4247 sq. ft., 2 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—barracks

Bldg. T–14–410
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420016
Status: Excess
Comment: 4247 sq. ft., 2 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—barracks.

Bldg. T–14–412
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420017
Status: Excess
Comment: 4247 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—barracks.

Bldg. T–14–414
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420018
Status: Excess
Comment: 4247 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—barracks.

Bldg. 4–71
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420019
Status: Excess
Comment: 1220 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. 4–72
Fort Indiantown Gap
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420020
Status: Excess
Comment: 1220 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–4–94
Fort Indiantown Gap
Birch Street
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420021
Status: Excess
Comment: 1220 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–100
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420022
Status: Excess
Comment: 3070 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–102
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420023
Status: Excess
Comment: 1075 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–110
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420024
Status: Excess
Comment: 3700 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–112
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420025
Status: Excess
Comment: 3848 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–114
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420026
Status: Excess
Comment: 3848 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–117
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420027
Status: Excess
Comment: 3320 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–202
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420028
Status: Excess
Comment: 3840 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–204
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420029
Status: Excess
Comment: 3840 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–206
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420030
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration

Bldg. T–14–208
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420031
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–210
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420032
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–212
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420033
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–214
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420034
Status: Excess
Comment: 3840 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–215
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420035
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–216
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420036
Status: Excess
Comment: 3840 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–300
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420037
Status: Excess
Comment: 6445 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–302
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420038
Status: Excess
Comment: 1512 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–303
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420039
Status: Excess
Comment: 3340 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–305
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420040
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration

Bldg. T–14–307
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420041
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse)

Bldg. T–14–308
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420042
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration

Bldg. T–14–310
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420043
Status: Excess
Comment: 3848 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration

Bldg. T–14–415
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420044
Status: Excess
Comment: 3650 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration

Bldg. T–14–416
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420045
Status: Excess
Comment: 4172 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration

Bldg. T–1–11
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army

Property Number: 219420046
Status: Excess
Comment: 2242 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—enlisted personnel dining

Bldg. T–1–19
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420047
Status: Excess
Comment: 2242 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—enlisted personnel dining

Bldg. T–1–21
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420048
Status: Excess
Comment: 2242 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—enlisted personnel dining

Bldg. T–14–400
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420049
Status: Excess
Comment: 2242 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—enlisted personnel dining

Bldg. T–1–8
Fort Indiantown Gap
Pine Grove Street
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420050
Status: Excess
Comment: 1075 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage

Bldg. T–1–12
Fort Indiantown Gap
Pine Grove Street
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420051
Status: Excess
Comment: 1075 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage

Bldg. T–14–124
Fort Indiantown Gap
Fisher Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420052
Status: Excess
Comment: 214 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage.

Bldg. T–14–122
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420053
Status: Excess
Comment: 2277 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (vehicle).

Bldg. T–14–200
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420054
Status: Excess
Comment: 3898 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–201
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420055
Status: Excess
Comment: 3630 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldg. T–14–203
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420056
Status: Excess
Comment: 3630 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldg. T–14–205
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420057
Status: Excess
Comment: 3638 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldg. T–14–207
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420058
Status: Excess
Comment: 3638 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldg. T–14–209
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420059
Status: Excess
Comment: 3638 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldg. T–14–211
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420060
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldg. T–14–213
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420061
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldg. T–14–217
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420062
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldg. T–14–301
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420063
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general storehouse).

Bldg. T–14–309
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420064
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldg. T–14–311
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420065
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldg. T–14–314
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420066
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldg. T–14–315
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420067
Status: Excess
Comment: 3624 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldg. T–14–401
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420068
Status: Excess
Comment: 782 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general storehouse).

Bldg. T–14–403
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420069
Status: Excess
Comment: 2685 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage.

Bldg. T–14–404
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420070
Status: Excess
Comment: 4247 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–405
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420071
Status: Excess
Comment: 480 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage.

Bldg. T–14–411
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420072
Status: Excess
Comment: 3045 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–413
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420073
Status: Excess
Comment: 3000 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–417
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420074
Status: Excess
Comment: 3633 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–419
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420075
Status: Excess
Comment: 3576 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–424
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420076
Status: Excess
Comment: 63 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general storehouse).

Bldg. T–14–500
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420077
Status: Excess
Comment: 1071 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general storehouse).

Bldg. T–14–503
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420078
Status: Excess
Comment: 5217 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–505
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420079
Status: Excess
Comment: 5217 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–507
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420080
Status: Excess
Comment: 5217 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–508
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420081
Status: Excess
Comment: 1071 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general storehouse).

Bldg. T–14–509
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420082
Status: Excess
Comment: 2638 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–511
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420083
Status: Excess
Comment: 2638 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–113
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420084
Status: Excess
Comment: 3848 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—medical supply warehouse.

Bldg. T–14–115
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420085
Status: Excess
Comment: 3848 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—medical supply warehouse.

Bldg. T–14–312
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420086
Status: Excess
Comment: 3848 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital.

Bldg. T–14–313
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army

Property Number: 219420087
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital.

Bldg. T–14–316
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420088
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital

Bldg. T–14–317
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420089
Status: Excess
Comment: 3623 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital

Bldg. T–14–407
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420090
Status: Excess
Comment: 3635 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital

Bldg. T–14–409
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420091
Status: Excess
Comment: 3635 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital

Bldg. T–14–502
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420092
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital

Bldg. T–14–504
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420093
Status: Excess
Comment: 3633 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital

Bldg. T–14–506
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420094
Status: Excess
Comment: 3633 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital

Bldg. T–14–304
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420095
Status: Excess
Comment: 4212 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—ADP bldg

Bldg. T–14–306
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420096
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—ADP bldg

Bldg. T–1–16
Fort Indiantown Gap
Pine Grove Street
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420097
Status: Excess
Comment: 1075 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—arms bldg.

Bldg. T–1–20
Fort Indiantown Gap
Pine Grove Street
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420098
Status: Excess
Comment: 1075 sq. ft., 1 story, wood frame, needs rehab. possible asbestos/lead paint, off-site removal only, most recent use—day room.

Bldg. 4–73
Fort Indiantown Gap
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420099
Status: Excess
Comment: 1075 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—day room.

Bldg. T–9–1
Fort Indiantown Gap
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420100
Status: Excess
Comment: 2170 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—credit union.

Bldg. T–13–64
Fort Indiantown Gap
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420101
Status: Excess
Comment: 5747 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—maintenance shop.

Bldg. T–14–421
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420102
Status: Excess
Comment: 287 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—maintenance shop

Bldg. T–14–423
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420103
Status: Excess
Comment: 1681 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—maintenance shop.

Bldg. T–16–149
Fort Indiantown Gap
Fisher Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420104
Status: Excess
Comment: 18045 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—vehicle maintenance shop.

Bldg. T–14–561
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420105
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg.

Bldg. T–14–562
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420106
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg

Bldg. T–14–563
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420107
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg.

Bldg. T–14–564
Fort Indiantown Gap

Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420108
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg.

Bldg. T–14–565
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420109
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg.

Bldg. T–14–566
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420110
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg.

Bldg. T–14–567
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420111
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg.

Bldg. T–14–568
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420112
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg.

Bldg. T–14–569
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420113
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg.

Bldg. T–14–570
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420114
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg.

Bldg. T–14–571
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420115
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg.

Bldg. T–14–572
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420116
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg.

Bldg. T–14–819
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420117
Status: Excess
Comment: 6122 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—covered walkway.

South Carolina

Bldg. 9608, Fort Jackson
Ft. Jackson Co: Richland SC 29207
Landholding Agency: Army
Property Number: 219410200
Status: Unutilized
Comment: 4720 sq. ft., wood frame, 2 story, needs rehab, off-site use only, utilities upgrade, most recent use—enlisted quarters

Bldg. 5492, Fort Jackson
Ft. Jackson Co: Richland SC 29207
Landholding Agency: Army
Property Number: 219410207
Status: Unutilized
Comment: 2379 sq. ft., wood frame, 1 story, off-site use only, utilities upgrade, most recent use—information management office

Bldg. 10–436, Fort Jackson
Ft. Jackson Co: Richland SC 29207
Landholding Agency: Army
Property Number: 219410217
Status: Unutilized
Comment: 100 sq. ft., wood frame, 1 story, off-site use only, limited utilities, needs rehab, most recent use—shed

Texas

Harlingen USARC
1920 East Washington
Harlingen, TX, Cameron, Zip: 78550–
Landholding Agency: Army
Property Number: 219120304
Status: Excess
Comment: 19,440 sq. ft., 1 story brick, needs rehab, with approx. 6 acres including parking areas, most recent use—Army Reserve Training Center

Bldg. P–3824, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220398
Status Unutilized
Comment: 2232 sq. ft., 1-story concrete structure, within National Landmark Historic District, off-site removal only.

Bldg. 4168, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219320350
Status: Unutilized
Comment: 2100 sq. ft., 1-story steel frame, most recent use—vehicle wash platform, needs rehab, off-site use only

Bldg. 440, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219320355
Status: Unutilized
Comment: 1651 sq. ft., 1-story brick, most recent use—education facility, off-site use only

Bldg. 1164, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219330420
Status: Unutilized
Comment: 2054 net sq. ft., 1 story wood, most recent use—admin. bldg., needs rehab, off-site use only

Bldg. 512, Fort Hood
Ft. Hood, TX, Coryell, Zip: 76544–
Landholding Agency: Army
Property Number: 219330421
Status: Unutilized
Comment: 6733 sq. ft., 1 story wood, most recent use—commissary, off-site use only

Bldg. P–293
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330441
Status: Unutilized
Comment: 442 sq. ft., 1 story brick, needs rehab, within National Landmark Historic District, off-site use only

Bldg. P–298
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330442
Status: Unutilized
Comment: 3200 sq. ft., 1 story hollow tile, needs rehab, within National Landmark Historic District, off-site use only

Bldg. P–371
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330443
Status: Unutilized
Comment: 18387 sq. ft., 2 story structural tile, off-site use only, most recent use—vehicle maintenance shop

Bldg. P–377
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330444
Status: Unutilized
Comment: 74 sq. ft., 1 story brick, needs rehab, location in National Historic District, off-site use only, most recent use—scale house

Bldg. S–1164

Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330445
Status: Unutilized
Comment: 8629 sq. ft., 1 story wood frame, needs rehab, located in National Historic District, off-site use only

Bldg. T–374
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330480
Status: Unutilized
Comment: 8640 sq. ft., 1 story wood frame, needs rehab, located in National Historic District, off-site use only

Bldg. T–1170, T–1468
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Numbers: 219330481–219330482
Status: Unutilized
Comment: 1144 sq. ft. ea., 1 story wood frame, needs rehab, off-site use only, most recent use—administration

Bldg. T–1492
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330483
Status: Unutilized
Comment: 2284 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—administration

Bldg. T–2066
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330484
Status: Unutilized
Comment: 4720 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—administration

Bldg. T–2509
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330485
Status: Unutilized
Comment: 3147 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—administration

Bldg. T–5901
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330486
Status: Unutilized
Comment: 742 sq. ft., 1 story wood frame, off-site use only, most recent use—administration

Bldg. T–1464
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330487
Status: Unutilized
Comment: 3778 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—t-shirts and frame shop

Bldg. T–1874
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330488
Status: Unutilized
Comment: 3108 sq. ft., 1 story wood frame, needs rehab, off-site use only

Bldg. T–2011
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330489
Status: Unutilized
Comment: 150 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storehouse

Bldg. T–2193
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330490
Status: Unutilized
Comment: 1800 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage shed

Bldg. T–2507
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330491
Status: Unutilized
Comment: 224 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage

Bldg. T–2510
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330492
Status: Unutilized
Comment: 3210 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage

Bldg. T–4044
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330493
Status: Unutilized
Comment: 263 sq. ft., 1 story brick frame, needs rehab, off-site use only, most recent use—storage

Bldg. T–2511, T–2512
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Numbers: 219330494–219330495
Status: Unutilized
Comment: 18260 sq. ft. ea., 1 story wood frame, needs rehab, off-site use only, most recent use—vehicle maintenance shop

Bldg. T–2513
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330496
Status: Unutilized
Comment: 13603 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—repair shop

Bldg. S–2516
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330497
Status: Unutilized
Comment: 3008 sq. ft., 1 story steel, lead contaminants present, off-site use only, most recent use—paint stripping plant

Bldg. T–2520
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330498
Status: Unutilized
Comment: 31296 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—physical fitness

Bldg. T–2183
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330499
Status: Unutilized
Comment: 3000 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—stable

Bldg. T–6231
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330500
Status: Unutilized
Comment: 600 sq. ft., 1 story wood frame, off-site use only, most recent use—firing range

Bldg. T–6232, T–6236
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Numbers: 219330501–219330502
Status: Unutilized
Comment: 401 sq. ft. ea., 1 story wood frame, off-site use only, most recent use—firing range

Bldg. T–2508
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330503
Status: Unutilized
Comment: 224 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use storage

Bldg. T–211
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219340194
Status: Unutilized
Comment: 2284 sq. ft., 1 story wood frame, off-site use only, most recent use—instruction bldg.

Bldg. T–1031
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219340195
Status: Unutilized
Comment: 4720 sq. ft., 2 story wood frame, off-site use only, most recent use—photo lab

Bldg. T–1126
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219340196
Status: Unutilized
Comment: 4720 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—blood donor center

Bldg. P–5902
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219340197
Status: Unutilized
Comment: 1157 sq. ft., 1 story wood frame, off-site use only, most recent use—warehouse

Bldg. 240, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219410314
Status: Unutilized
Comment: 2000 sq. ft., 1–story, needs rehab, most recent use—storage, off-site use only

Bldg. 315, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219410315
Status: Unutilized
Comment: 2400 sq. ft., 1–story, needs rehab, most recent use—storage, off-site use only

Bldg. 316, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219410316
Status: Unutilized
Comment: 1500 sq. ft., 1–story, needs rehab, most recent use—storage, off-site use only

Bldg. 317, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219410317
Status: Unutilized
Comment: 2000 sq. ft., 1–story, needs rehab, most recent use—storage, off-site use only

Bldg. 3436, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219410320
Status: Unutilized
Comment: 1080 sq. ft., 1–story, needs rehab, most recent use—storage, off-site use only

Bldg. 3437, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544-
Landholding Agency: Army
Property Number: 219410321
Status: Unutilized
Comment: 1080 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. 4480, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219410322
Status: Unutilized
Comment: 2160 sq. ft., 1-story, most recent use—storage, off-site use only

Bldg. 871, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219420455
Status: Unutilized
Comment: 3540 sq. ft., 1-story wood, needs repair, most recent use—storage, off-site use only

Bldg. 1165, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219420456
Status: Unutilized
Comment: 5263 sq. ft., 1-story wood, needs repair, most recent use—office, off-site use only

Bldg. 1675, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219420457
Status: Unutilized
Comment: 3674 sq. ft., 1-story wood, needs repair, most recent use—office, off-site use only

Bldg. 4717, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219420458
Status: Unutilized
Comment: 1081 sq. ft., 1-story wood, needs repair, most recent use—office, off-site use only

Bldg. 4718, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219420459
Status: Unutilized
Comment: 899 sq. ft., 1-story wood, needs repair, most recent use—storage, off-site use only

Bldg. 4719, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219420460
Status: Unutilized
Comment: 519 sq. ft., 1-story wood, needs repair, most recent use—storage, off-site use only

Bldg. 4105, Fort Hood
Ft. Hood, TX, Coryell, Zip: 76544–
Landholding Agency: Army
Property Number: 219420463
Status: Unutilized
Comment: 2535 sq. ft., 1-story wood, needs rehab, most recent use—storage, off-site use only

Bldgs. 7050, 7058
Fort Bliss
Ft. Bliss, TX, Zip: 79916–
Landholding Agency: Army
Property Number: 219430181
Status: Unutilized
Comment: 1809–8584 sq. ft., 1-story wood frame, needs rehab, most recent use—office/club, off-site use only

Bldgs. 828–830
Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219430182
Status: Unutilized
Comment: 4780 sq. ft. 2-story, needs rehab, presence of asbestos, most recent use—classroom, off-site use only

Bldg. 1, Fort Hood
Lubbock, TX, Lubbock, Zip: 79408–
Landholding Agency: Army
Property Number: 219440336
Status: Unutilized
Comment: 11440 sq. ft., 1-story, fair condition, to be vacated 6/30/95, off-site removal only, most recent use—army reserve center

Bldg. 2, Fort Hood
Lubbock, TX, Lubbock, Zip: 79408–
Landholding Agency: Army
Property Number: 219440337
Status: Unutilized
Comment: 2818 sq. ft., 1 story, fair condition, to be vacated 6/30/95, off-site removal only, most recent use—army reserve center maintenance shop

Bldg. P–452
Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219440449
Status: Excess
Comment: 600 sq. ft., 1 story stucco frame, lead paint, off-site removal only, most recent use—bath house

Bldg. P–2009
Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219440450
Status: Excess
Comment: 144 sq. ft., 1 story brick frame, lead paint, off-site removal only, no utilities, most recent use—flammable material storage

Bldg. T–5016
Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219440451
Status: Excess
Comment: 3146 sq. ft., 1 story wood frame, asbestos & lead paint, limited utilities, off-site removal only, most recent use—fire station vehicle storage

Bldg. T–5017
Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219440452
Status: Excess
Comment: 3146 sq. ft., 1 story wood frame, asbestos & lead paint, off-site removal only, most recent use—admin/storage

Bldg. T–5018
Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219440453
Status: Excess
Comment: 1140 sq. ft., 1 story wood frame, asbestos & lead paint, off-site removal only, most recent use—fire station

Bldg. P–6615
Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219440454
Status: Excess
Comment: 400 sq. ft., 1 story concrete frame, off-site removal only, most recent use—detached garage.

Virginia

Bldg. T–6015
U.S. Army Logistics Center & Fort Lee
Shop Road
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219012376
Status: Unutilized
Comment: 2124 sq. ft., 2 story, most recent use—barracks; poor condition; needs major rehab

Bldg. T3003, Fort Picket
W. 33rd Street
Blackstone Co: Nottoway VA 23824
Landholding Agency: Army
Property Number: 219440446

Status: Underutilized
Comment: 1750 sq. ft., 1 story wood frame, most recent use—confinement facility, need repairs

Bldg. T2800, Fort Picket
Off Armistead Road
Blackstone Co: Nottoway VA 23824
Landholding Agency: Army
Property Number: 219440447
Status: Underutilized
Comment: 2056 sq. ft., 1 story wood frame, most recent use—clinic, need repairs

Bldg. T2857, Fort Picket
Off Armistead Road
Blackstone Co: Nottoway VA 23824
Landholding Agency: Army
Property Number: 219440448
Status: Underutilized
Comment: 2987 sq. ft., 1 story wood frame, most recent use—admin.

Washington

Reserve Center, Longview
14 Port Way
Longview Co: Cowlitz WA 98632
Landholding Agency: Army
Property Number: 219320368
Status: Unutilized
Comment: 17304 sq. ft., 1 story training facility

Wisconsin

Bldg. 7174, Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219320372
Status: Underutilized
Comment: 8466 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—gen. purpose warehouse

Bldg. 7176, Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219320373
Status: Underutilized
Comment: 5415 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—gen. purpose warehouse

Bldg. 7261, Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219320374
Status: Unutilized
Comment: 4800 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—gen. purpose warehouse

Bldg. 556 Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219320386
Status: Underutilized
Comment: 3748 sq. ft. ea., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—unit chapel

Bldg. 455, Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219320390
Status: Underutilized
Comment: 2750 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—admin/supply

Bldg. 2321
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430225
Status: Unutilized
Comment: 682 sq. ft., 1-story, needs rehab, most recent use—heat plant

Bldg. 2673
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430226
Status: Unutilized
Comment: 13515 sq. ft., 1-story, needs rehab, most recent use—theater

Bldg. 2842
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430227
Status: Unutilized
Comment: 5310 sq. ft., 1-story, needs rehab, most recent use—range support bldg.

Bldg. 10105
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430228
Status: Unutilized
Comment: 3944 sq. ft., 1-story, needs rehab, most recent use—warehouse

Bldg. 10106
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430229
Status: Unutilized
Comment: 4105 sq. ft., 1-story, needs rehab, most recent use—warehouse

Bldg. 10107
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430230
Status: Unutilized
Comment: 3944 sq. ft., 1-story, needs rehab, most recent use—warehouse

Bldg. 10108
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430231
Status: Unutilized
Comment: 3944 sq. ft., 1-story, needs rehab, most recent use—warehouse

Bldg. 2110
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430232
Status: Unutilized
Comment: 18270 sq. ft., 1-story, needs rehab, most recent use—vehicle maint.

Bldg. 2320
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430233
Status: Unutilized
Comment: 33345 sq. ft., 1-story, needs rehab, most recent use—vehicle maint.

Bldg. 2327
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430234
Status: Unutilized
Comment: 3464 sq. ft., 1-story, needs rehab, most recent use—vehicle maint.

Bldg. 2328
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430235
Status: Unutilized
Comment: 4000 sq. ft., 1-story, needs rehab, most recent use—vehicle maint.

Bldg. 2763
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430236
Status: Unutilized
Comment: 3250 sq. ft., 1-story, needs rehab, most recent use—admin.

Bldg. 2173A
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430237
Status: Unutilized
Comment: 705 sq. ft., 1-story, needs rehab, most recent use—dispatch bldg.

Bldg. 2747
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430238
Status: Unutilized
Comment: 168 sq. ft., 1-story, needs rehab, most recent use—dispatch bldg.

Bldg. 2755
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430239
Status: Unutilized
Comment: 168 sq. ft., 1-story, needs rehab, most recent use—dispatch bldg.

Bldg. 2853
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430240
Status: Unutilized
Comment: 168 sq. ft., 1-story, needs rehab, most recent use—dispatch bldg.

Bldg. 651
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430242
Status: Unutilized
Comment: 2350 sq. ft., 1-story, needs rehab, most recent use—dining facility

Bldg. 850
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219430243
Status: Unutilized
Comment: 2350 sq. ft., 1-story, needs rehab, most recent use—dining facility

13 Storage Facilities
Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army

Property Number: 219430244
Status: Unutilized
Location: Bldgs. 1157, 1156, 1353, 1357, 1873, 1874, 2182, 2185, 2189, 2192, 2324, 2325, 2326
Comment: 224–5520 sq. ft., 1-story, needs rehab, most recent use—storage

Land (by State)

Georgia

Land (Railbed)
Fort Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219440440
Status: Unutilized
Comment: 17.3 acres extending 1.24 miles, no known utilities potential

Kansas

Parcel 1
Fort Leavenworth
Combined Arms Center
Fort Leavenworth Co: Leavenworth KS 66027–5020
Landholding Agency: Army
Property Number: 219012333
Status: Underutilized
Comment: 14.4+ acres.

Parcel 3
Fort Leavenworth
Combined Arms Center
Fort Leavenworth Co: Leavenworth KS 66027–5020
Landholding Agency: Army
Property Number: 219012336
Status: Underutilized
Comment: 261+ acres; heavily forrested; no access to a public right-of-way; selected periods are reserved for military/training exercises.

Parcel 4
Fort Leavenworth
Combined Arms Center
Fort Leavenworth Co: Leavenworth KS 66027–5020
Landholding Agency: Army
Property Number: 219012339
Status: Underutilized
Comment: 24.1+ acres; selected periods are reserved for military/training exercises; steep/wooded area.

Parcel 6
Fort Leavenworth
Combined Arms Center
Fort Leavenworth Co: Leavenworth KS 66027–5020
Location: Extreme north east corner of installation in Flood Plain of the Missouri River.
Landholding Agency: Army
Property Number: 219012340
Status: Underutilized
Comment: 1280 acres; selected periods are reserved for military/training exercises.

Parcel F
Fort Leavenworth
Combined Arms Center
Fort Leavenworth Co: Leavenworth KS 66027–5020
Landholding Agency: Army
Property Number: 219012552
Status: Unutilized
Comment: 33.4 acres; area is land locked; heavily wooded; periodic flooding.

Minnesota

Land
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219120269
Status: Underutilized
Comment: Approx. 25 acres, possible contamination, secured area with alternate access.

Montana

U.S. Army Reserve Center
Marcella Avenue
Lewistown Co: Fergus MT
Landholding Agency: Army
Property Number: 219420009
Status: Unutilized
Comment: 4.16 acres of bare land

Nevada

Parcel A
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: At Foot of Eastern slope of Mount Grant in Wassuk Range & S.W. edge of Walker Lane
Landholding Agency: Army
Property Number: 219012049
Status: Unutilized
Comment: 160 acres, road and utility easements, no utility hookup, possible flooding problem.

Parcel B
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral, NV 89415–
Location: At foot of eastern slope of Mount Grant in Wassuk Range & SW. edge of Walker Lane
Landholding Agency: Army
Property Number: 219012056
Status: Unutilized
Comment: 1920 acres; road and utility easements; no utility hookup; possible flooding problem

Parcel C
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral, NV 89415–
Location: South-southwest of Hawthorne along HWAAP's South Magazine Area at western edge of State Route 359
Landholding Agency: Army
Property Number: 219012057
Status: Unutilized
Comment: 85 acres; road & utility easements; no utility hookup

Parcel D
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral, NV 89415–
Location: South-southwest of Hawthorne along HWAAP's South Magazine Area at western edge of State Route 359
Landholding Agency: Army
Property Number: 219012058
Status: Unutilized
Comment: 955 acres; road & utility easements; no utility hookup

Ohio

5 acres
Doan U.S. Army Reserve Center
Portmonth Co: Scioto, OH 45662
Landholding Agency: Army
Property Number: 219320313
Status: Unutilized
Comment: 5 acres including paved roads, parking, sidewalks, etc.

3 acres
Hayes U.S. Army Reserve Center
Fremont Co: Sandusky, OH 43420
Landholding Agency: Army
Property Number: 219320316
Status: Unutilized
Comment: 3 acres including paved roads, parking, sidewalks, etc.

Tennessee

Milan Army Ammunition Plant
Milan Co: Carroll, TN 38358–
Location: Plant boundary in the northeast corner of the plant & housing area
Landholding Agency: Army
Property Number: 219010547
Status: Excess
Comment: 17.2 acres; right of entry legal constraint

Holston Army Ammunition Plant
Kingsport Co: Hawkins, TN 61299–6000
Landholding Agency: Army
Property Number: 219012338
Status: Unutilized
Comment: 8 acres; unimproved; could provide access; 2 acres unusable; near explosives

Land
Milan Army Ammunition Plant
NE. corner of plant & housing area
Milan Co: Carroll, TN 38358
Landholding Agency: Army
Property Number: 219240780
Status: Unutilized
Comment: 17.2 acres; secured area w/ alternate access; most recent use—buffer zone

Texas

Vacant Land, Fort Sam Houston
All of Block 1800, Portions of Blocks 1900, 3100 and 3200
San Antonio Co: Bexar, TX 78234–5000
Landholding Agency: Army
Property Number: 219220438
Status: Unutilized
Comment: 250.33 acres, 85% located in floodplain; possibility of unexploded ordnance

Old Camp Bullis Road
Fort Sam Houston
San Antonio Co: Bexar, TX 78234–5000
Landholding Agency: Army
Property Number: 219420461
Status: Unutilized
Comment: 7.16 acres; rural gravel road

Camp Bullis, Tract 9
Fort Sam Houston
San Antonio Co: Bexar, TX 78234–5000
Landholding Agency: Army
Property Number: 219420462
Status: Unutilized
Comment: 1.07 acres of undeveloped land

Suitable/Unavailable Properties

Buildings (by State)

Arizona

Bldg. S–306
Yuma Proving Ground
Yuma Co: Yuma/La Paz AZ 85365–9104
Landholding Agency: Army
Property Number: 219420346
Status: Unutilized
Comment: 4103 sq. ft., 2 story, needs major rehab.

Colorado

Bldgs. T–3449, T–741
Fort Carson
Colorado Springs Co: El Paso CO 80913
Landholding Agency: Army
Property Numbers: 219320205, 219410255
Status: Unutilized
Comment: 7528 sq. ft. ea., 1 story wood frame, needs rehab, off-site use only, most recent use—storage & admin.

Bldg. T–740
Fort Carson
Colorado Springs Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 219410254
Status: Unutilized
Comment: 2382 sq. ft., 1 story wood frame, needs rehab, Presence of asbestos, most recent use—admin., off-site use only

Bldg. T–1817
Fort Carson
Colorado Springs Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 219410256
Status: Unutilized
Comment: 5310 sq. ft., 2 story wood frame, needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. T–2740
Fort Carson
Colorado Springs Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 219410257
Status: Unutilized
Comment: 1916 sq. ft., 1 story wood frame, needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. T–106
Fort Carson
Colorado Springs Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 219410259
Status: Unutilized
Comment: 25749 sq. ft., 1 story wood frame, needs rehab, most recent use—storage, off-site use only.

Bldg. S–6275
Fort Carson
Colorado Springs Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 219410262
Status: Unutilized
Comment: 679 sq. ft., 1 story concrete block, needs rehab, most recent use—storage, off-site use only.

Georgia

Bldg. T–201, Fort Stewart
Hinesville Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 219420357
Status: Unutilized
Comment: 2929 sq. ft., 1 story wood frame, needs repair, most recent use—offices, off-site use only.

Bldg. T–902, Fort Stewart
Hinesville Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 219420360
Status: Unutilized
Comment: 2990 sq. ft., 1 story wood frame, needs repair, most recent use—offices, off-site use only.

Bldg. 704, Fort Stewart
Hinesville Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 219420364
Status: Unutilized
Comment: 2028 sq. ft., 1 story, need major repairs, most recent use—admin.

Kentucky

Bldg. 05711, Fort Campbell
Ft. Campbell, KY, Christian, ZIP: 42223–
Landholding Agency: Army
Property Number: 219410340
Status: Unutilized
Comment: 10944 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop.

Bldg. 05713, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410341
Status: Unutilized
Comment: 10,944 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop

Bldg. 5715
Fort Campbell
Fort Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410355
Status: Unutilized
Comment: 10,944 sq. ft.; 1 story; needs rehab.; presence of asbestos; most recent use—vehicle maintenance shop; off-site use only

Bldg. 5717
Fort Campbell
Fort Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410357
Status: Unutilized
Comment: 10,944 sq. ft.; 1 story; needs rehab.; presence of asbestos; most recent use—vehicle maintenance shop; off-site use only

Bldg. 5723
Fort Campbell
Fort Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410359
Status: Unutilized
Comment: 10,944 sq. ft.; 1 story; needs rehab.; presence of asbestos; most recent use—vehicle maintenance shop; off-site use only

Bldg. 5725
Fort Campbell
Fort Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410361
Status: Unutilized
Comment: 10,944 sq. ft.; 1 story; needs rehab.; presence of asbestos; most recent use–vehicle maintenance shop; off-site use only

Bldg. 232
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430147
Status: Unutilized
Comment: 8042 sq. ft., 2-story, needs repair, presence of asbestos, most recent use—adminin., off-site use only

Bldg. 230
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430148
Status: Unutilized
Comment: 8042 sq. ft., 2-story, needs repair, presence of asbestos, most recent use—admin., off-site use only

Bldg. 111
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430149
Status: Unutilized
Comment: 17,993 sq. ft., 2-story, needs repair, presence of asbestos, most recent use—transient family quarters

Bldg. 30
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430151
Status: Unutilized
Comment: 5310 sq. ft., 2-story, needs rehab, presence of asbestos, most recent use—admin., off-site use only

Bldg. 250, 252
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430157
Status: Unutilized
Comment: 5310 sq. ft., 2-story, needs repair, presence of asbestos, most recent use—admin., off-site use only

Bldg. 2105
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430159
Status: Unutilized
Comment: 2000 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—classroom, off-site use only

Bldg. 2905
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219430162
Status: Unutilized
Comment: 2000 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—classroom, off-site use only

Louisiana

Bldg. 3322, Fort Polk
Texas Avenue
Ft. Polk Co: Vernon Parish LA 71459
Landholding Agency: Army
Property Number: 219440441
Status: Underutilized
Comment: 480 sq. ft., 1 story, needs repairs, most recent use—offices.

Maryland

Bldgs. TMA4, TMA5, TMA8, TMA9
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219320292
Status: Unutilized
Comment: approx. 800 sq. ft., steel plate, gravel base ammunition storage area, fair condition.

Nevada

U.S. Army Reserve Center
685 East Plumb Lane

Reno Co: Washoe NV 89502
Landholding Agency: Army
Property Number: 219340180
Status: Unutilized
Comment: 11457 sq. ft., Reserve Center & 2611 sq. ft. vehicle repair shop on 4.29 acres, presence of asbestos, 1 story each, perpetual easement for road right of way 50 ft. from property.

Texas

Bldg. P–2000, Fort Sam Houston
San Antonio Co: Bexar TX 78234
Landholding Agency: Army
Property Number: 219220389
Status: Underutilized
Comment: 49542 sq. ft., 3-story brick structure, within National Landmark Historic District.

Bldg. P–2001, Fort Sam Houston
San Antonio Co: Bexar TX 78234
Landholding Agency: Army
Property Number: 219220390
Status: Underutilized
Comment: 16539 sq. ft., 4-story brick structure, within National Landmark Historic District.

Bldg. P–2007, Fort Sam Houston
San Antonio Co: Bexar TX 78234
Landholding Agency: Army
Property Number: 219220391
Status: Underutilized
Comment: 13058 sq. ft., 4-story brick structure, within National Landmark Historic District.

Bldg. T–189, Fort Sam Houston
San Antonio Co: Bexar TX 78234
Landholding Agency: Army
Property Number: 219220402
Status: Underutilized
Comment: 11949 sq. ft., 4-story brick structure, within National Landmark Historic District, possible lead contamination.

Bldg. P–8249
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219440455
Status: Excess
Comment: 2775 sq. ft., 1-story wood frame, lead paint, off-site removal only, most recent use—family housing.

Virginia

Bldg. T3004, Fort Pickett
Blackstone, VA Nottoway, Zip: 23824–
Landholding Agency: Army
Property Number: 219310317
Status: Unutilized
Comment: 2350 sq. ft., 1-story wood frame, needs repair, most recent use—clinic.

Bldgs. T3022–T3024, Fort Pickett
Blackstone, VA Nottoway, Zip: 23824–
Landholding Agency: Army
Property Numbers: 219310318–219310320
Status: Unutilized
Comment: 5310 sq. ft. each, 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3026, Fort Pickett
Blackstone, VA Nottoway, Zip: 23824–
Landholding Agency: Army
Property Number: 219310321
Status: Unutilized
Comment: 3550 sq. ft., 1-story wood frame, needs repair, most recent use—dining room.

Bldgs. T3025, T3040–T3041, T3049–T3050, Fort Pickett
Blackstone, VA Nottoway, Zip: 23824–
Landholding Agency: Army
Property Numbers: 219310322–219310326
Status: Unutilized
Comment: 2950 sq. ft. each, 1-story wood frame, needs repair, most recent use—dining room.

Bldgs. T3029–T3030, T3037–T3039, T3042–T3048, T3051–T3054, T3027–T3028 Fort Picket
Blackstone, VA, Nottoway, Zip: 23824–
Landholding Agency: Army
Property Numbers: 219310327–219310344
Status: Unutilized
Comment: 5310 sq. ft. each, 2-story wood frame, needs repair, most recent use—barracks

Bldgs. T3031–T3036, T3057 Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824–
Landholding Agency: Army
Property Numbers: 219310345–219310351
Status: Unutilized
Comment: 2987 sq. ft. each, 1-story wood frame, needs repair, most recent use—admin./supply

Bldg. T3055, Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824–
Landholding Agency: Army
Property Number: 219310352
Status: Unutilized
Comment: 2488 sq. ft., 1-story wood frame, needs repair, most recent use—admin./supply

Bldg. TT3001, Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824–
Landholding Agency: Army
Property Number: 219310353
Status: Unutilized
Comment: 3302 sq. ft., 1-story wood frame, most recent use—chapel

Bldg. TA3002, Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824–
Landholding Agency: Army
Property Number: 219310354
Status: Unutilized
Comment: 360 sq. ft., 1-story wood frame, most recent use—clinic

Bldg. 178, Fort Monroe
Ft. Monroe, VA 23651
Landholding Agency: Army
Property Number: 219320357
Status: Unutilized
Comment: 1470 sq. ft., 1 story, need repairs, most recent use—entomology facility, off-site use only.

Quarters 19201 & 19209
Fort Lee Co: Prince George, VA 23801
Landholding Agency: Army
Property Number: 219410365
Status: Excess
Comment: 8370 sq. ft. ea., 2 story family quarters with 6 units each, off-site use only

Quarters 19202, 19204, 19206, 19208, 19211 & 19213
Fort Lee Co: Prince George, VA 23801
Landholding Agency: Army
Property Number: 219410366
Status: Excess
Comment: 8404 sq. ft. ea., 2 story family quarters with 6 units each, off-site use only

Quarters 19203, 19205, 19207
Fort Lee Co: Prince George, VA 23801
Landholding Agency: Army
Property Number: 219410367
Status: Excess
Comment: 9416 sq. ft. ea., 2 story family quarters with 8 units each, off-site use only

Quarters 19210, 19214
Fort Lee Co: Prince George, VA 23801
Landholding Agency: Army
Property Number: 219410368
Status: Excess
Comment: 7084 sq. ft. ea., 2 story family quarters with 6 units each, off-site use only

Quarters 19212
Fort Lee Co: Prince George, VA 23801
Landholding Agency: Army
Property Number: 219410369
Status: Excess
Comment: 14098 sq. ft., 2 story family quarters with 12 units, off-site use only

Land (by State)

New Jersey

Land—Camp Kilmer
Plainfield Avenue
Edison Co: Middlesex, NJ 08817
Landholding Agency: Army
Property Number: 219230358
Status: Underutilized
Comment: approx. 10 acres in the southwest corner of site, most recent use—reserve training, wooded area.

Suitable/To Be Excessed

Buildings (by State)

Maryland

Bldg. 101
Walter Reed Army Medical Center
Forest Glen Section
Silver Spring Co: Montgomery, MD 20910–
Landholding Agency: Army
Property Number: 219012678
Status: Underutilized
Comment: 18438 sq. ft.; needs rehab; possible asbestos; building listed on National Historic Register.

Bldg. 104
Walter Reed Army Medical Center
Forest Glen Section
Silver Spring Co: Montgomery, MD 20910–
Landholding Agency: Army
Property Number: 219012679
Status: Underutilized
Comment: 12495 sq. ft.; needs rehab; possible asbestos; building listed on National Historic Register.

Bldg. 107
Walter Reed Army Medical Center
Forest Glen Section
Silver Spring Co: Montgomery, MD 20910–
Landholding Agency: Army
Property Number: 219012680
Status: Underutilized
Comment: 4107 sq. ft.; possible structural deficiencies; possible asbestos; historic property.

Bldg. 120
Walter Reed Army Medical Center
Forest Glen Section
Silver Spring Co: Montgomery, MD 20910–
Landholding Agency: Army
Property Number: 219012681
Status: Underutilized

Comment: 2442 sq. ft.; possible structural deficiencies; possible asbestos; historic property.

LAND (by State)

Texas

Land-Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070
Landholding Agency: Army
Property Number: 2199014814
Status: Unutilized
Comment: 43.08 acres, includes buildings/structures/parking and air strip.

Unsuitable Properties

Buildings (by State)

Alabama

82 Bldgs.
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 219014000, 219014009, 219014012, 219014015–219014051, 219014057, 219014060, 219014292, 219110109, 219120247,–219120250, 219230190, 219330001–219330002, 219430265–219430290, 219440078–219440082
Status Unutilized
Reason: Secured Area
Two Bedroom Apt.
Anniston Army Depot
Wherry Housing—Terrace Homes Apt.
Anniston Co: Calhoun AL 36201–
Landholdng Agency: Army
Property Number: 219130108
Status: Excess
Reason: Extensive deterioration
45 Bldgs., Fort Rucker
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 219220341–219220344, 219310016, 219320001, 219330003–219330010, 219340114, 219340116, 219340118, 219340120, 219340122–219340126, 219410016–219410019, 219410022–219410023, 219430260–219430264, 219440083–219440084, 219440087–219440097, 219510095–219510096
Status: Unutilized
Reason: Extensive deterioration
Bldgs. 25203, 25205–25207, 25209, 25501, 25503, 25505, 25507, 25510, 29101, 29103–29109
Fort Rucker
Stagefield Areas
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219410020–219410021, 219410024
Status: Unutilized
Reason: Secured area

27 Bldgs.
Phosphate Development Works
Muscle Shoals Co: Colbert AL 35660–1010
Landholding Agency: Army
Property Number: 219220789–219220815
Status: Unutilized
Reason: Extensive deterioration

17 Bldgs., Fort McClellan
Ft. McClellan Co: Calhoun AL 36205–5000
Landholding Agency; Army
Property Number: 219130019,, 219410003, 219420125,219440098–219440111
Status: Unutilized
Reason: Extensive deterioration

Bldg. 402–C
Alabama Army Ammunition Plant
Childersburg Co: Talladega AL 35044
Landholding Agency: Army
Property Number: 219420124
Status: Unutilized
Reason: Secured Area

Alaska

16 Bldgs.
Fort Greely
Ft. Greely AK 99790–
Landholding Agency: Army
Property Number: 219210124–219210125, 219220320–219220332
Status: Unutilized
Reason: Extensive deterioration

3 Bldgs., Fort Wainwright
Ft. Wainwright Co: Fairbanks AK 99505–
Landholding Agency: Army
Property Numbers: 219230183–219230184, 219410027
Status: Unutilized
Reason: Extensive deterioration (some are in a secured area)

Bldg. 1144, Fort Wainwright
Ft. Wainwright Co: Fairbanks/North AK 99703–
Landholding Agency: Army
Property Number: 219240273
Status: Unutilized
Reason: Secured area within airport runway clear zone

Bldgs. 5001, 5002, Fort Wainwright
Ft. Wainwright Co: Fairbanks/North AK 99703–
Landholding Agency: Army
Property Numbers: 219240274–219240275
Status: Unutilized
Reason: Secured area floodway

Bldg. 1501, Fort Greely
Ft. Greely AK 99505–
Landholding Agency: Army
Property Number: 219240327
Status: Unutilized
Reason: Secured area

Sullivan Roadhouse, Fort Greely
Ft. Greely AK
Landholding Agency: Army
Property Number: 219430291
Status: Unutilized
Reason: Extensive deterioration

Arizona

32 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–
Location: 12 miles west of Flagstaff, Arizona on I–40
Landholding Agency: Army
Property Numbers: 219014560–219014591
Status: Underutilized
Reason: Secured area

10 properties: 753 earth covered igloos; above ground standard magazines
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–
Location: 12 miles west of Flagstaff, Arizona on I–40
Landholding Agency: Army
Property Numbers: 219014592–219014601
Status: Underutilized
Reason: Secured area

9 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–5000
Location: 12 miles west of Flagstaff, Arizona on I–40
Landholding Agency: Army
Property Numbers: 219030273–219030274, 219120175–219120181
Status: Unutilized
Reason: Secured area

Bldgs. 84001, 68054
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Numbers: 219210017, 219430315
Status: Excess
Reason: Extensive deterioration

Bldgs. S–2085, S–6078
Yuma Proving Ground
Yuma Co: Yuma/LaPaz AZ 85365–9104
Landholding Agency: Army
Property Numbers: 219330020–219330021
Status: Unutilized
Reason: Secured area

Bldg. T–231
Yuma Proving Ground
Yuma Co: LaPaz AZ 85365–9104
Landholding Agency: Army
Property Number: 219510093
Status: Unutilized
Reason: Extensive deterioration

Bldg. 3007
Yuma Proving Ground
Laguana Army Airfield
Yuma Co: LaPaz AZ 85365–9104
Landholding Agency: Army
Property Number: 219510094
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Arkansas

Fort Smith USAR Center
Fort Smith
1218 South A Street
Fort Smith Co: Sebastian AR 72901–
Landholding Agency: Army
Property Number: 219014928
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Army Reserve Center
Hwy 79 North
Camden Co: Calhoun AR 71701–3415
Landholding Agency: Army
Property Number: 219220345
Status: Unutilized
Reason: Extensive deterioration

97 Bldgs.
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Numbers: 219340023–219340090, 219420132–219420137, 219430292–219430314
Status: Unutilized
Reason: Secured area (most are extensively deteriorated)

6 Bldgs.
Pine Bluff Arsenal
Pine Bluff Co: Jefferson AR 71602–9500
Landholding Agency: Army
Property Number: 219420138–219420142, 219440077
Status: Unutilized

Reason: Secured Area Extensive deterioration

California

Bldgs. P–177, P–178, 325, S–308, S–308A, T–308B
Fort Hunter Liggett
Jolon Co: Monterey CA 93928–
Landholding Agency: Army
Property Number: 219012414–219012415, 219012600, 219240284–219240285, 219240287
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material (Some are in a secured area.)

Bldg. 18
Riverbank Army Ammunition Plant
5300 Claus Road
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219012554
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

11 Bldgs., Nos, 2–8, 156, 1, 120, 181
Riverbank Army Ammunition Plant
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219013582–219013588, 219013590, 219240444–219240446
Status: Underutilized
Reason: Secured Area

9 Bldgs.
Oakland Army Base
Oakland Co: Alameda CA 94626–5000
Landholding Agency: Army
Property Number: 219013903–219013906, 219120051, 219340008–219340011
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated.)

Bldgs. S–108, S–290
Sharpe Army Depot
Lathrop Co: San Joaquin CA 95331–
Landholding Agency: Army
Property Number: 219014290, 219230179
Status: Underutilized
Reason: Secured Area

Bldg. S–184
Fort Hunter Liggett
Ft. Hunter Liggett Co: Monterey CA 93928–
Landholding Agency: Army
Property Number: 219014602
Status: Underutilized
Reason: Secured Area

12 Bldgs.
Sierra Army Depot
Herlong Co: Lassen CA 96113–
Landholding Agency: Army
Property Number: 219014713–219014717, 219014719–219014721, 219230181, 219320012
Status: Unutilized
Reason: Secured Area

Bldg. P–88
Sierra Army Depot
Road Oil Storage
Herlong Co: Lassen CA 96113–
Landholding Agency: Army
Property Number: 219014707
Status: Unutilized
Reason: Oil Storage Tank

Bldgs. 173, 177
Roth Road—Sharpe Army Depot
Lathrop Co: San Joaquin CA
Landholding Agency: Army
Property Number: 219014940–219014941
Status: Unutilized
Reason: Secured Area

Bldgs. 13, 171, 178 Riverbank Ammun Plant
5300 Claus Road
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219120162–219120164
Status: Underutilized
Reason: Secured Area

Bldg. S–521, Sharpe Site
Lathrop Co: San Joaquin CA 95331–
Landholding Agency: Army
Property Number: 219240155
Status: Unutilized
Reason: Secured Area

Bldgs. T–187, 403 Fort Hunter Liggett
Ft. Hunter Liggett Co: Monterey CA 93928
Landholding Agency: Army
Property Number: 219240321, 219440184
Status: Unutilized
Reason: Secured Area Extensive deterioration

Bldgs. 36, 257, Tracy Facility
Tracy Co: San Joaquin CA 95376
Landholding Agency: Army
Property Number: 219330023, 219330025
Status: Unutilized
Reason: Secured Area

10 Bldgs., Fort Irwin
Ft. Irwin Co: San Bernardino CA 92310
Landholding Agency: Army
Property: Number: 219330026–219330035
Status: Unutilized
Reason: Secured Area Extensive Deterioration

23 Bldgs.
DDDRW Sharpe Facility
Tracy Co: San Joaquin CA 95331
Landholding Agency: Army
Property Number: 219430017–219430039, 219430317
Status: Unutilized
Reason: Secured Area

US Army Reserve Center
Rio Vista Co: Sonoma CA 94571
Landholding Agency: Army
Property Number: 219430316
Status: Unutilized
Reason: Floodway

6 Buildings
Oakland Army Base
Oakland Co: Alameda CA 94626
Location: Include: 90, 790, 792, 807, 829, 916
Landholding Agency: Army
Property Number: 219510097
Status: Unutilized
Reason: Secured Area Within 2000 ft of flammable or explosive material

Colorado

70 Bldgs.
Pueblo Army Depot
Pueblo Co: Pueblo CO 81001–
Location: 14 miles East of Pueblo City on Highway 50
Landholding Agency: Army
Property Number: 219012209, 219012211, 219012214, 219012216, 219012221, 219012223–219012224, 219012226–219012228, 219012230–219012231, 219012233, 219012235–219012237, 219012239–219012257, 219012260–219012275, 219012287, 219012290–219012298, 219012300, 219012743, 219012745, 219012747–219012748, 219120058–219120061
Status: Unutilized
Reason: Secured Area

26 Bldgs., Pueblo Depot Activity
Pueblo CO 81001
Landholding Agency: Army
Property Number: 219240466–219240482
Status: Unutilized
Reason: Secured Area Extensive deterioration

Bldgs. T–317, T–412, 431, 433
Rocky Mountain Arsenal
Commerce Co: Adams CO 80022–2180
Landholding Agency: Army
Property Number: 219320013–219320016
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area Extensive deterioration

Bldg. 230
Fitzsimons Army Medical Center
Aurora Co: Adams CO 80045–5001
Landholding Agency: Army
Property Number: 219330036
Status: Unutilized
Reason: Secured Area

Bldgs. T–2741, T–2742, T–2743, T–2744, T–2745
Fort Carson
Colorado Springs Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 219410033–219410037
Status: Unutilized
Reason: Extensive deterioration

6 Buildings
Fitzsimons Army Medical Center
Aurora Co: Adams CO 80045–50001
Location: Include: 115, 116, 136, 137, 150, 154
Landholding Agency: Army
Property Number: 219510085
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldgs. 152, 153, 246, 248
Fitzsimons Army Medical Center
Aurora Co: Adams CO 80045–50001
Landholding Agency: Army
Property Number: 219510086
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material Extensive deterioration

Georgia

Fort Stewart
Sewage Treatment Plant
Ft. Stewart Co: Hinesville GA 31314–
Landholding Agency: Army
Property Number: 219013922
Status: Unutilized
Reason: Sewage treatment

Facility 12304
Fort Gordon
Augusta Co: Richmond GA 30905–
Location: Located off Lane Avenue
Landholding Agency: Army
Property Number: 219014787
Status: Unutilized
Reason: Wheeled vehicle grease/inspection rack

117 Bldgs.
Fort Gordon
Augusta Co: Richmond GA 30905–

Landholding Agency: Army
Property Number: 219220269, 219220279, 219220281, 219220293, 219320020, 219320026–219320029, 219330050–219330060, 219410038–219410131, 219420144–219420145, 219440199
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 11726–11727
Fort Gordon
Augusta Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219210138–219210139
Status: Unutilized
Reason: Secured Area

4 Bldgs., Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220334–219220337
Status: Unutilized
Reason: Detached lavatory

Bldg. 1673, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220742
Status: Unutilized
Reason: Extensive deterioration

9 Bldgs.
Fort Gillem
Forest Park Co: Clayton GA 30050
Landholding Agency: Army
Property Number: 219310091, 219310093–219310094, 219310098–219310099, 219310105, 219310107, 219320030, 219320033
Status: Unutilized
Reason: Extensve deterioration

13 Bldgs., Fort Stewart
Hinesville Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 219420155, 219420158, 219420161–219420163, 219420168–219420169, 219440193–219440198
Status: Unutilized
Reason: Extensive deterioration

18 Bldgs., Hunter Army Airfield
Savannah Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 219420152–219420153, 219430318–219430325, 219440185–219440192
Status: Unutilized
Reason: Extensive deterioration

Hawaii

PU–01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11
Schofield Barracks
Kolekoe Pass Road
Wahiawa Co: Wahiawa HI 26786–
Landholding Agency: Army
Property Number: 219014836–219014837
Status: Unutilized
Reason: Secured Area

P–3384, T–2281
Schofield Barracks
Wahiawa Co: Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219030361, 219510090
Status: Unutilized
Reason: Secured Area

Bldgs. T–1510, S–138, S–139, T–919, T–1081, T–1082, T–2283 Fort Shafter
Honolulu Co: Honolulu HI 96819
Landholding Agency: Army
Property Number: 219320035, 219510087
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 754–C, P–1519 A/B Schofield Barracks
Wahiawa Co: Wahiawa HI 96786
Landholding Agency: Army
Property Number: 219320034, 219420154
Status: Unutilized
Reason: Extensive deterioration

Bldg. 572
Wheeler Army Airfield
Wahiawa HI 96857
Landholding Agency: Army
Property Number: 219510088
Status: Unutilized
Reason: Secured Area

Illinois

609 Bldgs. and Groups
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Landholding Agency: Army
Property Number: 219010153–219010317, 219010319–219010407, 219010409–219010413, 219010415–219010439, 219011750–219011879, 219011881–219011908, 219012331, 219013076–219013138, 219014722–219014781, 219030277–219030278, 219040354, 219140441–219140446, 219210146, 219240457–219240465, 219330062–219330094
Status: Unutilized
Reason: Secured Area; many within 2,000 ft. of flammable or explosive materials; some within floodway.

Bldgs. 58, 59 and 72, 69, 64, 105
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–5000
Landholding Agency: Army
Property Number: 219110104–219110108
Status: Unutilized
Reason: Secured Area

Bldg. 133, Rock Island Arsenal
Gillespie Avenue
Rock Island Co: Rock Island IL 61299–
Landholding Agency: Army
Property Number: 219210100
Status: Underutilized
Reason: Extensive deterioration

13 Bldgs. Savanna Army Depot Activity
Savanna Co: Carroll IL 61074
Landholding Agency: Army
Property Number: 219230126–219230127, 219430326–219430335, 219430397
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 103, 114, 417, 110
Charles Melvin Price Support Center
Granite City Co: Madison IL 62040
Landholding Agency: Army
Property Number: 219420182–219420184, 219510008
Status: Unutilized
Reason: Secured Area Extensive deterioration

Indiana

263 Bldgs.
Indiana Army Ammunition Plant (INAAP)
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219010913–219010920, 219010924–219010936, 219010952, 219010955, 219010957, 219010959–219010960, 219010962–219010964, 219010966–219010967, 219010969–219010970, 219011449, 219011454, 219011456–219011457, 219011459–219011464, 219013764, 219013848, 219014608–219014653, 219014655–219014661, 219014663–219014683, 219030315, 219120168–219120171, 219140425–219140440, 219210152–219210155, 219230034–219230037, 219320036–219320111, 219420170–219420181, 219440159–219440163
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material (Most are within a secured area.)

61 Bldgs.
Newport Army Ammunition Plant
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219011584, 219011586–219011587, 219011589–219011590, 219011592–219011627, 219011629–219011636, 219011638–219011641, 219210149–219210151, 219220220, 219230032–219230033, 219430336–219430338
Status: Unutilized
Reason: Secured Area

2 Bldgs.
Atterbury Reserve Forces Training Area
Edinburgh Co: Johnson IN 46124–1096
Landholding Agency: Army
Property Number: 219230030–219230031
Status: Unutilized
Reason: Extensive deterioration

Bldg. 2635, Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111
Landholding Agency: Army
Property Number: 219240322
Status: Unutilized
Reason: Secured Area Extensive deterioration

Iowa

93 Bldgs.
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219012605–219012607, 219012609, 219012611, 219012613, 219012615, 219012620, 219012622, 219012624, 219013706–219013738, 219120172–219120174, 219440112–219440158, 219510089
Status: Unutilized
Reason: (Many are in a Secured Area) (Most are within 2000 ft. of flammable or explosive material.)

28 Bldgs., Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638
Landholding Agency: Army
Property Number: 219230005–219230029, 219320017, 219330061, 219340091
Status: Unutilized
Reason: Extensive deterioration

Kansas

37 Bldgs.
Kansas Army Ammunition Plant
Production Area
Parsons Co: Labette KS 67357–
Landholding Agency: Army
Property Number: 219011909–219011945
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material)

222 Bldgs.
Sunflower Army Ammunition Plant

34425 W. 103rd Street
DeSoto Co: Johnson KS 66018–
Landholding Agency: Army
Property Number: 219040039, 219040045, 219040048–219040051, 219040053, 219040055, 219040063–219040067, 219040072–219040080, 219040086–219040099, 219040102, 219040111–219040112, 219040118–219040119, 219040121–219040124, 219040126, 219040128–219040133, 219040136–219040137, 219040139–219040140, 219040143, 219040149–219040154, 219040156, 219040160–219040165, 219040168–219040170, 219040180, 219040182–219040185, 219040190–219040191, 219040202, 219040205–219040207, 219040208, 219040210–219040221, 219040234–219040239, 219040241–219040254, 219040256–219040257, 219040260, 219040262–219040267, 219040270–219040279, 219040282–219040319, 219040321–219040323, 219040325–219040327, 219040330–219040335, 219040349, 219040353, 219110073, 219140569–219140577, 219140580–219140591, 219140594, 219140599–219140601, 219140606–219140612, 219420185–219420187
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Floodway Secured Area

21 Bldgs.
Sunflower Army Ammunition Plant
35425 W. 103rd Street
DeSoto Co: Johnson KS 66018–
Landholding Agency: Army
Property Number: 219040007–219040008, 219040010–219040012, 219040014–219040027, 219040030–219040031
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Floodway

28 Bldgs.
Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 219240032, 219240080, 219420188–219420191, 219430040, 219440164–219440183, 219510092
Status: Unutilized
Reason: Extensive deterioration

11 Latrines
Sunflower Army Ammunition Plant
35425 West 103rd
DeSoto Co: Johnson KS 66018–
Landholding Agency: Army
Property Number: 219140578–219140579, 219140593, 219140595–219140598, 219140602–219140605
Status: Unutilized
Reason: Detached Latrine

75 Bldgs.,
Sunflower Army Ammunition Plant
DeSota Co: Johnson KS 66018–
Landholding Agency: Army
Property Number: 219240333–219240394, 219240402, 219240410–219240416, 219240420, 219240434–219240437
Status: Unutilized
Reason: Secured Area Within 2000 ft. of flammable or explosive material Extensive deterioration

Kentucky

Bldg. 126
Lexington-Blue Grass Army Depot
Lexington Co. Fayette KY 40511–
Location: 12 miles northeast of Lexington, Kentucky
Landholding Agency: Army
Property Number: 219011661
Status: Unutilized
Reason: Secured Area Sewage treatment facility

Bldg. 12
Lexington—Blue Grass Army Depot
Lexington Co: Fayette KY 40511–
Location: 12 miles Northeast of Lexington Kentucky
Landholding Agency: Army
Property Number: 219011663
Status: Unutilized
Reason: Industrial waste treatment plant.

6 Bldgs., Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219320113–219320115, 219320132–219320133, 219410146
Status: Unutilized
Reason: Extensive deterioration

42 Bldgs., Fort Campbell
Ft. Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219340247, 219340249–219340250, 219340253, 219410144, 219420192, 219430043–219430058, 219440258–219440277
Status: Unutilized
Reason: Extensive deterioration (Some are in a secured area.)

22 Buildings, Fort Knox
Ft. Knox Co: Hardin KY 40121
Location: Include: 9253, 9255, 9257, 9262, 9330, 9345, 9365, 9366, 9458, 9459, 9471, 9472, 9601, 9602, 9609, 9610, 9612, 9613, 9621–9642
Landholding Agency: Army
Property Number: 219510078
Status: Unutilized
Reason: Extensive deterioration (Some are detached latrines)

77 Bldgs.
Fort Knox
Ft. Knox Co: Hardin KY 40121
Landholding Agency: Army
Property Number: 219510079–219410084
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 6115, 6120, 6121
Fort Campbell
Ft. Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219510091
Status: Unutilized
Reason: Extensive deterioration

Louisiana

42 Bldgs.
Louisana Army Ammunition Plant
Doylin Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219011668–219011670, 219011700, 219011714–219011716, 219011735–219011737, 219012112, 219013571–219013572, 219013863–219013869, 219110124, 219110127, 219110131, 219110135–219110136, 219120290, 219240137–219240150, 219420330–219420332
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material) (Some are extensively deteriorated)

Staff Residences
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219120284–219120286
Status: Excess
Reason: Secured Area

5 Bldgs., Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 219320282, 219340107–219340108, 219430339–219430340
Status: Unutilized
Reason: Extensive deterioration

Maryland

56 Bldgs.
Aberdeen Proving Ground
Aberdeen City Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219011406–219011417, 219012608, 219012610, 219012612, 219012614, 219012616–219012617, 219012619, 219012623, 219012625–219012629, 219012631, 219012633–219012635, 219012637–219012642, 219012645–219012651, 219012655–219012664, 219013773, 219014711–219014712, 219030316, 219110140, 219240329
Status: Unutilized
Reason: Most are in a secured area. (Some are within 2000 ft. of flammable or explosive material) Some are in a floodway)

Bldg. 1958
Fort George G. Meade
Fort Meade Co: Anne Arundel, MD 20755–
Landholding Agency: Army
Property Number: 219014789
Status: Unutilized
Reason: Secured area

Bldg. 10401
Aberdeen Proving Ground
Aberdeen Area
Harford Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219110138
Status: Unutilized
Reason: Sewage treatment plant

Bldg. 10402
Aberdeen Proving Ground
Aberdeen Area
Aberdeen City Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219110139
Status: Unutilized
Reason: Sewage pumping station

37 Bldgs. Ft. George G. Meade
Ft. Meade Co: Anne Arundel, MD 20755–
Landholding Agency: Army
Property Numbers: 219130059, 219140458, 219140460–219140461, 219140465, 219140467, 219140510, 219210123, 219220142, 219220146–219220147, 219220153, 219220171–219220173, 219220190–219220192, 219220195–219220197, 219240121, 219310022, 219310026–219310027, 219310031–219310033, 219320144, 219330114–219330118, 219340013, 219420333–219420334

Status: Unutilized
Reason: Extensive deterioration

Bldgs. 132, 135 Fort Ritchie
Ft. Ritchie Co: Washington MD 21719–5010
Landholding Agency: Army
Property Numbers: 219330109–219330110
Status: Underutilized
Reason: Secured Area

Bldg. T–116, Fort Detrick
Frederick Co: Frederick MD 21762–5000
Landholding Agency: Army
Property Number: 219340012
Status: Unutilized
Reason: Extensive deterioration

Bldg. 4900, Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219230089
Status: Unutilized
Reason: Within airport runway clear zone

Massachusetts

Material Technology Lab
405 Arsenal Street
Watertown Co: Middlesex MA 02132–
Landholding Agency: Army
Property Number: 219120161
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; floodway secured area

Bldgs. T–102, T–110, T–111, Hudson Family Hsg
Natick RD&E Center
Bruen Road
Hudson Co: Middlesex MA 01749–
Landholding Agency: Army
Property Number: 219220105–219220107
Status: Unutilized
Reason: Extensive deterioration

Bldg. 3462, Camp Edwards
Massachusetts Military Reservation
Bourne Co: Barnstable MA 024620–5003
Landholding Co: Army
Property Number: 219230095
Status: Unutilized
Reason: Secured area; extensive deterioration

Bldgs. 3596, 1209–1211 Camp Edwards
Massachusetts Military Reservation
Bourne Co: Barnstable MA 02462–5003
Landholding Agency: Army
Property Number: 219230096, 219310018–219310020
Status: Unutilized
Reason: Secured Area

Michigan

Bldgs. 602, 604
U.S. Army Garrison Selfridge
Mt. Clemens Co: Macomb MI 48043–
Landholding Agency: Army
Property Number: 219012355–219012356
Status: Unutilized
Reason: Within airport runway clear zone, Floodway, Secured Area

Detroit Arsenal Tank Plant
28251 Van Dyke Avenue
Warren Co: Macomb MI 48090–
Landholding Agency: Army
Property Number: 219014605
Status: Unutilized
Reason: Secured Area

Bldgs. 5755–5756
Newport Weekend Training Site
Carleton Co: Monroe MI 48166
Landholding Agency: Army
Property Number: 219310060–219310061
Status: Unutilized
Reason: Secured Area, Extensive deterioration

25 Bldgs.
Fort Custer Training Center
2501 26th Street
Augusta Co: Kalamazoo MI 49102–9205
Landholding Agency: Army
Property Number: 219014947–219014963, 219140447–219140454
Status: Unutilized
Reason: Secured Area

Minnesota

170 Bldgs.
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219120165–219120167, 219210014–219210015, 219220227–219220235, 219240328, 219310055–219310056, 219320145–219320156, 219330096–219330108, 219340015, 219410159–219410189, 219420195–219420284, 219430059–219430064
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material.) (Some are extensively deteriorated)

Mississippi

Bldgs. 8301, 8303–8305, 9158
Mississippi Army Ammunition Plant
Stennis Space Center Co: Hancock MS 39529–7000
Landholding Agency: Army
Property Number: 219040438–219040442
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Missouri

Lake City Army Ammo. Plant
59, 59A, 59C, 59B
Independence Co: Jackson MO 64050–
Landholding Agency: Army
Property Number: 219013666–219013669
Status: Unutilized
Reason: Secured Area

Bldg. #1, 2, 3
St. Louis Army Ammunition Plant
4800 Goodfellow Blvd.
St. Louis Co: St. Louis MO 63120–1798
Landholding Agency: Army
Property Number: 219120067–219120069
Status: Unutilized
Reason: Secured Area

19 Bldgs.
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219140422–219140423, 219430065–219430081
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

Nevada

7 Bldgs.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219011953, 219011955, 219012061–219012062, 219012106, 219013614, 219230090
Status: Unutilized
Reason: Secured Area

Bldg. 396
Hawthorne Army Ammunition Plant
Bachelor Enlisted Qtrs W/Dining Facilities
Hawthorne Co: Mineral NV 89415–
Location: East side of Decatur Street—North of Maine Avenue
Landholding Agency: Army
Property Number: 219011997
Status: Unutilized
Reason: Within airport runway clear zone. Secured Area

57 Bldgs.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219012009, 219012013, 219012021, 219012044, 219013615–219013651, 219013653–219013656, 219013658–219013661, 219013663, 219013665, 219340016–219340021
Status: Underutilized
Reason: Secured Area (Some within airport runway clear zone; many within 2000 ft. of flammable or explosive material)

62 Concrete Explo. Mag. Stor.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: North Mag. Area
Landholding Agency: Army
Property Number: 219120150
Status: Unutilized
Reason: Secured Area

259 Concrete Explo. Mag. Stor.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: South & Central Mag. Areas
Landholding Agency: Army
Property Number: 219120151
Status: Unutilized
Reason: Secured Area

Facility No. 00169, 00A38
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219240276, 219330119
Status: Unutilized
Reason: Extensive deterioration

New Jersey

217 Bldgs.
Armament Res. Dev. & Eng. Ctr.
Picatinny Arsenal Co: Morris NJ 07806–5000
Location: Route 15 North
Landholding Agency: Army
Property Number: 219010440–219010474, 219010476, 219010478, 219010639–219010667, 219010669–219010721, 219012423–219012424, 219012426–219012428, 219012430–219012431, 219012433–219012466, 219012469–219012472, 219012474–219012475, 219012756–219012760, 219012763–219012767, 219013787, 219014306–219014307, 219014311, 219014313–219014321, 219030269, 219140617, 219230118–219230125, 219240315–219240316, 219420001–21942008, 219510002–219510007
Status: Excess
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material.) (Some are extensively deteriorated) (Some are in a floodway)

35 Bldgs.
Fort Monmouth
Wall Co: Monmouth NJ 07719–
Landholding Agency: Army
Property Number: 219012829–219012833, 219012837, 219012841–219012842, 219013786, 219230177, 219320157, 219330129–219330140, 219420335, 219440201–219440211
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated) (Some are in a floodway)

12 Bldgs., Military Ocean Terminal
Bayonne Co: Hudson NJ 07002–
Landholding Agency: Army
Property Number: 219013890–219013896, 219330141–219330143, 219430001, 219440200
Status: Unutilized
Reason: Floodway, Secured Area

24 Bldgs., Fort Dix
Ft. Dix Co: Burlington NJ 08640
Landholding Agency: Army
Property Number: 219510009–219510014
Status: Underutilized
Reason: Extensive deterioration

Structure 403B
Armament Research, Dev. & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219510001
Status: Unutilized
Reason: Drop Tower

New Mexico

Bldgs. 21384, 28356, 32010, 32984, 28730, 28830
White Sands Missile Range
White Sands Co: Dona Ana NM 88802
Landholding Agency: Army
Property Number: 219330144–219330147, 219430126–219430127
Status: Unutilized
Reason: Extensive Deterioration

New York

7 Bldgs., Fort Totten
Bayside Co: Queens NY 11357–
Landholding Agency: Army
Property Number: 219210130–219210131, 219430082–219430086
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 110, 143, 2084, 2105, 2110
Seneca Army Depot
Romulus Co: Seneca NY 14541–5001
Landholding Agency: Army
Property Number 219240439, 219240440–219240443
Status: unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 124
U.S. Military Academy
West Point Co: Orange NY 10996
Landholding Agency: Army
Property Number: 219330148
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 3008, 3077, Stewart Gardens
Stewart Army Subpost
New Windsor Co: Orange NY 12553
Landholding Agency: Army
Property Number: 219420285, 219440236
Status: Unutilized
Reason: Extensive deterioration

Bldg. P–4370, Fort Drum
Ft. Drum Co: Jefferson NY 13602
Landholding Agency: Army
Property Number: 219430004
Status: Unutilized
Reason: Sewage pumping station

10 Bldgs., Fort Drum
Ft. Drum Co: Jefferson NY 13602
Landholding Agency: Army
Property Numbers: 219430005–219430012, 219430014, 219510016
Status: Unutilized
Reason: (Some are within airport runway clear zone) (Some are extensively deteriorated)

5 Field Range Latrines
Fort Drum
Ft. Drum Co: Jefferson NY 13602
Location: Bldgs. S–2565, S–2703, S–2714, S–2802, S–2822
Landholding Agency: Army
Property Number: 219430013
Status: Unutilized
Reason: Detached latrines

North Carolina

24 Bldgs., Fort Bragg
Ft. Bragg Co: Cumberland NC 28307
Landholding Agency: Army
Property Numbers: 219420286–219420290, 219420293, 219420294, 219420297, 219420303, 219440294–219440308
Status: Unutilized
Reason: Extensive deterioration

Bldg. 12
Military Ocean Terminal
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 219510015
Status: Unutilized
Reason: Secured Area

Ohio

63 Bldgs.
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Numbers: 219012476–219012507, 219012509–219012513, 219012515, 219012517–219012518, 219012520, 219012522–219012523, 219012525–219012528, 219012530–219012532, 219012534–219012535, 219012537, 219013670–219013677, 219013781, 219210148
Status: Unutilized
Reason: Secured Area

Bldgs. T–404, T–78, T–79, T–97, T–80, 309, 317, T–81 thru T–86
Defense Construction Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Numbers: 219240331, 219310034–219310039, 219440257
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated)

12 Bldgs., Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Numbers: 219320399–219320410
Status: Unutilized
Reason: Extensive deterioration

Oklahoma

547 Bldgs.
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501–5000
Landholding Agency: Army
Property Numbers: 219011674, 219011680, 219011684, 219011687, 219012113, 219013792, 219013981–219013991, 219013994, 219014081–219014102, 219014104, 219014107–219014137, 219014141–219014159, 219014162, 219014165–219014216, 219014218–219014274, 219014336–219014559, 219030007–219030127, 219040004
Status: Underutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material)

13 Bldgs.
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219130060, 219140525, 219140528–219140529, 219140545–219140548, 219140550–219140551, 219320337, 219440309, 219510023
Status: Unutilized
Reason: Extensive deterioration

22 Bldgs.
McAlester Army Ammunition Plant
McAlester Co: Pittsburgh OK 74501
Landholding Agency: Army
Property Number: 219310050–219310053, 219320170–219320171, 219330149–219330160, 219430122–219430125
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated)

7 Bldgs., Fort Sill
Lawton Co: Comanche OK 73503
Landholding Agency: Army
Property Number: 219440310–219440316
Status: Unutilized
Reason: Detached Latrines

Oregon

11 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219012174–219012176, 219012178–219012179, 219012190–219012191, 219012197–219012198, 219012217, 219012229
Status: Underutilized
Reason: Secured Area

24 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219012177, 219012185–219012186, 219012189, 219012195–219012196, 219012199–219012205, 219012207–219012208, 219012225, 219012279, 219014304–219014305, 219014782, 219030362–219030363, 219120032, 219320201
Status: Unutilized
Reason: Secured Area

Pennsylvania

Hays Army Ammunition Plant
300 Mifflin Road
Pittsburgh Co: Allegheny PA 15207–
Landholding Agency: Army
Property Number; 219011666
Status: Excess

Reason: Secured Area

74 Bldgs.
Fort Indiantown GAP
Annville Co: Lebanon PA 17003–5011
Landholding Agency: Army
Property Number: 219140267–219140270, 219140272–219140274, 219140277–219140286, 219140292, 219140295, 219140299, 219140302, 219140306–219140311, 219140313, 219140316–219140320, 219140322–219140324, 219420118, 219420120–219420123, 219430106–219430121, 219440240–219440256
Status: Unutilized
Reason: Extensive deterioration (Some are detached latrines)

Bldg. 82001, Reading USARC
Reading Co: Berks PA 19604–1528
Landholding Agency: Army
Property Number; 219320173
Status: Unutilized
Reason: Extensive deterioration

33 Bldgs.
Letterkenny Army Depot
Chambersburg Co: Franklin PA 17201
Landholding Agency: Army
Property Numbers: 219420399–219420430, 219430098
Status: Unutilized
Reason: Secured Area, Extensive deterioration

South Carolina

22 Bldgs., Fort Jackson
Ft. Jackson Co: Richland SC 29207
Landholding Agency: Army
Property Numbers: 219410157–219410158, 219440237–219440239, 219510017–219510022
Status: Unutilized
Reason: Extensive deterioration

Tennessee

45 Bldgs.
Volunteer Army Ammo. Plant
Chattanooga Co: Hamilton TN 37422–
Landholding Agency: Army
Property Numbers: 219010475, 219010477, 219010479–219010500, 219240127–219240136, 219420304–219420307, 219430099–219430105
Status: Unutilized/Underutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material) (Some are extensively deteriorated)

32 Bldgs.
Holston Army Ammunition Plant
Kingsport Co: Hawkins TN 61299–6000
Landholding Agency: Army
Property Numbers: 219012304–219012309, 219012311–219012312, 219012314, 219012316–219012317, 219012319, 219012325, 219012328, 219012330, 219012332, 219012334–219012335, 219012337, 219013789–219013790, 219030266, 219140613, 219330178, 219440212–219440216, 219510025–219510028
Status: Unutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material)

8 Bldgs.
Milan Army Ammunition Plant
Milan Co: Gibson TN 38358
Landholding Agency: Army
Property Numbers: 219240447–219240449, 219320182–219320184, 219330176–219330177
Status: Unutilized
Reason: Secured Area

Bldg. Z–183A
Milan Army Ammunition Plant
Milan Co: Gibson TN 38358
Landholding Agency: Army
Property Number: 219240783
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Texas

Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76079–
Landholding Agency: Army
Property Number: 219011665
Status: Unutilized
Reason: easement to city of Saginaw for sewer pipeline ending 5/15/2023

18 Bldgs.
Lone Star Army Ammunition Plant
Highway 82 West
Texarkana Co: Bowie TX 75505–9100
Landholding Agency: Army
Property Numbers: 219012524, 219012529, 219012533, 219012536, 219012539–219012540, 219012542, 219012544–219012545, 219030337–219030345
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 0021A, 0027A
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75661–
Location: State highway 43 north
Landholding Agency: Army
Property Numbers: 219012546, 219012548
Status: Underutilized
Reason: Secured Area

33 Bldgs., Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Landholding Agency: Army
Property Number: 219120064, 219130002, 219140255, 219230109–219230115, 219320193–219320194, 219330163, 219420314–219420327, 219430093–219430097, 219440217
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated)

Bldg. T–5000
Camp Bullis
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219220100
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

Swimming Pools
Fort Bliss
El Paso Co: El Paso TX 79916
Landholding Agency: Army
Property Number: 219230108
Status: Unutilized
Reason: Extensive deterioration

6 Bldgs., Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 219340022, 219340238, 219410149, 219410151, 219430131, 219510024
Status: Unutilized
Reason: Extensive deterioration

14 Bldgs., Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330161–219330162, 219330473–219330474, 219340095–219340098, 219420309–219420313, 219440439
Status: Unutilized
Reason: Extensive Deterioration

Bldg. T–2514
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330475
Status: Unutilized
Reason: Pump house

Bldgs. T–2916, T–3180, T–3192, T–3398
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330476–219330479
Status: Unutilized
Reason: Detached latrines

Utah

3 Bldgs.
Tooele Army Depot
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219012153, 219012166, 219030366
Status: Unutilized
Reason: Secured Area

11 Bldgs.
Tooele Army Depot
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219012143–219012144, 219012148–219012149, 219012152, 219012155, 219012156, 219012158, 219012742, 219012751, 219240267
Status: Underutilized
Reason: Secured Area

12 Bldgs.
Dugway Proving Ground
Dugway Co: Toole UT 84022–
Landholding Agency: Army
Property Number: 219013996–219013999, 219130008, 219130011–219130013, 219130015–219130018
Status: Underutilized
Reason: Secured Area

18 Bldgs.
Dugway Proving Ground
Dugway Co: Toole UT 84022–
Landholding Agency: Army
Property Number: 219014693, 219130009–219130010, 219130014, 219220204–219220207, 219330179–219330185, 219420328–219420329, 219440218
Status: Unutilized
Reason: Secured Area

Bldg. 4520
Tooele Army Depot, South Area
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219240268
Status: Unutilized
Reason: Extensive deterioration

Virginia

173 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141–

Location: State Highway 114
Landholding Agency: Army
Property Number: 219010833, 219010836, 219010839, 219010842, 219010844, 219010847–219010890, 219010892–219010912, 219011521–219011577, 219011581–219011583, 219011585, 219011588, 219011591, 219013559–219013570, 219110142–219110143, 219120071, 219140618–219140633, 219440219–219440225, 219510031–219510033
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

13 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141–
Location: State Highway 114
Landholding Agency: Army
Property Number: 219010834–219010835, 219010837–219010838, 219010840–219010841, 219010843, 219010845–219010846, 219010891, 219011578–219011580
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Comment: Latrine, detached structure

61 Bldgs.
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219240084, 219240096, 219240103–219240105, 219240107–219240118, 219330191–219330228, 219340092–219340094, 219420340–219420342, 219510034
Status: Unutilized
Reason: Extensive deterioration (Some are in a secured area.)

13 Bldgs.
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219220210–219220218, 219230100–219230103
Status: Unutilized
Reason: Secured Area

2 Bldgs.
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219220312, 219220314
Status: Underutilized
Reason: Extensive deterioration

2 Bldgs., Fort A.P. Hill
Bowling Co: Caroline VA 22427
Landholding Agency: Army
Property Number: 219240313–219240314
Status: Underutilized
Reason: Detached latrines

Bldg. B7103–01, Motor House
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219240324
Status: Unutilized
Reason: Secured Area Within 2000 ft. of flammable or explosive material Extensive deterioration

8 Bldgs., Fort Pickett
Blackstone Co: Nottoway VA 23824
Landholding Agency: Army
Property Number: 219310136, 219310138–219310139, 219310141–219310145
Status: Unutilized
Reason: Extensive deterioration

Bldg. 160, Fort Monroe
Ft. Monroe VA 23651
Landholding Agency: Army
Property Number: 219510029
Status: Unutilized
Reason: Extensive deterioration

Bldg. 919, Fort Story
Ft. Story Co: Princess Ann VA 23459
Landholding Agency: Army
Property Number: 219430015
Status: Unutilized
Reason: Floodway

Bldgs. 1058, 1061, Fort Story
Ft. Story Co: Princess Ann VA 23459
Landholding Agency: Army
Property Number: 219430016
Status: Unutilized
Reason: Extensive deterioration

56 Bldgs.
Red Water Field Office
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219430341–219430396
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area

Bristol U.S. Army Reserve Ctr.
100 Piedmont Avenue
Bristol Co: Washington VA 24201
Landholding Agency: Army
Property Number: 219440317
Status: Underutilized
Reason: Secured Area

Bldg. SS1238
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427
Landholding Agency: Army
Property Number: 219510030
Status: Underutilized
Reason: Secured Area, Extensive deterioration

Washington

24 Training Facilities
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–5000
Landholding Agency: Army
Property Number: 219430128
Status: Unutilized
Reason: Secured Area, Extensive deterioration

68 Bldgs., Fort Lewis
Ft. Lewis Co: Pierce WA 98433–5000
Landholding Agency: Army
Property Number: 219430129, 219440226–219440229, 219440231–219440235
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldgs. 524, 538, 539
Ft. Lawton
Seattle Co: King WA 98199
Landholding Agency: Army
Property Number: 219430130
Status: Unutilized
Reason: Secured Area, Extensive deterioration

98 Bldgs. (Barracks)
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 219440230
Status: Unutilized
Reason: Secured Area, Extensive deterioration

152 Bldgs., Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 219510035–219510056
Status: Unutilized
Reason: Secured Area

Wisconsin

6 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219011094, 219011209–219011212, 219011217
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material Other environmental Secured Area
Comment: friable asbestos

154 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219011104, 219011106, 219011108–219011113, 219011115–219011117, 219011119–219011120, 219011122–219011139, 219011141–219011142, 219011144, 219011148–219011208, 219011213–219011216, 219011218–219011234, 219011236, 219011238, 219011240, 219011242, 219011244, 219011247, 219011249, 219011251, 219011254, 219011256, 219011259, 219011263, 219011265, 219011268, 219011270, 219011275, 219011277, 219011280, 219011282, 219011284, 219011286, 219011290, 219011293, 219011295, 219011297, 219011300, 219011302, 219011304–219011311, 219011317, 219011319–219011321, 219011323
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Other environmental Secured Area
Comment: friable asbestos

4 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013871–219013873, 219013875
Status: Underutilized
Reason: Secured Area

31 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013876–219013878, 219220295–219220311, 219510058–219510068
Status: Unutilized
Reason: Secured Area

6 Bldgs. 6513–27, 6823–2, 6861–4
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219210097–219210099

Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

76 Bldgs., Fort McCoy
US Hwy. 21
Ft. McCoy Co: Monroe WI 54656–
Landholding Agency: Army
Property Number: 219210115, 219240206–219240262, 219310208–219310225
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 2845, 2860, Fort McCoy
Ft. McCoy Co: Monroe WI 54656
Landholding Agency: Army
Property Number: 219430002
Status: Unutilized
Reason: Detached latrines

Bldg. 6513–3
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913
Landholding Agency: Army
Property Number: 219510057
Status: Unutilized
Reason: Detached Latrine

124 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913
Landholding Agency: Army
Property Number: 219510069–219510077
Status: Unutilized
Reason: Secured Area Extensive deterioration

Land (by State)

Alabama

23 acres and 2284 acres
Alabama Army Ammunition Plant
110 Hwy. 235
Childersburg Co: Talladega Al 35044–
Landholding Agency: Army
Property Number 219210095–219210096
Status: Excess
Reason: Secured Area

Alaska

Campbell Creek Range
Fort Richardson
Anchorage Co: Greater Anchorage AK 99507
Landholding Agency: Army
Property Number: 219230188
Status: Unutilized
Reason: Inaccessible

Illinois

Group 66A
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Landholding Agency: Army
Property Number: 219010414
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Parcel 1
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Location: South of the 811 Magazine Area, adjacent to the River road.
Landholding Agency: Army
Property Number 219012810
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material Floodway

Parcel No. 2, 3
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Landholding Agency: Army
Property Number: 219013796–219013797
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material Floodway

Parcel No. 4, 5, 6
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Landholding Agency: Army
Property Number: 219013798–219013800
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Floodway

Homewood USAR Center
18760 S. Halsted Street
Homewood Co: Cook IL 60430–
Landholding Agency: Army
Property Number: 219014067
Status: Underutilized
Reason: Secured Area 38,000 sq. ft. & 4,000 sq. ft. of Land

Rock Island Arsenal
South Shore Moline Pool Miss. River
Moline Co: Rock Island IL 61299–5000
Landholding Agency: Army
Property Number: 219240317–219240318
Status: Unutilized
Reason: Floodway

Indiana

Newport Army Ammunition Plant
East of 14th St. & North of S. Blvd.
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219012360
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Land—Plant 2
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111
Landholding Agency: Army
Property Number: 219330095
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Maryland

Carroll Island, Graces Quarters
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Number: 219012630, 219012632
Status: Underutilized
Reason: Floodway, Secured Area

New Jersey

Land
Armament Research Development & Eng. Center
Route 15 North
Picatinny Arsenal Co: Morris NJ 07806–
Landholding Agency: Army
Property Number: 219013788
Status: Unutilized
Reason: Secured Area

Oklahoma

McAlester Army Ammo. Plant
McAlester Co: Pittsburg OK 74501–
Landholding Agency: Army
Property Number: 219014603
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

Pennsylvania

Lickdale Railhead
Fort Indiantown Gap
Lickdale Co: Lebanon PA 17038–
Landholding Agency: Army
Property Number: 219012359
Status: Excess
Reason: Floodway

Tennessee

Land
Volunteer Army Ammunition Plant
Chattanooga Co: Hamilton TN
Landholding Agency: Army
Property Number: 219013791
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Volunteer Army Ammo. Plant
Chattanooga Co: Hamilton TN
Location: Area around VAAP—outside fence in buffer zone.
Landholding Agency: Army
Property Number: 219013880
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Texas

Land—Approx. 50 acres
Lone Star Army Ammunition Plant
Texarkana Co: Bowie TX 75505–9100
Landholding Agency: Army
Property Number: 219420308
Status: Unutilized
Reason: Secured Area

Virginia

Fort Belvoir Military Reservation—5.6 Acres
South Post located West of Pohick Road
Fort Belvoir Co: Fairfax VA 22060–
Location: Rightside of King Road
Landholding Agency: Army
Property Number: 219012550
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area

Wisconsin

Land
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Location: Vacant land within plant boundaries.
Landholding Agency: Army
Property Number: 219013783
Status: Unutilized
Reason: Secured Area

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Friday
April 7, 1995

Part III

Nuclear Regulatory Commission

10 CFR Part 52

Standard Design Certifications: System 80+ Design and U.S. Advanced Boiling Water Reactor Design; Proposed Rules

NUCLEAR REGULATORY COMMISSION

10 CFR PART 52

RIN 3150–AE87

Standard Design Certification for the U.S. Advanced Boiling Water Reactor Design

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) proposes to approve by rulemaking a standard design certification for the U.S. Advanced Boiling Water Reactor (ABWR) design. The applicant for certification of the U.S. ABWR design was GE Nuclear Energy. The NRC is proposing to add a new appendix to 10 CFR part 52 for the design certification. This action is necessary so that applicants or licensees intending to construct and operate a U.S. ABWR design may do so by appropriately referencing the proposed appendix. The public is invited to submit comments on this proposed design certification rule (DCR) and the design control document (DCD) that is incorporated by reference into the DCR (refer to Sections IV and V). The Commission also invites the public to submit comments on the environmental assessment for the U.S. ABWR design (refer to Section VI).

DATES: The comment period expires on August 7, 1995. Comments received after this date will be considered if it is practical to do so, but the Commission is only able to assure consideration for comments received on or before this date. In addition, interested parties may request an informal hearing before the Atomic Safety and Licensing Board Panel, in accordance with 10 CFR 52.51, on matters pertaining to this design certification rulemaking (refer to Section V). Requests for an informal hearing must be submitted by August 7, 1995.

ADDRESSES: Mail written comments and requests for an informal hearing to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Comments may also be delivered to 11555 Rockville Pike, Rockville, MD, between 7:30 am and 4:15 pm on Federal workdays. Copies of comments received will be available for examination and copying at the NRC Public Document Room (PDR) at 2120 L Street NW. (Lower Level), Washington, DC. A copy of the environmental assessment and the design control document is also available for examination and copying at the PDR.

FOR FURTHER INFORMATION CONTACT: Harry S. Tovmassian, Office of Nuclear Regulatory Research, telephone (301) 415–6231, Jerry N. Wilson, Office of Nuclear Reactor Regulation, telephone (301) 415–3145, or Geary S. Mizuno, Office of the General Counsel, telephone (301) 415–1639, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

SUPPLEMENTARY INFORMATION:

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I. Background

On September 29, 1987, General Electric Company applied for certification of the U.S. ABWR standard design with the NRC. The application was made in accordance with the procedures specified in 10 CFR part 50, appendix O, and the Policy Statement on Nuclear Power Plant Standardization, dated September 15, 1987. The application was docketed on February 22, 1988 (Docket No. STN 50–605).

On May 18, 1989 (54 FR 15372), the NRC added 10 CFR part 52 to its regulations to provide for the issuance of early site permits, standard design certifications, and combined licenses for nuclear power reactors. Subpart B of 10 CFR part 52, established the process for obtaining design certifications. A major purpose of this rule was to achieve early resolution of licensing issues and to enhance the safety and reliability of nuclear power plants.

On December 20, 1991, GE Nuclear Energy (GE), an operating component of General Electric Company's power systems business, requested that its application, originally submitted pursuant to 10 CFR part 50, appendix O, be considered as an application for design approval and subsequent design certification pursuant to 10 CFR 52.45. Notice of receipt of this request was published in the **Federal Register** on March 20, 1992 (57 FR 9749), and a new docket number (52–001) was assigned. GE's application, the ABWR Standard Safety Analysis Report (SSAR) up to and including amendment 35 (Revision 7) and the Certified Design Material, Revision 6, is available for inspection and copying at the PDR.

The NRC staff issued a final safety evaluation report (FSER) related to the certification of the U.S. ABWR design in July 1994 (NUREG–1503). The FSER documents the results of the NRC staff's safety review of the U.S. ABWR design against the requirements of 10 CFR part 52, subpart B, and delineates the scope of the technical details considered in evaluating the proposed design. A copy of the FSER may be obtained from the Superintendent of Documents, Government Printing Office, Mail Stop SSOP, Washington, DC 20402–9328 or the National Technical Information

Service, Springfield, VA 22161. The final design approval (FDA) for the U.S. ABWR design was issued on July 13, 1994, and published in the **Federal Register** on July 20, 1994 (59 FR 37058). A revised version of the FDA was issued on November 23, 1994 and published in the **Federal Register** on December 1, 1994 (59 FR 61647).

Since the issuance of 10 CFR part 52, the NRC staff has been working to implement subpart B with issues such as the acceptability of using a two-tiered design certification rule and the level of design detail required for design certification. The NRC staff originally proposed a design certification rule for evolutionary standard plant designs in SECY–92–287, ''Form and Content for a Design Certification Rule.'' On March 26, 1993, the NRC staff issued SECY–92–287A in which it responded to issues on SECY–92–287, which were put forth by the Commission and to specific questions raised by Commissioner Curtiss in a letter dated September 9, 1992. Subsequently, the NRC staff modified the draft rule in SECY–92–287 to incorporate Commission guidance and published a draft-proposed design certification rule in the **Federal Register** on November 3, 1993 (58 FR 58665), as an Advanced Notice of Proposed Rulemaking (ANPR) for public comment. On November 23, 1993, the NRC staff discussed this ANPR in a public workshop entitled ''Topics Related to Certification of Evolutionary Light Water Reactor Designs.'' All holders of operating licenses or construction permits were informed of the issuance of the ANPR and the planned public workshop through the issuance of NRC Administrative Letter 93–05 on October 29, 1993. Separate announcements of the workshop were also sent to the Union of Concerned Scientists, the Nuclear Information and Resource Service, the Natural Resources Defense Council, the Public Citizen Litigation Group, the Ohio Citizens for Responsible Energy (OCRE), and the State of Illinois Department of Nuclear Safety on October 18, 1993. An official transcript of the workshop proceedings is available in the PDR.

Rulemaking Procedures

10 CFR part 52 provides for Commission approval of standard designs for nuclear power facilities (*e.g.*, design certification) through rulemaking. In accordance with the Administrative Procedure Act (APA), part 52 provides the opportunity for the public to submit written comments on the proposed design certification rule. However, part 52 goes beyond the requirements of the APA by providing the public with an opportunity to request a hearing before the Atomic Safety and Licensing Board in a design certification rulemaking. While part 52 describes a general framework for conducting a design certification rulemaking, § 52.51(a) states that more detailed procedures for the conduct of each design certification will be specified by the Commission.

To assist the Commission in developing the detailed rulemaking procedures, the NRC's Office of General Counsel (OGC) prepared a paper, SECY–92–170 (May 8, 1992), which identified issues relevant to design certification rulemaking procedures, and provided OGC's preliminary analyses and recommendations with respect to those issues. SECY–92–170 was made public by the Commission, and a Commission meeting on this paper was held on June 1, 1992.

Thereafter, in SECY–92–185 (May 19, 1992), OGC proposed holding a public workshop for the purpose of facilitating public discussion on the issues raised in SECY–92–170 and obtaining public comments on those issues. The Commission approved OGC's proposal (See the May 28, 1992, Memorandum from Samuel J. Chilk to William C. Parler). Notice of the workshop was published in the **Federal Register** on June 9, 1992 (57 FR 24394). The notice also provided for a 30-day period following the workshop for the public to submit written comments on SECY–92–170. A transcript was kept of the workshop proceedings and placed in the PDR. Nearly 50 non-NRC individuals attended the workshop; an additional eight persons requested copies of SECY–92–170 and workshop materials but did not attend. The workshop was organized in a panel format, with representatives from OCRE (Susan Hiatt), NUMARC (Robert Bishop), GE and Westinghouse—two design certification vendors (Marcus Rowden and Barton Cowan), the State of Illinois Department of Nuclear Safety (Stephen England), the State of New York Public Service Commission (James Brew), the Administrative Conference of the United States (William Olmstead), OGC, the NRC Staff, and a moderator. Eleven written comments were received after the workshop, three from OCRE (OCRE August 1992 Comments; OCRE September 1992 Letter; OCRE October 1992 Letter), NUMARC, Winston and Strawn, the State of Illinois Department of Nuclear Safety, Westinghouse Energy Systems, the U.S. Department of Energy, Asea Brown Boveri-Combustion Engineering (ABB–CE), and AECL Technologies[1]. Mr. Rowden submitted an additional comment on behalf of NUMARC which addresses proprietary information.

OGC's final analyses and recommendations for design certification rulemaking procedures were set forth in SECY–92–381 (November 10, 1992). This paper was prepared after consideration of the panel discussions at the public workshop and the written comments received after the workshop. On April 30, 1993, the Commission issued a Memorandum to the General Counsel which sets forth the Commission's determinations with respect to the procedural issues raised by the General Counsel's paper. Section V. below, ''Comments and Hearings in the Design Certification Rulemaking,'' describes the procedures to be utilized in this design certification rulemaking.

II. Public Comment Summary and Resolution

The public comment period for the ANPR for rulemakings to grant standard design certification for evolutionary light water reactor designs expired on January 3, 1994. Six comment letters were received. Five comment letters were from the nuclear industry (i.e., vendors, utilities, and industry representatives) and one from a public interest organization. Most of the commenters addressed the nine topics upon which the NRC sought the public's views. The Commission has carefully considered all the comments and wishes to express its sincere appreciation of the often considerable efforts of the commenters.

In the following public comment summary and resolution and in the section-by-section discussion (Section III below), the discussion refers to ''Commission approval'' of NRC staff-proposed positions or recommendations. This should be understood as meaning the Commission's tentative approval of those positions or recommendations for purposes of: (i) The NRC staff's review of the ABWR design certification application, and (ii) preparation of this notice of proposed rulemaking. The public may submit comments and request an informal hearing with respect to any of the ''Commission approved'' positions or recommendations (comments and hearings are discussed in further detail in Section V).

All of the commenters supported the basic concept of the design certification rulemaking approach including the two-tiered structure for design information.

[1] AECL is the vendor for the CANDU 3 design.

The Nuclear Management and Resources Council, which has since been subsumed within the Nuclear Energy Institute (NEI), commented for the nuclear industry. GE Nuclear Energy, Westinghouse, and ABB–CE stated that they participated in the preparation of the NEI comments and fully supported them. One additional letter addressing the U.S. ABWR rulemaking was received from Marcus Rowden of the law firm of Fried, Frank, Harris, Shriver & Jacobson, dated September 20, 1994. This letter was written on behalf of GE Nuclear Energy and contained a proposed draft rule for the NRC staff's consideration in the U.S. ABWR rulemaking process. Mr. Rowden's proposed rule is different in some aspects from the rule proposed by the NRC staff in this **Federal Register** notice. The issues raised by the significant differences between Mr. Rowden's proposed rule and the proposed rule in this **Federal Register** notice have been appropriately considered and discussed in the following public comment summary and resolution or in the section-by-section discussion:

Topic 1—Acceptability of a Two-Tiered Design Certification Rule Structure

Comment Summary. On behalf of the nuclear industry, NEI stated that a two-tiered structure to a design certification rule is practical and fully consistent with the intent and requirements of 10 CFR part 52. OCRE stated that it fully supports the concept set forth in the ANPR provided that the Tier 2 information is subject to public challenge in the standard design certification and any associated hearing.

Response. Although a two-tiered structure for design certification rules was not envisioned or subsequently deemed necessary to implement standard design certifications under 10 CFR part 52, the Commission approved the use of a two-tiered structure for a design certification rule in its SRM of February 15, 1991, on SECY–90–377, ''Requirements for Design Certification Under 10 CFR part 52,'' in response to a request from NEI dated August 31, 1990. Since then, the NRC staff has worked to develop a two-tiered rule that achieves industry's goal of issue preclusion for a greater amount of information than was originally planned for design certification, while retaining flexibility for design implementation.

Tier 1 information is defined in section 2(b) of the proposed rule and is treated as the certified information that is controlled by the change standards of 10 CFR 52.63. Tier 2 information is defined in section 2(c) of the proposed rule and consists primarily of the information submitted in an application for design certification. The information in the two tiers is interdependent. Therefore, an applicant for a construction permit, operating license, or combined license (COL) that references this design certification must reference both tiers of information. The consolidation of both tiers of information into a Design Control Document (DCD) will provide an effective means of maintaining this information and facilitating its incorporation into the rule by reference. All matters covered in each tier, including the determination of what information should be placed in each tier, are subject to public challenge in the design certification rulemaking and any associated hearing.

Topic 2—Acceptability of the Process and Standards for Changing Tier 2 Information

Comment Summary. NEI concurs in the process and standards to be used by COL holders and applicants for evaluating and implementing changes to Tier 2 information via the so-called ''§ 50.59-like'' change process. However, NEI does not agree with the statement in the ANPR (Section A.13(d)(3)) that ''changes properly implemented through this ''§ 50.59-like'' process cause a loss of finality relative to the affected portion of the design or are subject to subsequent legal challenge.'' NEI contends that these changes would be sanctioned through the design certification rule and that the only issue entertainable at the time of the COL licensing proceeding would be whether the licensee complied with the ''§ 50.59-like'' change process. Likewise, changes made subsequent to COL issuance could be challenged in the part 52 proceeding before fuel-load authorization only on the basis that the change resulted in noncompliance with applicable acceptance criteria. However, NEI recognizes that changes from Tier 2 that require NRC approval would be subject to a hearing opportunity as specified in 10 CFR part 52.

OCRE stated that it is important that applicant or licensee initiated changes to Tier 2 information made pursuant to the ''§ 50.59-like'' process will no longer be afforded the issue preclusion protection of 10 CFR 52.63. To do otherwise would turn the two-tiered system into a double standard in which utilities could deviate from the standard design but the public could not challenge these deviations. Permitting site-specific litigation of these changes would also serve to discourage changes.

Response. In order to implement the two-tiered structure for design certification rules, the Commission proposes a change process for Tier 2 information that has the same elements as the Tier 1 change process. Specifically, the Tier 2 change process has provisions for generic changes, plant-specific changes, and exemptions similar to those in 10 CFR 52.63. Although the NRC staff proposed that the backfitting standards for making generic changes to Tier 2 information should be less stringent than those for Tier 1 information, the Commission disapproved this proposal in its SRM on SECY–92–287A, dated June 13, 1993, and stated that ''the backfitting standards of 10 CFR 52.63 should be applied for such changes to Tier 2.'' As a result, the NRC staff adopted the backfitting standards of 10 CFR 52.63 in the Tier 2 change process proposed in the ANPR, except that the additional factor regarding ''any decrease in safety that may result from the reduction in standardization'' was not adopted for plant-specific changes and exemptions in order to achieve additional flexibility for Tier 2 information.

The Tier 2 change process also has a provision similar to 10 CFR 50.59 that allows changes to Tier 2 information by an applicant or licensee, without prior NRC approval, subject to certain restrictions. The Commission approved this process in its SRM on SECY–90–377, dated February 15, 1991, provided ''that such changes open the possibility for challenge in a hearing.'' The NRC staff followed the Commission's guidance in developing the process in ANPR Section A.13(d)(3) that allows certain changes to Tier 2 information, without prior NRC approval. This section of the ANPR states that ''Tier 2 changes will no longer be considered matters resolved in connection with the issuance or renewal of a design certification within the meaning of 10 CFR 52.63(a)(4).'' The NRC staff included this provision to meet Commission guidance and to restrain Tier 2 changes in order to maintain the benefits of standardization, as discussed in SECY–92–287. Also, changes may be challenged in individual COL proceedings since the changes depart from the design information approved in the design certification rulemaking. Therefore, the Commission agrees with the OCRE position on issue preclusion and specifically invites comments on this provision (see Section IV).

Topic 3—The Acceptability of a Tier 2 Exemption

Comment Summary. NEI supports the inclusion of the provision that an

applicant or licensee may request, and the NRC may grant, an exemption to Tier 2 information. OCRE indirectly supports the Tier 2 exemption provision but recommends that the sentence: ''These Tier 2 changes will no longer be considered matters resolved in connection with the issuance or renewal of a design certification within the meaning of 10 CFR 52.63(a)(4)'' also be included in the section A.13(d)(2) of the ANPR on exemptions from Tier 2 information, for clarity, and because 10 CFR 52.63(b)(1) does not mention the two-tiered system.

Response. In SECY–92–287A, the NRC staff proposed the addition of an exemption provision to the Tier 2 change process so that the change process for both tiers would have the same elements and to provide additional flexibility to applicants or licensees that reference a design certification rule. The Commission deferred its decision on an exemption to the Tier 2 change process in its SRM dated June 23, 1993, and requested the NRC staff to solicit public comments on this issue.

Because no commenter objected to the addition of a Tier 2 exemption process and NEI supported the proposal, the provision was retained in the proposed rule. However, OCRE proposed that Tier 2 exemptions lose issue preclusion consistent with Tier 1 exemptions. Because that is consistent with the NRC staff's approach to Tier 2 changes and the Commission's guidance in its SRM on SECY–90–377 (see response to topic #2), OCRE's proposal has been incorporated into the proposed rule.

The additional standard in the Tier 1 exemption process, which requires that ''any decrease in safety that may result from the reduction in standardization caused by the exemption'' outweighs the special circumstances in 10 CFR 50.12, was not included in the Tier 2 exemption process because the Commission views Tier 2 information as more detailed descriptions of Tier 1 information that should have a less stringent change standard than Tier 1 and the industry requested additional flexibility for Tier 2 information. Therefore, the proposed Tier 2 change process uses the same standard that is used for Part 50 exemptions, namely 10 CFR 50.12. The Commission believes that the loss of issue preclusion for Tier 2 exemptions will help minimize the consequences of the loss of standardization caused by these exemptions.

Topic 4—Acceptability of Using a Change Process, Similar to the one in 10 CFR 50.59 Applicable to Operating Reactors, Prior to the Issuance of a Combined License that References a Certified Design.

Comment Summary. NEI concurs in the NRC's proposal to have the ''§ 50.59-like'' change process apply to both COL applicants and licensees.

Response. In its SRM on SECY–92–287A, dated June 23, 1993, the Commission approved the NRC staff's proposal to extend the use of the ''§ 50.59-like'' change process for Tier 2 information to applicants that reference a certified design. Because NEI and other commenters supported this proposal, this additional flexibility has been retained for the proposed rule.

Topic 5—The Acceptability of Identifying Selected Technical Positions From the FSER as ''Unreviewed Safety Questions'' That Cannot Be Changed Under a ''Section 50.59-Like'' Change Process

Comment Summary. NEI commented that the proposal to predesignate changes to certain design aspects as constituting ''unreviewed safety questions'' is unnecessary and is tantamount to the creation of a third tier of information, which runs counter to the two-tier structure. NEI proposed that the selected Tier 2 material be designated, not broadly in the rule, but specifically in the SSAR/FSER and the DCD as requiring NRC staff notification before implementing the changes. NEI argued that at the time of notification, the NRC staff could decide whether the proposed change constitutes an ''unreviewed safety question,'' and the applicant or COL holder would be prohibited from making the change without either NRC staff concurrence or a successful appeal of the NRC staff's determination. NEI also envisioned a time, subsequent to completion of designs and the inspections, tests, analyses, and acceptance criteria (ITAAC), when the change restriction for selected Tier 2 material will no longer be necessary. NEI further stated that, whether or not the Commission adopts NEI's proposal, the NRC staff should be limited to design areas discussed with plant designers when designations of ''unreviewed safety questions'' are made. Also, these special designations should be as narrow and specific as practicable to avoid the inadvertent broadening of this special category of Tier 2 design information and the excessive restrictions against change that would result.

Response. The NRC's proposal to predesignate certain Tier 2 information that cannot be changed without prior NRC approval does not create a third tier of information or conflict with the two-tiered rule structure. In fact, this so-called Tier 2* information was created as a consequence of industry's implementation of the two-tiered rule structure. Specifically, industry's desire to minimize the amount of information in Tier 1 and to use design acceptance criteria in lieu of design information in certain areas resulted in the need to identify significant Tier 2 information that could not be changed by an applicant or licensee without prior NRC approval. The previous reference to ''identified unreviewed safety questions'' in the ANPR was made to indicate that the process for changing the so-called Tier 2* information would be the same as for changing other Tier 2 information that an applicant or licensee determines to constitute an unreviewed safety question. Therefore, there is no third tier of information. Rather, some Tier 2 information cannot be changed without prior NRC approval and the remainder can. This is no different than the information in a Final Safety Analysis Report relative to the process in 10 CFR 50.59.

The Commission agrees with NEI that it would be clearer to future users of the certified design if the specific information that has been designated as requiring prior NRC approval (Tier 2*) is identified in the DCD rather than summarized in the design certification rule (DCR). However, the requirement for prior NRC approval does need to be specified in the DCR for the Tier 2 change process. Therefore, the NRC instructed the applicants to identify the Tier 2* information in the DCD.

In response to NEI's request, the DCR will not identify the Tier 2* information as an unreviewed safety question because that designation is not required; only prior NRC approval is required. Therefore, the Tier 2 change process has been revised to state that Tier 2* information identified in the DCD cannot be changed without prior NRC approval. Although Tier 2* changes may not result in unreviewed safety questions, the public will be afforded an opportunity to challenge the changes (see response to topic #2). The Commission also that the predesignation of some of the Tier 2* information can expire when the plant first achieves 100% power while other Tier 2* information must remain in effect throughout the life of the plant that references the DCR. This is because there is sufficient information in some of the related areas of Tier 1 to control

changes after the plant is completed. The appropriate expiration point is designated in their DCDs.

The NEI proposal to require notification of the NRC rather than requiring NRC approval prior to changing the Tier 2* information would create an unnecessary burden on the NRC in the Tier 2 change process. The Commission has already determined that the predesignated Tier 2* information is significant and cannot be changed before NRC approval. Therefore, the Commission has not adopted the ''notification'' proposal. Also, the designation of Tier 2* information is not an excessive restriction on the change process. Rather, it compensates for industry's request to minimize the amount of information in Tier 1.

Topic 6—Need for Modifications to 10 CFR 52.63(b)(2) If the Two-Tiered Structure for the Design Certification Rule is Approved

Comment Summary. OCRE commented that modifications to § 52.63 are not necessary because the design certification rules would also become regulations. NEI commented that changes to 10 CFR part 52 are not needed at this time but that some changes to part 52 may be identified as appropriate for future consideration based on experience with the initial design certifications.

Response. When part 52 was written, § 52.63(b)(2) was intended to be the change process for information that was not referenced in the design certification rule (non-certified information). Now that the Commission has decided to implement a two-tiered rule structure as described in the response to Topic #1, the two-tiered change process applies to all information referenced by the design certification rule. Therefore, there does not appear to be a need for § 52.63(b)(2) in a two-tiered rule structure.

In the absence of any perceived need for changes to 10 CFR 52.63(b)(2) to accommodate the two-tiered concept in design certification, the Commission does not intend to modify 10 CFR part 52 at this time. However, as NEI suggests, the Commission is evaluating the need for changes to part 52 as it gains experience with the initial design certification reviews.

Topic 7—Whether the Commission Should Either Incorporate or Identify the Information in Tier 1 or Tier 2 or Both in the Combined License

Comment Summary. On the question of whether Tier 1 or Tier 2 information should be incorporated in the combined license (COL) or identified in the COL, NEI stated that this question need not be resolved for design certification purposes but provided two alternatives for future NRC consideration. Alternative one would be to incorporate Tier 1 information and identify Tier 2 information in the COL. The second alternative would be to incorporate both tiers of information in the rule, provided that the Tier 2 change provisions are incorporated in the rule as well.

OCRE stated that both Tier 1 and Tier 2 information should be incorporated in the COL because both tiers contain important design information.

Response. The NRC is deferring the decision on this issue because resolution of this issue is not needed to develop a design certification rule. However, because the commenters all supported incorporation of both tiers of information, the NRC staff will evaluate that option for a combined license under subpart C of 10 CFR part 52.

Topic 8—Acceptability of Using Design Specific Rulemakings Rather Than Generic Rulemaking for the Technical Issues Whose Resolution Exceeds Current Requirements

Comment Summary. NEI, GE Nuclear Energy, and Westinghouse Electric Corporation took exception with the NRC position on the issue of designating severe accident and technical requirements, beyond those in current regulations as ''applicable regulations'' in the design certification rule. NEI stated that ''Commission approved NRC staff positions will be reflected in a design certification rule by means of design provisions contained in Tier 1 and Tier 2 of the DCD incorporated in the rule.'' NEI argued that the NRC staff's proposed approach would result in needless duplication, complexity, and delay because matters that have been agreed to in detail would then be formulated in broadly stated positions requiring another round of extensive discussions to reach agreement in a process equivalent to a series of complex, discrete rulemakings. In addition, NEI stated that these ''broadly stated, free standing applicable regulations carry the potential for new and diverse interpretations by the NRC staff during the life of the design certification.'' These interpretations may be at odds with the understandings that translated into specific Tier 1 and Tier 2 requirements in the DCD. GE Nuclear Energy reiterated these comments but added that ''The course proposed by the NRC staff would enormously complicate pre-rulemaking preparation, the conduct of the rulemakings themselves and COL licensing and post-licensing facility construction and operation. It would, moreover, impose schedule delays and generate needless duplication, if not outright conflicts.'' Also, NEI saw little difference between the proposal to incorporate applicable regulations in design certification rules and the similar effect of proceeding with generic severe accident rulemaking.

OCRE stated that the resolution of technical issues whose resolution exceeds current requirements will likely be design-specific and therefore, it may make little difference whether the rulemakings are design-specific or generic. OCRE further stated that, if the NRC wants all plants constructed after a certain date to incorporate certain design features or otherwise address certain technical issues, then a generic rulemaking may be the safest and most cost-effective way to accomplish this goal. OCRE also noted that a generic rule would cover an applicant that might decide not to use a standard certified design.

Response. The Commission has used design-specific rulemaking rather than generic rulemaking for the selected technical and severe accident issues that go beyond current requirements for light-water reactors (LWRs). The Commission adopted this approach, early in the review process, because it believed that the new requirements would be design-specific, as OCRE stated. Also, the NRC was concerned that generic rulemakings would cause significant delay in the design certification reviews. The Commission approved this approach in its SRM on SECY–91–262, dated January 28, 1992, and has continued to support this approach for evolutionary LWRs, as stated in its SRM on SECY–93–226, dated September 14, 1993. The Commission has deferred its decision on the need for generic rulemaking for advanced LWRs.

Both the industry and OCRE concluded that there would be little difference in the requirements for the certified designs, regardless if the approach was generic or design-specific. The Commission agrees that at the conclusion of the design certification rulemaking the effect of the new regulations is basically the same but that the specific wording of the regulations may have been different if generic rulemaking was used.

In implementing the goals of 10 CFR part 52 and the Commission's Severe Accident Policy Statement (50 FR 32138; August 8, 1985), the NRC staff set out to achieve a higher level of safety performance for both evolutionary and passive LWR designs in the area of severe accidents and in other selected areas. The NRC staff proposed new

requirements to implement these goals in various Commission papers, such as SECY–90–016 and SECY–93–087. The NRC staff then selected the applicable requirements for each evolutionary design and evaluated the design information that describes how those requirements were met in the FSERs for the U.S. ABWR and System 80+ designs. In the proposed rule for each design, the NRC has identified these requirements as applicable regulations in order to specify the requirements that were applicable and in effect at the time the certification was issued for the purposes of §§ 52.48, 52.54, 52.59, and 52.63.

These applicable regulations, which were identified in each FSER, are set forth in the design certification rule, with minor editing, to achieve codification through the design certification rulemaking. These codified regulations, which supplement the list of regulations in § 52.48, become part of the Commission's regulations that are ''applicable and in effect at the time the certification was issued.'' Without this complete list of applicable regulations, the NRC staff could not perform reviews in accordance with §§ 52.59 and 52.63. By codifying these requirements, the NRC intends to make it clear that for the purpose of renewal of a certified design under § 52.59, these requirements are part of the applicable regulations in effect at the time that the design certification was first issued. The NRC also intends to make it clear that the Commission may, pursuant to § 52.63(a)(1) and (3), impose modification of Tier 1 information or to issue a plant-specific order, respectively, to ensure that the certified design or the plant complies with the applicable regulations of the design certification rule. The rationale is that the Commission could not, without re-reviewing the merits of each position, impose a change to Tier 1 information or issue a plant-specific order merely because the modification was necessary for compliance with a matter involving these proposed requirements. Also, the Commission would not have a complete baseline of regulations for evaluating proposed changes from the public, applicants, or licensees, thereby degrading the predictability of the licensing process.

The codification of these proposed requirements, in reference to § 52.48, is also necessary for two other reasons. First, it serves as a basis for obtaining public comment on the proposed adoption of the requirements as applicable regulations. Second, it provides confirmation that the requirements are being adopted by the Commission as applicable regulations under § 52.54 for the design certification being approved. In the absence of this codification, a design certification applicant could argue that the Commission cannot lawfully condition approval of the design certification on compliance with the proposed requirements used during its review of the design. This is because the requirements are not ''applicable standards and requirements of the * * * Commission's regulations'' without further Commission action under § 52.54.

By identifying the regulations that are applicable to each design, the Commission has improved the stability and predictability of the licensing process. By approving the design information that describes how these regulations were met, the Commission has minimized the potential for a differing interpretation of the regulations. Finally, the NRC staff told NEI in a meeting on April 25, 1994, and in a letter dated July 25, 1994, that the industry-proposed alternative to applicable regulations was unacceptable. The NRC staff stated that design information cannot function as a surrogate for design-specific (applicable) regulations because this information describes only one method for meeting the regulation and would not provide a basis for evaluating proposed changes to the design information. Therefore, consideration of the comments on Topic #8 has not altered the Commission's decision to proceed with design-specific rulemaking for the proposed requirements and to publish the appropriate applicable regulations in each design certification rule.

Topic 9—The Appropriate Form and Content of a Design Control Document

Comment Summary. Concerning the form and content of the DCD, NEI envisioned a document that consisted of three parts including an introductory section, Tier 1 information, and Tier 2 information. NEI also proposed an algorithm that described the industry's view of the contents of a DCD.

NEI stated that, based on its interactions with the NRC staff on the guidance for preparing a DCD, two main issues have emerged. The first issue is the nature and treatment for rulemaking purposes of secondary references contained in the DCD. At issue is the extent to which references to codes, standards, Regulatory Guides, etc. need to be explicitly ''incorporated by reference'' in specific design certification rules (DCRs). It is industry's position that the burden of incorporating these secondary references into the rule would outweigh the increase in regulatory certainty and predictability that such an effort would provide. The second issue relates to the regulatory significance of information contained in the DCD and, in particular, design Probabilistic Risk Assessment (PRA) information. Specifically, NEI is concerned with the inclusion of the design PRA in the DCD and a perceived requirement to use the PRA to support the ''50.59-like'' change process.

Response. As defined in SECY–92–287, the DCD is the master document that contains the Tier 1 and 2 information referenced by the design certification rule. The NRC staff has had several meetings with the design certification applicants on the preparation of a DCD and provided guidance to the applicants in letters dated August 26, 1993; August 3 and 5, 1994; and October 4, 1994. Although the Commission agrees with NEI on the basic form of the DCD, it does not agree with NEI's proposed algorithm on the contents of a DCD.

Because the DCD is the master reference document, it should, to the extent possible, retain as much of the applicant's standard safety analysis report (SSAR), as required in 10 CFR 52.47. Due to the requirement that all information incorporated in the rule be publicly available, proprietary and safeguards information cannot be included in the DCD. Also, the NRC concluded that the detailed methodology and quantitative portions of the design PRA do not need to be included in the DCD but the assumptions, insights, and discussions of PRA analyses must be retained in the DCD. The NRC also decided that COL applicants and licensees will be encouraged, but not required, to use the PRA to support the change process. This position was predicated in part upon NEI's acceptance, in conceptual form, of a future generic rulemaking that requires a COL applicant or holder to have a plant-specific PRA that updates and supersedes the design PRA to account for site-specific and detailed as-built aspects of the plant. The Commission approved the requirement for a plant-specific PRA in its SRM on SECY–94–182, ''Probabilistic Risk Assessment (PRA) Beyond Design Certification,'' in approving the development of a generic ''Operational Rule'' that would apply to all COL applicants and holders. The remainder of the applicant's SSAR, including all of the assumptions, issue resolutions, and safety analyses, should be retained in the DCD.

With regard to NEI's concern with secondary references, the NRC staff met with NEI on January 6, 1994, and issued a letter to NEI on May 3, 1994, that

documented an agreement with the industry on the resolution of this issue. The agreement states that combined license (COL) applicants and licensees who reference a DCR will treat these secondary references as requirements, in the context that they are described in the documents referenced in the DCD. However, these secondary references will not be incorporated by reference in the DCR, and thus there is no issue preclusion for secondary references. With the above stated guidance, the NRC believes that the appropriate form and content of a DCD has been defined.

III. Section-by-Section Discussion of Design Certification Rule

Pursuant to 10 CFR part 52, subpart B, the NRC has been working for some time to develop a rule that will achieve the Commission's goals for standard design certifications. Therefore, this proposed rule seeks to achieve the early resolution of safety issues and to enhance the safety and reliability of nuclear power plants. The Commission also expects to achieve a more predictable and stable licensing process through the certification of standard designs by rulemaking. An applicant for a combined license (COL) that references a design certification rule (DCR) must meet the requirements in the DCR and in the design control document that is incorporated by reference in the DCR.

The NRC staff's first proposal of a standard design certification rule was provided in Enclosure 1 to SECY–92–287, dated August 18, 1992. This proposal was modified based on Commission guidance, and an updated version was published in appendix 2 to the ANPR. The proposed rule in this **Federal Register** notice has the same basic form and content as the ANPR version, but there has been some reorganization of the contents. The following discusses the purpose and key aspects of each section of the rule and also discusses issues raised on those sections that are not covered in the public comment summary. Changes made to the ANPR version of the proposed rule for the sake of clarity, brevity, consistency, or organization are not discussed below.

All references to the proposed rule are to the provisions in proposed appendix A to 10 CFR part 52.

A. Scope

The purpose of Section 1 of the proposed rule entitled, ''Scope,'' is to identify the standard plant design that is to be approved by this design certification rule. The applicant for certification of the design is also identified in this section. While the design certification applicant does not have special rights pursuant to this rule, the implementation of 10 CFR 52.63(c) depends on whether an applicant for a COL contracts with the design certification applicant to provide the certified design. If the COL applicant does not use the design certification applicant to provide the design, then it may have to meet the requirements in 10 CFR 52.63(c). Also, the proposed rule imposes a requirement on the design certification applicant in Section 9(a)(1). Therefore, identification of the design certification applicant is necessary to implement this rule.

Because the requirements of 10 CFR 52.63(c) apply to an applicant for a COL, the NRC proposes that this requirement be added to 10 CFR part 52 of subpart C, specifically to a new section 10 CFR 52.79(e). The NRC requests comments on the desirability of making this change to 10 CFR part 52 (refer to Section IV).

B. Definitions

The terms Tier 1, Tier 2, and Tier 2* are defined in Section 2, of the proposed rule entitled ''Definitions,'' because these concepts were not envisioned at the time that 10 CFR part 52 was developed. The design certification applicants and the NRC used these terms in implementing the two-tiered rule structure that was proposed by industry after the issuance of part 52 (refer to discussion on Topic #1). The design control document (DCD) contains both the Tier 1 and 2 information, along with an introduction. After the issuance of the ANPR, the phrase Tier 2* was added to the list of definitions. Some of the information in Tier 2 that requires special treatment in the change process was commonly referred to as Tier 2* during the design review. Therefore, the Commission believes that it would be useful to define and use this phrase in the proposed rule. Further information on changes to or departures from information in the DCD is provided below in the discussion on Section 8, ''Change Process.'' The NRC requests suggestions on other words or phrases that may need to be defined in this rule (refer to Section IV).

C. [Reserved]

The purpose of Section 3, ''Information collection requirements,'' in the proposed rule was originally intended to provide the citation for the control number which has been assigned by the Office of Management and Budget when it approved the information collection requirements in this rulemaking. Because this citation has been placed in § 52.8, section 3 to the rule is no longer necessary.

D. Contents of the Design Certification

Section 4 of the proposed rule entitled, ''Contents of the design certification,'' identifies the design-related information that is incorporated by reference into this rule (4(a)) and includes some related provisions of the proposed rule (4(b) and (c)). Both tiers of design-related information have been combined into a single document, called the design control document (DCD), in order to effectively control this information and facilitate its incorporation into the rule by reference (refer to Topic #9 for discussion on the DCD). The DCD was prepared to meet the requirements of the Office of the **Federal Register** (OFR) for incorporation by reference (1 CFR part 51). Section 4(a) of this proposed rule would incorporate the DCD by reference upon approval of the Director, OFR. The legal effect of incorporation by reference is that the material is treated as if it were published in the **Federal Register**. This material, like any other properly issued regulation, has the force and effect of law.

An applicant for a construction permit or COL that references this design certification rule must conform with the requirements in the proposed rule and the DCD. The master DCD for this design certification will be archived at NRC's central file with a matching copy at OFR. Copies of the up-to-date DCD will also be maintained at the NRC's Public Document Room and library. Questions concerning the accuracy of information in an application that references this design certification will be resolved by checking the master DCD in NRC's central file. If a generic change (rulemaking) is made to the DCD pursuant to the change process in Section 8 of the proposed rule, then at the completion of the rulemaking the NRC will change its copies of the DCD and notify the OFR and design certification applicant to change their copies.

The applicant for this design certification rule is responsible for preparing the DCD in accordance with NRC and OFR requirements and maintaining an up-to-date copy pursuant to Section 9(a)(1) of the proposed rule. Plant-specific changes to and departures from the DCD will be maintained by the applicant or licensee that references this design certification pursuant to Section 9(a)(2) of the proposed rule. In order to meet the requirements of OFR for incorporation by reference, the originator of the DCD

(design certification applicant) must make the document available upon request after the final design certification rule is issued. Therefore, the proposed rule states that copies of the DCD can be obtained from the applicant or an organization designated by the applicant. The applicant for this design certification has stated that it plans to request distribution of its DCD by the National Technical Information Service (NTIS). If the applicant selects an organization, such as NTIS, to distribute the DCD, then the applicant must provide that organization with an up-to-date copy. A copy of the DCD must also be made available at the NRC and OFR.

The DCD contains an introduction that explains the purpose and uses of the DCD and two tiers of design-related information. The significance of designating design information as Tier 1 or Tier 2 is that different change processes and criteria apply to each tier, as explained in Section H ''change process'' below. The introduction to the DCD is neither Tier 1 nor Tier 2 information, and is not part of the information in the DCD that is incorporated by reference into this design certification rule. Rather, the DCD introduction constitutes an explanation of requirements and other provisions of this design certification rule. If there is a conflict between the explanations in the DCD introduction and the explanations of this design certification rule in these statements of consideration (SOC), then this SOC is controlling.

The Tier 1 portion of the design-related information contained in the DCD is certified by this rule. This information consists of an introduction to Tier 1, the certified design descriptions and corresponding inspections, tests, analyses, and acceptance criteria (ITAAC) for systems and structures of the design, design material applicable to multiple systems of the design, significant interface requirements, and significant site parameters for the design. The NRC staff's evaluation of the Tier 1 information, including a description of how this information was developed is provided in Section 14.3 of the FSER.

The information in the Tier 1 portion of the DCD was extracted from the detailed information contained in the application for design certification. The Tier 1 information addresses the most safety-significant aspects of the design, and was organized primarily according to the structures and systems of the design. Additional design material and related ITAAC is also provided in Tier 1 for selected design and construction activities that are applicable to multiple systems of the design. The Tier 1 design descriptions serve as design commitments for the lifetime of a facility referencing the design certification, and the ITAAC verify that the as-built facility conforms with the approved design and applicable regulations. In accordance with 10 CFR 52.103(g), the Commission must find that the acceptance criteria in the ITAAC are met before operation. After the Commission has made the finding required by 10 CFR 52.103(g), the ITAAC do not constitute regulatory requirements for subsequent modifications. However, subsequent modifications to the facility must comply with the Tier 1 design descriptions, unless changes are made in accordance with the change process in Section 8 of this proposed rule.

The Tier 1 interface requirements are the most significant of the interface requirements for the standard design, which were submitted in response to 10 CFR 52.47(a)(1)(vii), that must be met by the site-specific portions of a facility that references the design certification. The Tier 1 site parameters are the most significant site parameters, which were submitted in response to 10 CFR 52.47(a)(1)(iii), that must be addressed as part of the application for a construction permit or COL.

Tier 2 is the portion of the design-related information contained in the DCD that is approved by this rule but is not certified. Changes to or departures from the certified design material (Tier 1) must comply with Section 8(a) of this proposed rule. Changes to or departures from the approved information (Tier 2) must comply with Section 8(b) of this proposed rule. Tier 2 includes the information required by 10 CFR 52.47 and supporting information on the inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAAC have been met. Compliance with the more detailed Tier 2 information provides a sufficient method, but not the only acceptable method, for complying with the more general design requirements included in Tier 1. A supplementary description of Tier 2 information is provided in the DCD introduction. If an applicant or licensee used methods other than those described in Tier 2, then the alternative method would be open to staff review and a possible subject for a hearing.

When completing the design information for a plant, an applicant for a COL must conform with all of the requirements in the DCD, unless the information in the DCD is changed pursuant to the process in Section 8 of this proposed rule. The change process defines the procedural differences between Tier 1 and 2. Accordingly, an applicant for a construction permit or COL, or licensee that references this certified design must conform with all of the requirements from the DCD, including the codes, standards, and other guidance documents that are referenced from the DCD (so-called secondary references). The industry agreed to treat these secondary references as requirements even though they are not incorporated by reference, in the context as described in the DCD, as set forth in a letter from Dennis Crutchfield of the NRC to Joe Colvin of the Nuclear Energy Institute, dated May 3, 1994.

An applicant for a construction permit or COL that references this proposed rule must also describe those portions of the plant design which are site-specific, and demonstrate compliance with the interface requirements, as required by 10 CFR 52.79(b). The COL applicant does not need to conform with the conceptual design information in the DCD that was provided by the design certification applicant in response to 10 CFR 52.47(a)(1)(ix). The conceptual design information, which are examples of site-specific design features, was required to facilitate the design certification review, and it is neither Tier 1 nor 2. The introduction to the DCD identifies the location of the conceptual design information and explains that this information is not applicable to a COL application.

An applicant must address COL Action Items, which are identified in the DCD as COL License Information, in its COL application. The COL Action Items (COL License Information) identify matters that need to be addressed by an applicant or licensee that references the design certification, as required by 10 CFR 52.77 and 52.79. A further explanation of the status of the COL License Information is provided in the DCD introduction. Also, the detailed methodology and quantitative portions of the design-specific probabilistic risk assessment (PRA), as required by 10 CFR 52.47(a)(1)(v), was not included in the DCD. The NRC agreed with the design certification applicant's request to delete this information because conformance with the deleted portions of the PRA is not required. The NRC's position is also predicated in part upon NEI's acceptance, in conceptual form, of a future generic rulemaking that requires a COL applicant or licensee to have a plant-specific PRA that updates and supersedes the design-specific PRA

and maintain it throughout the operational life of the plant.

The application for design certification contained proprietary and safeguards information. This information was part of the NRC staff's bases for its safety findings in the FSER. However, because of OFR requirements, this information could not be included in the DCD. Therefore, the proprietary and safeguards information, or its equivalent, that was provided in the design certification application but not included in the DCD, must be included as part of a COL application. The NRC considers this information to be requirements for plants that reference this rule. Since this information was not included in the DCD or otherwise approved by OFR for ''incorporation by reference,'' it would not have issue preclusion in a construction permit or COL proceeding.

There is other information that is within the scope of the certified design (i.e. as-built, as-procured, and evolving technology design information) that must be developed by a COL applicant or holder. This detailed design information must be completed in accordance with the requirements in the DCD and the acceptance criteria in ITAAC, including DAC. Since the Tier 1 and 2 information is solely contained within the DCD, the remainder of the design-related information that is developed by a COL applicant or holder that references this proposed rule will not be either Tier 1 or 2 information, whether it is within the scope of the design certification or not. Therefore, the change process in Section 8 of this proposed rule will not control this COL information. Although the change process for this COL information does not need to be developed until a COL application is submitted, the NRC is interested in the public's view on how this information should be controlled (refer to Section IV).

The purpose of Section 4(b) of this proposed rule is to ensure that an applicant that references this design certification references both tiers of information in the DCD. The two tiers of information were developed together and both tiers of information are needed to complete the design of a plant that references the rule. For example, the ITAAC in Tier 1 contains not only the acceptance criteria for verifying that the as-built plant conforms with the approved design, but it also contains various design processes with acceptance criteria (DAC), for completing selected areas of the plant design. The DAC are described in Section 14.3 of the SSAR and FSER. The NRC staff relied on DAC for its evaluation of selected design areas where the applicant for design certification did not provide complete design information. Also, the Tier 2 information contains explanations and procedures on how to implement ITAAC. Therefore, the Commission proposes that an applicant could not reference this design certification rule without meeting ITAAC, even though it is not a requirement in 10 CFR part 50 (See Section J for further discussion).

The applicant for design certification initially prepared the DCD to be consistent with the SSAR and the NRC staff's FSER. The applicant for design certification made some corrections and clarifications to the DCD since the completion of the SSAR and issuance of the FSER. If there is an inconsistency between the SSAR and the FSER, or between either of these documents and the DCD, then the DCD is the controlling document. That is the purpose of Section 4(c) of this proposed rule.

E. Exemptions and Applicable Regulations

The purpose of Section 5 of the proposed rule entitled, ''Exemptions and applicable regulations,'' of the proposed rule is to identify the complete set of regulations that were applicable and in effect at the time the design certification was issued for the purposes of 10 CFR 52.48, 52.54, 52.59, and 52.63. In accordance with 10 CFR 52.48, the NRC staff used the technically relevant regulations (safety standards) in 10 CFR parts 20, 50, 73, and 100 in performing its review of the application for design certification. The effective date of the applicable regulations is the date of the FSER, as set forth in Section 5(b) of the proposed rule. During its review of the application for design certification, the NRC staff identified certain regulations for which application of the regulation to the standard design would not serve or was not necessary to achieve the underlying purpose of the regulation. These proposed exemptions to the NRC's current regulations are identified in Section 5(a) of this proposed rule. The basis for these exemptions is provided in the FSER.

In implementing the goals of 10 CFR part 52 and the Commission's Severe Accident Policy Statement, the NRC staff set out to achieve a higher level of safety performance for both evolutionary and passive LWR standard designs in the area of severe accidents and in other selected areas. As a result, the NRC staff proposed new requirements in various Commission papers, such as SECY–90–016 and SECY–93–087, to be used in the design certification review and treated as applicable regulations in the design certification rulemaking (refer to discussion on Topic #8). The bases for these requirements are set forth in SECY–90–016 and SECY–93–087. The Commission approved the use of these proposed regulations for purposes of the design certification review in the respective SRMs. These proposed regulations deviated from or were not embodied in current regulations applicable to the standard design. The NRC staff then selected proposed regulations that were applicable to the design under review and reviewed the design pursuant to these applicable regulations. The FSER identifies the applicable regulations that were used and describes how these regulations were met by the design-related information in the SSAR. The Commission approved the evaluation of the design pursuant to the applicable regulations in its approval to publish the FSER.

These proposed applicable regulations are identified in Section 5(c) of this proposed rule to achieve codification through the design certification rulemaking. The proposed applicable regulations in Section 5(c) are substantively the same as those in the FSER but have been edited for clarity. These codified requirements, which supplement the regulations in Section 5(b), will become part of the Commission's regulations that were ''applicable and in effect at the time the certification was issued,'' if the Commission adopts them in the final design certification rule. The Commission requests comments on whether each specific applicable regulation is justified (refer to Section IV).

The codification of these additional requirements, in reference to 10 CFR 52.48, is necessary for two reasons. First, it serves as a basis for obtaining public comment on the adoption of the proposed requirements as applicable regulations. Second, it provides confirmation that the requirements are being adopted by the Commission as applicable regulations under § 52.54 for the design certification being approved. In the absence of this codification, a design certification applicant could argue that the Commission cannot lawfully condition approval of the design certification on compliance with the requirements used during its review of the design. This is because the proposed requirements, without further Commission action, could be argued as not being ''applicable standards and requirements of the * * * Commission's regulations'' under

§ 52.54. Also, without codification of the applicable regulations, the NRC could not perform its reviews in accordance with §§ 52.59 and 52.63. By codifying these requirements, the NRC intends that for renewal of a certified design under § 52.59, these requirements are part of the applicable regulations in effect at the time that the design certification was first issued.

The Commission may, pursuant to § 53.63(a)(1) and (3), impose a modification of Tier 1 information or issue a plant-specific order, respectively, to ensure that the certified design or the plant complies with the applicable regulations of the design certification rule. The rationale is that the Commission could not, without re-reviewing the merits of each position, impose a change to Tier 1 information or issue a plant-specific order merely because the modification was necessary for compliance with a matter involving these requirements. Also, the Commission would not have a complete list of regulations for use in evaluating requested changes from the public, applicants, or licensees, thereby degrading the predictability of the licensing process.

By identifying the regulations that are applicable to each design, the Commission has improved the stability and predictability of the licensing process. By approving the design information that describes how these regulations were met, the Commission has minimized the potential for a differing interpretation of the regulations. Finally, the NRC rejected NEI's proposed alternative to applicable regulations in a meeting on April 25, 1994 and in a letter dated July 25, 1994. NEI's proposal to use design information as a surrogate for design-specific (applicable) regulations is not workable for proposed changes, because the design information only represents one way of implementing a regulation. The NRC would need the regulation for the design feature in order to evaluate a proposed change to the design information.

F. Issue Resolution for the Design Certification

The purpose of Section 6 of the proposed rule entitled, ''Issue resolution for the design certification'' is to identify the issues that are considered resolved, if the Commission adopts a final design certification rule, and therefore, these issues receive issue preclusion within the scope and intent of 10 CFR 52.63(a)(4). Specifically, all nuclear safety issues arising from the Atomic Energy Act that are associated with the information in the NRC staff's FSER or the applicant's DCD are resolved within the meaning of § 52.63(a)(4). All issues arising under the National Environmental Policy Act of 1969 associated with the information in the NRC staff's environmental assessment or the severe accident design alternatives in the applicant's Technical Support Document are also resolved within the scope and intent of § 52.63(a)(4). The issues that are associated with information that is not included in the DCD, such as proprietary information, do not have issue preclusion within the meaning of 10 CFR 52.63(a)(4).

G. Duration of the Design Certification

The purpose of Section 7 of the proposed rule entitled, ''Duration of the design certification,'' is in part to specify the time period during which the standard design certification may be referenced by an applicant for a construction permit or COL, pursuant to 10 CFR 52.55. This section of the rule also states that the design certification remains valid for an applicant or licensee that references the design certification until their application is withdrawn or their license expires. Therefore, if an application references this design certification during the 15-year period, then the design certification rule continues in effect until the application is withdrawn or the license issued on that application expires. Also, the design certification continues in effect for the referencing license if the license is renewed. The Commission intends for the proposed rule to remain valid for the life of the plant that references the design certification to achieve the benefits of standardization and licensing stability. This means that rulemaking changes to or plant-specific departures from information in the DCD must be made pursuant to the change process in Section 8 of this proposed rule for the life of the plant.

H. Change Process

The purpose of Section 8 of the proposed rule entitled, ''Change Process'' is to set forth the process for requesting rulemaking changes to or plant-specific departures from information in the DCD. The Commission has developed a more restrictive change process than for plants that were licensed pursuant to 10 CFR part 50, in order to achieve a more stable licensing process for applicants and licensees that reference a design certification rule. The change process in Section 8 is substantively the same as the process proposed in the ANPR.[2] As a result, Section 8(a) provides the process for changing Tier 1 information and Section 8(b) provides the process for changing Tier 2 information. The change process for Tier 1 information uses the change process developed by the Commission in the 10 CFR part 52 rulemaking for certified design-related information. Therefore, the provisions in Section 8(a) of the proposed rule simply refer to the appropriate sections in 10 CFR 52.63. A description of the Tier 1 information that is controlled by Section 8(a) is provided in the above discussion on contents of the design certification (III.D).

As discussed in Topic #2, the NRC developed a change process for Tier 2 that has the same elements as the Tier 1 change process. Specifically, the Tier 2 change process in Section 8(b) has provisions for generic changes, plant-specific orders, and exemptions similar to those in 10 CFR 52.63, but some of the standards for plant-specific orders and exemptions are different. The standards that must be met in order to justify a generic change to either Tier 1 or 2 information are the same. When NEI proposed a two-tiered structure for design certification rules in its letter of August 31, 1990, it also stated that ''NRC backfits involving matters described in the first tier would be governed by the provisions of § 52.63, whereas § 50.109 would govern backfitting as respects the second tier.'' As a result, the NRC staff used the backfit standards in § 50.109 for generic changes to Tier 2 in its proposed design certification rule in SECY–92–287. Subsequently, in a letter dated October 5, 1992, NEI changed its position and agreed with the Commission that the standard for generic changes to Tier 2 should be the same as the Tier 1 standard. This issue is discussed further in SECY–92–287A, dated March 26, 1993. Therefore, Section 8 of this proposed rule uses the same standards for generic changes to both Tier 1 and 2 information.

Although the process in Section 8 for plant-specific orders and exemptions is the same for Tier 1 and 2 information, the standards are different. In order to preserve the benefits of standardization which is one of the important goals of design certification, the Commission

[2] This change process has been reorganized for clarity and conformance to the two-tiered rule structure, and to distinguish between generic changes to Tier 1 and 2 information, which are accomplished via rulemaking, and plant-specific departures from Tier 1 and 2 information, which may be accomplished by the process defined in Section 8 of this proposed rule. For brevity, this SOC refers to both aspects as constituting the ''change process'' for this design certification rule.

proposes in Section 8(a)(3) that plant-specific orders or exemptions from Tier 1 information must consider whether the special circumstances which § 50.12(a)(2) required to be present outweigh any decrease in safety that may result from the reduction in standardization, as required in 10 CFR 52.63(a)(3). The Commission does not propose to adopt this additional consideration for plant-specific orders or exemptions from Tier 2 information, in order to achieve additional flexibility. The Commission believes this is acceptable because the Tier 2 information is not as safety significant as the Tier 1 information. Therefore, Sections 8(b) (3) and (4) of the proposed rule do not require the additional consideration of the reduction in standardization caused by proposed departures from Tier 2 information.

A generic change to either Tier 1 or 2 information in the DCD is accomplished by rulemaking. Any person seeking to make a generic change to the DCD, including the applicant for this design certification, must submit a petition pursuant to 10 CFR 2.802. This petition must describe how the proposed change meets the standards in 10 CFR 52.63(a)(1) for justifying a generic change to the DCD. Any generic changes to the DCD resulting from the rulemaking will be noticed in the **Federal Register**. The NRC will update the master DCD in its central files and the copies in the NRC Library and public document room (refer to the discussion in III.D). Under Sections 8(a)(2) and (b)(2) generic changes to Tier 1 and 2, respectively, will be applicable to all plants referencing the design certification. However, if the NRC determines that a generic change is not technically relevant to a particular plant, based on plant-specific changes made pursuant to Section 8, then the generic rulemaking will indicate that the change will not be applicable to that plant. If the proposed change to the DCD also results in a violation of an underlying regulation that is applicable to this design certification, then an exemption to that regulation is also required.

A plant-specific departure from either Tier 1 or 2 information in the DCD does not require rulemaking. Any person requesting a Commission order directing a plant-specific change, including the applicant for this design certification, must submit a petition pursuant to 10 CFR 2.206. This petition must describe how the proposed change meets the standards in 10 CFR 52.63(a)(3) or Section 8(b)(3) for departures from Tier 1 or Tier 2 information, respectively. By contrast an applicant or licensee that references this design certification rule may request exemptions from Tier 1 or 2 information pursuant to 10 CFR 52.63(b)(1) or Section 8(b)(4) of this rule, respectively. The NRC recognized that there may be special circumstances pertaining to a particular applicant or licensee that would justify an exemption from the DCD. The request must describe how the exemption from Tier 1 or 2 meets the standards in 10 CFR 52.63(b)(1) or Section 8(b)(4) of this proposed rule, respectively. The exemption may be contested in a hearing if the exemption is granted in connection with issuance of a construction permit, operating license, or combined license; it may also be contested in a hearing if the exemption also requires the issuance of a license amendment. If a plant-specific change or exemption from the DCD also results in a violation of the underlying regulation that is applicable to this design certification, then an exemption to that regulation is also required.

In addition to the plant-specific changes described above, an applicant or licensee that references this design certification rule may depart from Tier 2 information, without prior NRC approval pursuant to Section 8(b)(5) of this proposed rule. However, the Commission believes that these changes should open the possibility for challenge in a hearing (refer to discussion on Topic #2). The Commission approved the use of this ''§ 50.59-like'' change process in its SRMs on SECY–90–377 and SECY–92–287A. The NRC is interested in the public's view on how these changes could be challenged in a hearing (refer to Section IV).

As in 10 CFR 50.59, an applicant or licensee cannot make changes that involve an unreviewed safety question (USQ) or technical specifications, without prior NRC approval. Also, for changes pursuant to Section 8(b)(5), an applicant or licensee cannot make changes to Tier 1 or Tier 2* information without prior NRC approval. If the proposed change does not involve these factors, then the NRC will allow changes to previously approved information in Tier 2 without prior NRC approval. However, if the change involves an issue that the NRC staff has not previously approved, then NRC approval is required. The process for evaluating proposed tests or experiments not described in Tier 2 will be developed for an operating or combined license that references this design certification (refer to Section IV).

The restriction on changing Tier 1 information is included in the process in Section 8(b)(5) because this information can only be changed pursuant to Section 8(a) of the proposed rule. Whereas, the restriction on changing Tier 2* information resulted from the development of the Tier 1 information in the DCD. A description of the Tier 1 information is provided in the discussion in Section III.D on contents of the design certification. During the development of the Tier 1 information, the applicant for design certification requested that the amount of information in Tier 1 be minimized to provide additional flexibility for the applicant or licensee that references this design certification. Also, many codes, standards, and design processes, which were not specified in Tier 1, that are acceptable for meeting ITAAC were specified in Tier 2. The result of these actions is that certain relatively significant information only exists in Tier 2 and the NRC staff did not want this significant information changed without prior NRC approval. The NRC specified this information in its FSER and the design certification applicant has identified this information in its DCD. This information has come to be known as Tier 2* information and it has compensated for industry's desire to minimize the amount of information in Tier 1.

In the ANPR, the NRC referred to the Tier 2* information as pre-identified unreviewed safety questions (USQs) because there was already an established procedure in 10 CFR 50.59 for FSAR changes that constitute USQs, which require NRC approval. NEI stated in its comments on the ANPR that it was not necessary to create an artificial set of USQs in order to accomplish the NRC's objective of requiring prior approval. Therefore, the proposed rule was changed from the ANPR to simply state that the Tier 2* information can not be changed without prior NRC approval. Also, NEI requested in its comments that the Tier 2* information not be identified in the design certification rule, as was proposed in the ANPR, and that an expiration date be considered for the restriction in the change process for Tier 2* information. NRC agrees that Tier 2* information can be identified in the DCD and Section 8(b)(5) of the proposed rule was changed accordingly. The NRC also reevaluated the duration of the change restriction for Tier 2* information and determined that some of the Tier 2* information can expire when the plant first achieves 100% power while other Tier 2* information must remain in effect throughout the life of the plant that references the DCR. The DCD sets

forth an expiration date for some of the Tier 2* information.

As part of this rulemaking, the NRC is seeking public comments on the appropriate regulatory process to use for review of proposed changes to Tier 2* information. Currently, pursuant to 10 CFR 50.59, the NRC approves changes to FSAR information that constitute a USQ or involve technical specifications through the issuance of license amendments. However, if an applicant or licensee requests NRC approval for a proposed change to Tier 2* information, should the NRC review process be similar to that for a USQ? While it is clear that these proposed changes would all involve significant design-related information and that prior review of proposed departures from Tier 2* information is necessary, the NRC has not determined if it is always appropriate to process the approved changes as either an amendment to the license application or an amendment to the license, with the requisite hearing rights. Therefore, the NRC requests the public's view on the preferred regulatory process for these changes (refer to Section IV).

An applicant or licensee that plans to depart from Tier 2 information, pursuant to Section 8(b)(5), must prepare a safety evaluation which provides the bases for the determination that the proposed change does not involve an unreviewed safety question, a change to Tier 1 or Tier 2* information, or a change to the technical specifications. In order to achieve the Commission's goals for design certification, the evaluation needs to consider all of the matters that were resolved in the DCD, including the generic issues discussed in Chapter 20 of the FSER. The benefits of the early resolution of safety issues would be lost if changes were made to the DCD that violated these resolutions without NRC approval. The evaluation of the resolved issues needs to consider the proposed change over the full range of power operation from startup to shutdown, including issues resolved under the heading of shutdown risk, as it relates to anticipated operational occurrences, transients, and design basis accidents. The evaluation should consider the tables in Sections 14.3 and 19.8 of the DCD to ensure that the proposed change does not impact Tier 1. These tables contain various cross-references from the plant safety analyses in Tier 2 to the important parameters that were included in Tier 1. Although many issues and analyses could have been cross-referenced, the listings in these tables were developed only for key plant safety analyses for the design. GE provided more detailed cross-references to Tier 1 for these analyses in a letter dated March 31, 1994, and ABB–CE provided more detailed cross-references in a letter dated June 10, 1994. The NRC does not endorse NSAC–125, ''Guidelines for 10 CFR 50.59 Safety Evaluations,'' for performing the safety evaluations required by Section 8(b)(5) of the proposed rule. However, the NRC will work with industry, if it is desired, to develop an appropriate guidance document for implementing Section 8 after the final rule is issued.

During the review of its DCD, GE requested that the determination of whether a proposed departure from Tier 2 information that involves severe accident issues constitutes a USQ use criteria that are different from the criteria for USQ determinations proposed in the ANPR (10 CFR 50.59(a)(2)). GE argued that not all increases in the probability or consequences of severe accidents are significant from a safety standpoint. Minor increases in the probability of some accident scenarios will not affect the overall core damage frequency or the conclusions of the severe accident evaluations. Therefore, GE proposed that changes to Tier 2 information that result in insignificant increases in the probability or consequences of severe accidents not constitute a USQ.

The NRC believes that it is important to preserve and maintain the resolution of severe accident issues just like all other safety issues that were resolved during the design certification review (refer to SRM on SECY–90–377). However, because of the increased uncertainty in severe accident issue resolutions, the NRC has proposed, in Section 8(b)(5), separate criteria for determining whether a departure from information associated with severe accident issues constitutes a USQ. The new criteria in Section 8(b)(5)(iii) will only apply to Tier 2 information that is associated with the severe accident issues discussed in the section of the DCD identified in the rule. The criteria for USQ determinations in Section 8(b)(5)(ii), which are the same as those proposed in the ANPR, will apply to other Tier 2 information. If the proposed departure from Tier 2 information involves the resolution of other safety issues in addition to the severe accident issues, then the USQ determination should be based upon the criteria in Section 8(b)(5)(ii). The NRC is interested in the public's view on whether the Tier 2 information involving resolutions of severe accident issues should be treated differently for USQ determinations than all other safety issues? If so, are the proposed criteria in Section 8(b)(5)(iii) sufficient to determine if a proposed departure from information associated with severe accident issues constitutes a USQ? (Refer to Section IV).

The NRC is also proposing two additional provisions to the change process that were not in the ANPR. The first is Section 8(b)(5)(iv), which provides that changes made pursuant to Section 8(b)(5) do not also require an exemption from the design certification rule. Because the Tier 2 information is incorporated by reference into the design certification, a departure from Tier 2 pursuant to Section 8(b)(5) would also require an exemption from the design certification rule absent this proposed provision. The second provision is Section 8(c), which makes it clear that proposed changes to requirements in this design certification rule that are neither Tier 1 nor Tier 2 must be done by exemption pursuant to 10 CFR 50.12. Such requirements include the recordkeeping and reporting requirements in Section 9 of this proposed rule.

I. Records and Reports

The purpose of Section 9 of this proposed rule entitled, ''Records and Reports,'' is to set forth the requirements for maintaining records of DCD changes and submitting reports to the NRC. This section is similar to the requirements for records and reports in 10 CFR part 50 and § 52.63(b)(2), with the following differences. Section 9(a)(1) requires an applicant for design certification to maintain an up-to-date copy of the DCD that includes all generic changes to Tier 1 and 2 information that are made by rulemaking. This will ensure that the design certification applicant provides up-to-date versions of the DCD to prospective applicants that want to reference this design certification or to other interested parties who want copies of the DCD. Section 9(a)(2) requires an applicant or licensee that references this design certification to maintain an up-to-date plant-specific version of the DCD that includes both generic changes to the DCD, as well as plant-specific departures from the DCD. This ensures that the plant records which include an accurate DCD reflecting information specific to the plant as well as changes to the DCD.

The proposed rule also establishes reporting requirements in Section 9(b) for applicants or licensees that reference this design certification rule. The requirements in Section 9(b) are similar to the reporting requirements in 10 CFR part 50, except that they include reporting of changes to or departures from the plant-specific DCD. In addition, the reporting requirements in

Section 9(b) vary according to whether the changes are made as part of an application, during plant construction, or during operation. Also, the reporting frequency of summary reports of departures from and periodic updates to the DCD increases during plant construction. If an applicant that references this design certification rule decides to adopt departures from the DCD that were developed, but not approved pursuant to Section 8 of this proposed rule, before its application (i.e., first of a kind engineering), then the proposed departures from the DCD must be submitted with the initial application for a construction permit or combined license.

For currently operating plants, a licensee is required to maintain records of the basis for any design change made to the plant pursuant to 10 CFR 50.59. Further, a licensee is required to provide a summary of these changes to the NRC annually or along with updates to the final safety analysis report pursuant to 10 CFR 50.71. The proposed rule allows departures from the DCD during the periods of application, construction, and operation of the plant. Therefore, the proposed rule requires timely submittal of summary reports of departures from, as well as updates to, the DCD during each of these intervals, consistent with the Commission's guidance on reporting frequency in its SRM on SECY–90–377.

NEI proposed reporting of design changes at a 6-month interval, in its comments on the ANPR, to ''avoid unnecessarily diverting owner/operator resources to meet excessive reporting requirements.'' The NRC modified the provisions in the proposed rule to relax the reporting requirements before issuance of a construction permit or combined license. During this interval, summary reports of changes and updates to the DCD should be submitted to the NRC as part of the amendments to the construction permit or combined license application. However, the NRC does not agree with the NEI proposal for semi-annual reporting of design changes during plant construction because it does not provide for sufficiently timely notification of design changes. Therefore, the Commission retained the requirement for quarterly reporting of changes in the proposed rule during this interval. Also, the NRC relaxed the provisions in Section 9(b) so that during operation of a plant, the reporting requirements are the same as for currently operating plants.

The NRC Commission believes that quarterly reporting of design changes during the period of construction are necessary to closely monitor the status and progress of the construction of the plant. As required by 10 CFR 52.99, the NRC must find that the ITAAC have been successfully met. The ITAAC verify that the as-built facility conforms with the approved design and emphasize design reconciliation and design verification of the as-built plant. To make its finding, the NRC must tailor its inspection program to monitor the plant construction and adjust its program to accommodate changes. Quarterly reporting of design changes will facilitate these adjustments in a timely manner and aids in a common understanding of the plant as the changes are being made. This is particularly important in times where the number of design changes could be significant, such as during the procurement of components and equipment, detailed design of the plant at the start of construction, and during pre-operational testing.

Section 9(c) of the proposed rule requires that records are kept for the lifetime of a facility, as in 10 CFR part 50 and § 52.63(b)(2).

J. Applicability of a DCR in 10 CFR Part 50 Licensing Proceedings

Several provisions in 10 CFR part 52, subpart B, suggest that design certification rules (DCRs) may be referenced not only in combined license proceedings under 10 CFR part 52, subpart C, but also in licensing proceedings under 10 CFR part 50. Section 52.63(c) states:

> The Commission will require, prior to granting a construction permit, combined license, or operating license which references a standard design certification, that information normally contained in certain procurement specifications and construction and installation specifications be completed and available for audit if such information is necessary for the Commission to make its safety determination, including the determination that the application is consistent with the certified design. (Emphasis supplied.)

See also §§ 52.41, 52.55(b), 52.55(c), 52.63(a)(4), 52.63(b)(1). However, these provisions in 10 CFR part 52, subpart B, are inconsistent in identifying the *type* of part 50 proceeding in which design certification rules may be referenced. For example, although § 52.63(c) (quoted above) and § 52.55(c) explicitly provide for referencing of design certification rules in 10 CFR part 50 *construction permit* proceedings, §§ 52.55(b), 52.63(a)(4) and 52.63(b)(1) refer only to *operating license* proceedings. Section 52.63(a)(4) is illustrative:

> Except as provided for in 10 CFR 2.758, in making the findings required for issuance of a combined license or operating license, or for any hearing under § 52.103, the Commission shall treat as resolved those matters resolved in connection with the issuance or renewal of a design certification. (Emphasis supplied.)

Therefore, some might question whether the Commission intended construction permits applicants under 10 CFR part 50 to have the option of referencing design certification rules. However, the Commission has not identified any regulatory or policy reasons for precluding a construction permit applicant from referencing a design certification rule while allowing an operating license applicant to do so. Thus, the Commission believes that 10 CFR part 52 provides the discretion to authorize a construction permit applicant under 10 CFR part 50 to reference a design certification rule.

Assuming that the Commission has such discretion, there are a number of issues that present themselves. Should the Commission exercise its discretion to allow construction permit applicants to reference this design certification rule? Should the Commission require that if a design certification rule is to be relied upon in part 50 licensing proceedings, it must be referenced in both the construction permit and operating license applications? Would it make sense to allow an operating license applicant to reference a design certification if the underlying construction permit did not reference the design certification? The Commission recognizes that consideration of these issues depends in part upon the legal significance of a design certification in the 10 CFR part 50 licensing proceeding, as well as its significance for the permittee or licensee once the construction permit or operating license is granted. In particular, 10 CFR part 52, subpart B, does not say what the legal effect is (if any) of ITAAC in a part 50 operating license proceeding in which the underlying construction permit references a design certification.

In view of the status of ITAAC as Tier 1 information, how would a construction permit applicant referencing a design certification rule avoid referencing the ITAAC? What would be the consequences for the construction permit applicant of referencing ITAAC? If the underlying construction permit referenced ITAAC, then what (if any) would be the scope and nature of ''issue preclusion'' at the operating license stage, in terms of Staff/Commission review and approval of the operating license application, as well as issues which are precluded from consideration under 10 CFR 2.758? The

Commission seeks the public's views on the referencing of design certification rules in 10 CFR part 50 applications (refer to Section IV).

IV. Specific Requests for Comments

In addition to the general invitation to submit comments on the proposed rule, the DCD, and the environmental assessment, the NRC also invites specific comments on the following questions:

1. Should the requirements of 10 CFR 52.63(c) be added to a new 10 CFR 52.79(e)? (Refer to discussion in III.A.)

2. Are there other words or phrases that should be defined in Section 2 of the proposed rule? (Refer to discussion in III.B.)

3. What change process should apply to design-related information developed by a COL applicant or holder that references this design certification rule? (Refer to discussion in III.D.)

4. Are each of the applicable regulations set forth in Section 5(c) of the proposed rule justified? (Refer to discussion in III.E.)

5. Section 8(b)(5)(i) authorizes an applicant or licensee who references the design certification to depart from Tier 2 information without prior NRC approval if the applicant or licensee makes a determination that the change does not involve a change to Tier 1 or Tier 2* information, as identified in the DCD, the technical specifications, or an unreviewed safety question as defined in Sections 8(b)(5)(ii) and (iii). Where Section 8(b)(5)(i) states that a change made pursuant to that paragraph will no longer be considered as a matter resolved in connection with the issuance or renewal of a design certification within the meaning of 10 CFR 52.63(a)(4), should this mean that the determination may be challenged as not demonstrating that the change may be made without prior NRC approval or that the change itself may be challenged as not complying with the Commission's requirements? (Refer to discussion in III.H.)

6. How should the determinations made by an applicant or licensee that changes may be made under Section 8(b)(5)(i) without prior NRC approval be made available to the public in order for those determinations to be challenged or for the changes themselves to be challenged? (Refer to discussion in III.H.)

7. What is the preferred regulatory process (including opportunities for public participation) for NRC review of proposed changes to Tier 2* information and the commenter's basis for recommending a particular process? (Refer to discussion in III.H.)

8. Should determinations of whether proposed changes to severe accident issues constitute an unreviewed safety question use different criteria than for other safety issues resolved in the design certification review and, if so, what should those criteria be? (Refer to discussion in III.H.)

9(a) (1) Should construction permit applicants under 10 CFR part 50 be allowed to reference design certification rules to satisfy the relevant requirements of 10 CFR part 50? (Refer to discussion in III.J.)

(2) What, if any, issue preclusion exists in a subsequent operating license stage and NRC enforcement, after the Commission authorizes a construction permit applicant to reference a design certification rule?

(3) Should construction permit applicants referencing a design certification rule be either permitted or required to reference the ITAAC? If so, what are the legal consequences, in terms of the scope of NRC review and approval and the scope of admissible contentions, at the subsequent operating license proceeding?

(4) What would distinguish the ''old'' 10 CFR part 50 2-step process from the 10 CFR part 52 combined license process if a construction permit applicant is permitted to reference a design certification rule and the final design and ITAAC are given full issue preclusion in the operating license proceeding? To the extent this circumstance approximates a combined license, without being one, is it inconsistent with Section 189(b) of the Atomic Energy Act (added by the Energy Policy Act of 1992) providing specifically for combined licenses?

9(b) (1) Should operating license applicants under 10 CFR Part 50 be allowed to reference design certification rules to satisfy the relevant requirements of 10 CFR part 50? (Refer to discussion in III.J.)

(2) What should be the legal consequences, from the standpoints of issue resolution in the operating license proceeding, NRC enforcement and licensee operation if a design certification rule is referenced by an applicant for an operating license under 10 CFR Part 50?

(c) Is it necessary to resolve these issues as part of this design certification, or may resolution of these issues be deferred without adverse consequence (*e.g.*, without foreclosing alternatives for future resolution).

V. Comments and Hearings in the Design Certification Rulemaking

A. Opportunity to Submit Written and Electronic Comments

Any person may submit written comments on the proposed design certification rule to the Commission for its consideration.[3] Commenters have 120 days from the publication of this notice to file written comments on the proposed design certification rule. Commenters needing access to proprietary information in order to provide written comments must follow the procedures and filing deadlines (including the date for filing written comments) which are set forth in Section V.E. below.

Commenters are encouraged to submit, in addition to the original paper copy, a copy of the comment letter in electronic format on a DOS-formatted (IBM compatible) 3.5 or 5.25-inch computer diskette. Text files should be provided in WordPerfect format or unformatted ASCII code. The format and version should be identified on the diskette's external label. Comments may also be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll free number: 1–800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI terminal emulation, the NRC rules subsystem can then be accessed by selecting the ''Rules'' option from the ''NRC Main Menu.'' For further information about options available for NRC at FedWorld consult the ''Help/Information Center'' from the ''NRC Main Menu.'' Users will find the ''FedWorld Online User's Guides'' particularly helpful. Many NRC subsystems and databases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS: 703–321–3339; Telnet via Internet: fedworld.gov (192.239.92.3); File Transfer Protocol (FTP) via Internet: ftp.fedworld.gov (192.239.92.205); and

[3] An opportunity for public comment is required by Section 553 of the Administrative Procedures Act and 10 CFR 52.51(b).

World Wide Web using: http://www.fedworld.gov (this is the Uniform Resource Locator (URL)).

If using a method other than the toll free number to contact FedWorld, then the NRC subsystem will be accessed from the main FedWorld menu by selecting the ''U.S. Nuclear Regulatory Commission'' option from FedWorld's ''Subsystems/Databases'' menu or by entering the command ''/go nrc'' at a FedWorld command line. If NRC access is obtained through FedWorld's ''Subsystems/Databases'' menu, then return to FedWorld is accomplished by selecting the ''Return to FedWorld'' option from the ''NRC Main Menu.'' However, if NRC access at FedWorld is accomplished by using NRC's toll-free number, access to all NRC systems is available, but there will be no access to the main FedWorld system. For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

Public Meeting

The NRC staff plans to conduct a public meeting on this proposed rule on May 11, 1995, at the NRC Auditorium in Two White Flint North. Further details on the meeting are provided in a document published in this issue of the **Federal Register**. The purpose of the public meeting will be to discuss this proposed rule and respond to questions on the meaning and intent of any provisions of this proposed rule. It is hoped that this meeting will be helpful to persons who intend to submit written comments on the proposed rule. An official transcript of the proceedings of the public meeting will be prepared.

B. Opportunity to Request Hearing

Any person may request an informal hearing on one or more specific matters with respect to the proposed design certification rule.[4] An informal hearing provides the admitted party with an opportunity to provide written and oral presentations on those matters to an Atomic Safety and Licensing Board and to request that the licensing board question the applicant on those matters. The conduct of an informal hearing is discussed in more detail in Section C below. Under certain circumstances, a party in an informal hearing may request that the Commission hold a formal hearing on specific and substantial factual disputes necessary to resolution of the matters for which the party was granted an informal hearing (see Section C.11 below).

A person may request an informal hearing even though that person has not submitted separate written comments on the design certification rule (*i.e.*, is not a commenter). Requests for an informal hearing must be received by the Commission no later than 120 days from the publication of this notice, and a copy of the request must be sent via overnight mail to the design certification applicant at the following address: Mr. Joseph F. Quirk, Mail Code 782, GE Nuclear Energy, 175 Curtner Avenue, San Jose, CA 95125. The information which a person requesting a hearing must provide in the hearing request, as well as the procedures and standards to be used by the Commission in its determination of the request, are discussed in Sections C.1 through C.4 below.

A person who needs to review proprietary information submitted by the design certification applicant in order to prepare a request for an informal hearing must follow the procedures and filing schedule set forth in Section V.E. below.

The Commission is also providing an opportunity for interested state, county, and city/municipal and other local governments, as well as Native American tribal governments to participate as ''interested governments'' in any informal hearings which the Commission authorizes, similar to their participation as ''interested governments'' in subpart G hearings under 10 CFR 2.715. State, county, city/municipal, local, and tribal governments wishing to participate as an ''interested government'' in any design certification rulemaking hearings which may be held must file their request to participate no later than 120 days from the publication of this notice.

C. Hearing Process

1. Filings and Computation of Times

All notices, papers, or other filings discussed in this section must be filed by express mail.[5] The time periods specified in this section have been established based upon such a filing. The express mail filing requirement shall be considered in establishing other filing deadlines.

In computing any period of time, the day of the act, event or default after which the designated period of time begins to run is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or legal holiday at the place where the action or event is to occur, in which case the period runs until the next day which is neither a Saturday, Sunday, nor holiday.

2. Content of Hearing Request

The Commission will grant a request for an informal hearing only if the hearing request satisfies each of the following two requirements. First, the hearing request must include the written presentations which the requestor wishes to be included in the record of the hearing. The written presentations must:

(i) Identify the specific portion of the proposed design certification rule or supporting bases which are challenged,

(ii) Describe the reasons why the proposed rule or supporting bases are incorrect or insufficient, and

(iii) Identify the references or sources upon which the person requesting the hearing relies.

If the requestor has submitted written comments in the public comment period addressing these three factors for the specific issue for which the requestor seeks a hearing, it will be sufficient for the requestor to identify the portions of the written comments which the requestor intends to submit as a written presentation. Also, the hearing request must demonstrate that the requestor (or other persons identified in the hearing request who will represent, assist, or speak on behalf of the requestor at the hearing) has appropriate knowledge and qualifications to enable the requestor to contribute significantly to the development of the hearing record on the specific matters at issue. The Commission does not intend that the requestor meet a judicial ''expert witness'' standard in order to meet the second criterion. Nonetheless, given the substantial commitment of time and resources associated with any hearing, the Commission believes it to be a reasonable prerequisite that the hearing requestor demonstrate that he/she (or his/her assistant) has:

(i) Substantial familiarity with the publicly available docketed information relevant to the issue for which a hearing is requested;

(ii) The requisite technical capability to understand the factual matters and develop a record on the issue for which a hearing is requested; and

[4] An opportunity for a hearing is provided by 10 CFR 52.51(b).

[5] Filings discussed in this section may also be served upon the Commission in electronic form in lieu of express mail. However, parties must serve copies of their filings on other parties by express mail, unless the receiving party agrees to filing in electronic form. Filings must be transmitted no later than the last day of the time period specified for filing and must be in accordance with the requirements specified in the Summary.

(iii) An understanding of the NRC's hearing procedures in 10 CFR part 2.[6]

3. Request to Hold Hearing Outside of Washington, DC

Any hearing(s) which the Commission may authorize ordinarily will be conducted in the Washington, DC metropolitan area. However, the Commission at its discretion may schedule hearings outside the Washington, DC metropolitan area in response to requests submitted by a person requesting a hearing that all or part of the hearing be held elsewhere. These requests must be submitted in conjunction with the request for hearing, and must specifically explain the special circumstances for holding a hearing outside the Washington, DC metropolitan area.

4. Responses to Hearing Request

The applicant may file a response to any hearing request within 15 days of the date of the hearing request. The NRC staff will not provide a response to the hearing request unless requested to do so by the Commission but may assist the Commission in its ruling on the request.

5. Commission Determination of Hearing Request

The Commission intends to rule on a hearing request within 20 days of the close of the period for requesting a hearing. The Commission's determination will be based upon the materials accompanying the hearing request and the applicant's response (and the NRC staff's response, if requested by the Commission). The hearing request shall be granted if:

(i) The request is accompanied by a written presentation containing the information required by Section C.2. above; and

(ii) The requestor has the appropriate knowledge and qualifications to enable the requestor to contribute significantly to the development of the hearing record on the matters sought to be controverted.

The Commission may consult with the NRC staff before its determination of a hearing request. A written decision either granting or denying the hearing request will be published by the Commission.

If a hearing request is granted in whole or in part, the Commission's decision will delineate the controverted matter that will be the subject of the hearing and whether any issues and/or parties are to be consolidated (see Section C.7. below). The Commission's decision granting the hearing will direct the establishment of a licensing board to preside over the informal hearing. Finally, the Commission's decision will specify:

(i) The date by which any requests for discovery must be filed with the licensing board (normally 20 days after the date of the Commission's decision), and

(ii) The date by which any objections to discovery must be filed (see Section C.9. below).

The Commission's decision will be sent to each admitted party by overnight mail. Separate hearings may be granted for each controverted matter or set of consolidated matters. Thus, if there are three different controverted matters, the Commission may establish three separate hearings. In this fashion, closing of the hearing record on a controverted matter and its referral to the Commission for resolution need not await completion of the hearing on the other controverted matters. Finally, the Commission's decision will rule on any requests for hearings outside of the Washington, DC metropolitan area (see Section C.3 above).

6. Authority of the Licensing Board

If the Commission authorizes an informal hearing on a controverted matter, the licensing board will function as a ''limited magistrate'' in that hearing with the authority and responsibility for assuring that a sufficient record is developed on those controverted matters which the Commission has determined are appropriate for consideration in that hearing. The licensing board shall have the following specific responsibilities and authority:

(i) Schedule and expeditiously conduct the informal hearing for each admitted controverted matter, consistent with the rights of all the parties,

(ii) Review all discovery requests against the criteria established by the Commission, and refer all appropriate requests to the Commission with a decision explaining the licensing board's action,

(iii) Preside over and resolve any issues regarding the scheduling and conduct of any discovery authorized by the Commission,

(iv) Order such further consolidation of parties and issues as the licensing board determines is necessary or desirable,

(v) Orally examine persons making oral presentations in the informal hearing, based in part upon the licensing board's review of the parties' proposed oral questions to be asked of persons making oral presentations,

(vi) Request that the NRC staff:

(A) Answer licensing board questions about the SER or the proposed rule,

(B) Provide additional information or documentation with respect to the design certification, and

(C) Provide other assistance as the licensing board may request. Licensing board requests for NRC staff assistance should be framed such that the NRC staff does not assume a role as an adversary party in the informal hearing (see Section C.8 below),

(vii) Review all requests for additional hearing procedures and refer all appropriate requests to the Commission with a decision explaining the licensing board's action,

(viii) Certify the hearing record to the Commission, based upon the licensing board's determination that the hearing record contains sufficient information for the Commission to make a reasoned determination on the controverted matter; and

(ix) Include with its certification any concerns identified by the *licensing board in the course of the hearing which, although neither raised by* the parties nor necessary to resolution of the controverted hearing matters, are significant enough in the licensing board's view to warrant attention by the Commission.

Licensing board determinations with respect to referral of requests to the Commission, as well as licensing board determinations of parties' motions, are not appealable to the Commission as an interlocutory matter. Instead, any disagreements with the licensing board's determinations, and a specific discussion of how the hearing record is deficient with respect to the contested issue must be set forth in the parties' proposed findings of fact which are submitted directly to the Commission (see Section C.13 below).

As suggested by Item (10) above, the licensing board shall not have any ''sua sponte'' authority analogous to 10 CFR 2.760a. The Commission believes that in the absence of a request for an informal hearing on a matter, the Commission should resolve issues with respect to the design certification rule in the same manner as other agency-identified rulemaking issues, *viz.*, through NRC staff consideration of the issue followed by the Commission's review and its final resolution of the matter. However, when it certifies the completed hearing record to the Commission (see Section C.12. below), the licensing board should identify to the Commission any concerns identified during the hearing that are significant enough to warrant Commission consideration but that are unnecessary or irrelevant to the

[6] Requestors will satisfy this requirement by stating that they possess and have read a copy of 10 CFR part 2, subparts A, G, and L.

resolution of the controverted hearing matter.

The licensing board shall close the hearing and certify the record to the Commission only after it determines that the record on the controverted matter is sufficiently complete for the Commission to make a reasoned determination with respect to that matter. However, the licensing board shall not have any responsibility or authority to resolve and decide controverted matters in either an informal or a formal hearing. Rather, the Commission retains its traditional authority in rulemaking proceedings to evaluate and resolve all rulemaking issues identified in public comments on a proposed rule. Therefore, the Commission will resolve any controverted matters that are the subject of a hearing in this design certification rulemaking.

7. Consolidation of Parties and Issues; Joint Hearings on Related Issues

If two or more persons seek an informal hearing on the same or similar matters, the Commission may, in its discretion, grant an informal hearing and consolidate the matters into a single issue (as defined by the Commission). The Commission may also, in its discretion, require that the parties be consolidated analogous to the consolidation permitted under 10 CFR 2.715a. If the Commission consolidates two or more issues into a single consolidated issue but does not consolidate parties, each admitted person will be deemed a separate party with an individual right to:

(i) Submit separate written presentations,

(ii) Submit separate sets of proposed oral questions to be asked by the licensing board (see Section C.10 below),

(iii) Make separate oral presentation, and

(iv) Submit and separately respond to motions.

If the Commission also requires that parties be consolidated, the consolidated parties must participate jointly, including deciding upon written and oral presentations, submitting a single set of written questions, submitting motions supported by each of the consolidated parties, and responding to motions filed by other parties.

During the informal hearing, the licensing board may decide that further consolidation of issues or parties would simplify the overall conduct of informal hearings or materially reduce the time or resources devoted to the hearings. In these instances, the licensing board may direct such consolidation. The licensing board shall set forth the issues and/or parties to be consolidated and the reasons for such consolidation in a written order.

8. Status of the Design Certification Applicant, the NRC staff, and Requesting Party

The design certification applicant shall be a party in the informal hearing, with the right to submit written and oral presentations, propose questions to be asked by the licensing board of oral presenters, and file and submit appropriate motions.

The NRC staff shall *not* be a party in the informal hearing but shall be available in the informal hearing to answer licensing board questions about the FSER or the proposed rule, provide additional information or documentation with respect to the design certification, and provide other assistance that the licensing board may request without the NRC staff assuming the role of a party in the informal hearing.

A party whose hearing requests have been granted with respect to a particular controverted matter shall not participate with respect to any controverted matter on which the party was not granted a hearing. For example, if Person 1 has been authorized as a party on Issue A and Person 2 has been authorized as a party on Issue B, then Person 1 may participate only in the informal hearing on Issue A, and may *not* participate in the informal hearing on Issue B. Conversely, Person 2 may participate only in the informal hearing on Issue B, and may *not* participate in the informal hearing on Issue A.

9. Requests for Discovery

Any party may request the opportunity to conduct discovery against another party before the oral phase of the informal hearing. The request for discovery must:

(i) Identify the type of discovery permitted under 10 CFR 2.740, 2.740a, 2.740a(b), 2.741, and 2.742 which the party seeks to use;

(ii) Identify the subject matter or nature of the information sought to be obtained by discovery; and

(iii) Explain *with particularity* the relevance of the information sought to the controverted matter which is the subject of the hearing and why this information is indispensable to the presentation of the party's position on the controverted matter.

The request shall be filed with the licensing board, with copies of the request to be filed with the party against which discovery is sought, and the NRC staff. The requests must be received no later than the deadline specified by the Commission in its decision granting a party's hearing request (*see* Section C.5. above). A party against whom discovery is sought may file a response objecting to part or all of the request. Such a response must explain *with particularity* why the discovery request should not be granted.

The licensing board shall review all discovery requests and refer to the Commission those requests that it believes should be granted within 7 days after the date for receiving a party's objections to a discovery request. The licensing board shall issue a written decision explaining its basis for either referring the request to the Commission or declining to refer it. The written decision shall accompany the discovery requests which are referred by the licensing board to the Commission.

The Commission will determine whether to grant any discovery requests forwarded to it based upon the licensing board's decision, together with the request and the design certification applicant's response (and any NRC staff response requested by the licensing board). Discovery will be at the discretion of the Commission. In this regard, the Commission notes that two docket files have been established by the NRC staff for the U.S. ABWR design certification review. The first docket file (STN 50–605) was established on February 22, 1988, and the second docket file (52–001) became effective on March 13, 1992. The NRC staff has placed information and documents received from the design certification applicant in these docket files. This information includes the Design Control Document, Revision 2, and the Technical Support Document for the U.S. ABWR, Revision 1. Furthermore, the docket files contain NRC staff communications and documents, such as written questions and comments provided to the design certification applicant, and summaries of meetings held between the NRC staff and the design certification applicant. The NRC Staff's bases for approving the U.S. ABWR design are set forth in the FSER (NUREG–1503), dated July 1994. The Commission also notes that each admitted party has already disclosed a substantial amount of information in its hearing request, relating both to bases for the party's position with respect to the controverted matter as well as information on the qualifications of the party (or its representatives and witnesses in the hearing).

As discussed above, much of the information documenting the NRC staff's review and approval of the design

certification application has been routinely placed in the docket file. Furthermore, as discussed in Section C.8., the NRC staff is not a party in an informal hearing. Therefore, the Commission has decided that in an informal hearing, the parties should *not* be afforded discovery against the NRC staff.

10. Conduct of Informal Hearing

If the Commission authorizes discovery, the licensing board shall establish a schedule for the conduct and completion of discovery. Normally, the licensing board should not permit more than one round of discovery. The Commission will not entertain any interlocutory appeals from licensing board orders resolving any discovery disputes or otherwise complaining of the scheduling of discovery.

Following the completion of discovery, the licensing board should issue an order setting forth the date of commencement of the oral phase of each informal hearing, and the date (no less than thirty (30) days before the commencement of the oral phase of the hearing) by which parties must submit:

(i) The identities and curriculum vitae of those persons providing oral presentations;

(ii) The outlines of the oral presentations; and

(iii) Any questions which a party would like the licensing board to ask. The licensing board may schedule the oral phases of two or more informal hearings to be held during the same session.

The licensing board shall publish a notice in the **Federal Register** announcing the commencement of the oral phase of the informal hearing(s). The notice shall set forth the place and time of the oral hearing session, the subject matter(s) of the informal hearing(s), a brief description of the informal hearing procedures, and a statement indicating that the public may observe the informal hearing.

Based upon the parties' outlines of the oral presentation and proposed questions, the licensing board should determine whether it has specific questions of the NRC staff with respect to the staff's review of the design certification application. These questions should be submitted in writing to the NRC no less than 20 days before the commencement of the oral phase of the hearing and must specify the date by which the NRC staff shall provide its written answers to the licensing board. The licensing board shall send copies of the request by overnight mail to all parties. The NRC staff shall file its written answers with the licensing board and the parties.

During the oral phase of the hearing, the licensing board shall receive into evidence the written presentations of the parties and permit each party (or the representatives identified in their hearing request) to make oral presentations addressing the controverted matter. Normally, the party raising the controverted matter should make their presentations, followed by the presentations of the design certification applicant. The licensing board may question the persons making oral presentations, using its own questions as well as those submitted to the licensing board by the other parties. Based upon the parties' oral presentations and/or responses to licensing board questions, the licensing board may also orally question the NRC staff.

11. Additional Hearing Procedures and Formal Hearings

After the parties have made their oral presentations and the licensing board has concluded its questioning of the presenters (and, as applicable, the NRC staff), the licensing board should declare that the oral phase of an informal hearing on a controverted matter (or consolidated set of controverted matters) is complete.

No later than 10 days after the licensing board has declared that the oral phase of the informal hearing has been completed, parties may file with the licensing board (with copies to the applicant and the NRC staff) a request that some or all of the procedures described in 10 CFR part 2, subpart G (*e.g.*, direct and cross-examination by the parties) be utilized. The request shall:

(i) Identify the specific hearing procedures which the party seeks, or state that a formal hearing is requested;

(ii) Identify the specific *factual* issues for which the additional procedures would be utilized,

(iii) Explain why resolution of these factual disputes are necessary to the Commission's decision on the controverted issue;

(iv) Explain, with specific citations to the hearing record, why the record is insufficient on the controverted matter, and

(v) Identify the nature of the evidence that would be developed utilizing the additional procedures requested.

The design certification applicant may file a response to these requests no later than seven days after the applicant's receipt of a request for additional procedures. The NRC staff will not provide a response unless specifically requested to do so by the licensing board.

The licensing board will review all requests for additional hearing procedures or a formal hearing and refer those that it believes should be granted to the Commission for its determination. The licensing board shall issue a written decision explaining its determination whether to forward the request to the Commission no later than 7 days after receipt of any applicant response to the request. The decision will provide the basis for either forwarding the request to the Commission or declining to forward it. In the absence of any requests for hearing procedures or if the licensing board concludes that none of the requests should be referred to the Commission, the licensing board should declare that the hearing record is closed (see Section C.12 below).

The Commission will determine whether to grant any requests for additional procedures or a formal hearing that are forwarded by the licensing board. The Commission's determination shall be based upon the licensing board's decision along with the request and the design certification applicant's response. If the Commission directs that a formal hearing be held on a controverted factual matter, the NRC staff shall be a party in the formal hearing. After either the additional hearing procedures authorized by the Commission are completed or the formal hearing is concluded on the factual dispute, the licensing board should declare the hearing record closed (see Section C.12 below).

12. Licensing Board's Certification of Hearing Record to the Commission

After the oral phase of a hearing is completed and either:

(i) There are no requests for additional hearing procedures or a formal hearing, or

(ii) The licensing board concludes that none of the requests should be referred to the Commission, then the licensing board should declare that the hearing record is closed.

If the Commission directs that additional hearing procedures should be utilized or a formal hearing be held on specific factual disputes, the licensing board should declare the hearing record closed after completion of the additional hearing procedures or the formal hearing. Within 30 days of the closing of the hearing record the licensing board should certify the hearing record to the Commission on each controverted

matter (or consolidated set of controverted matters).[7]

The licensing board's certification for each controverted matter (or consolidated set of controverted matters) shall contain:

(i) The hearing record, including a transcript of the oral phase of the hearing (and any pre-hearing conferences) and copies of all filings by the parties and the licensing board,

(ii) A list of all documentary evidence admitted by the licensing board, including the written presentations of the parties,

(iii) Copies of the documentary evidence admitted by the licensing board,

(iv) A list of all witnesses who provided oral testimony,

(v) The NRC staff's written answers to licensing board requests, and

(vi) A licensing board statement that the hearing record contains sufficient information for the Commission to make a reasoned determination on the controverted matter.

Finally, as discussed in Section C.6 above, the licensing board should identify any issues not raised by the parties or otherwise are not relevant to the controverted matters in the hearing, that the licensing board nonetheless believes are significant enough to warrant attention by the Commission.

13. Parties' Proposed Findings of Fact and Conclusions

The applicant must file directly with the Commission proposed findings of fact and conclusions for each controverted hearing matter (or consolidated set of controverted matters) within 30 days following the close of the hearing record on that matter in the form of a proposed final rule and statement of considerations with respect to the controverted hearing issues.

Other parties are encouraged, but not required, to file with the Commission proposed findings of fact and conclusions limited to those issues which a party was afforded a hearing by the Commission (*i.e.*, a party may not file proposed findings of fact and conclusions on issues which it was not admitted). Any findings that a party wishes the Commission to consider must be received by the Commission no later than 30 days after the licensing board closes the hearing record on that issue. Although parties are not required to file proposed findings and conclusions, a party who does not file a finding may not, upon appeal, claim or otherwise argue that the Commission either misunderstood the party's position, or failed to address a specific piece of evidence or issue.

D. Resolution of Issues for the Final Rulemaking

1. Absence of Qualifying Hearing Request

If the Commission does not receive any request for hearing within the 120-day period for submitting a request, or does not grant any of the requests (see Section V.B. above), the Commission will determine whether the proposed design certification rule meets the applicable standards and requirements of the Atomic Energy Act of 1954; as amended (AEA), the National Environmental Policy Act of 1969; as amended (NEPA), and the Commission's rules and regulations. The Commission's determination will be based upon the rulemaking record, which includes: The application for design certification, including the SSAR and DCD; the applicant's responses to the NRC staff's requests for additional information; the NRC staff's FSER and any supplements thereto; the report on the application by the ACRS; the applicant's Technical Support Document addressing consideration of severe accident mitigation design alternatives (SAMDAs) for purposes of NEPA; the NRC staff's EA and draft FONSI; the proposed rule, and the public comments received on the proposed rule. If the Commission makes an affirmative finding, it will issue a standard design certification in the form of a rule by adding a new appendix to 10 CFR part 52, and publish the design certification rule and a statement of considerations in the **Federal Register**.

2. Commission Resolution of Issues Where a Hearing is Granted

All matters related to the proposed design certification rule, including those matters for which the Commission authorizes a hearing (see Sections B. and C. above), will be resolved by the Commission after the licensing board has closed the hearing record and certified it to the Commission. The Commission will determine whether the proposed design certification rule meets the applicable standards and requirements of the AEA, NEPA, and the Commission's rules and regulations. The Commission's determination will be based upon the rulemaking record as described in Section D.1 above, with the addition of the hearing record for controverted matters. If the Commission makes an affirmative finding, the Commission will issue a final design certification rule as described in Section D.1.

E. Access to Proprietary Information in Rulemaking

1. Access to Proprietary Information for the Preparation of Written Comments or Informal Hearing Requests

Persons who determine that they need to review proprietary information submitted by the design certification applicant to the NRC in order to submit written comments on the proposed certification or to prepare an informal hearing request, may request access to such information from the applicant.

The request shall state with particularity:

(i) The nature of the proprietary information sought,

(ii) The reason why the nonproprietary information currently available to the public in the NRC's Public Document Room is insufficient either to develop public comments or to prepare for the hearing,

(iii) The relevance of the requested information either to the issue which the commenter wishes to comment on, and

(iv) A showing that the person requesting the information has the capability to understand and utilize the requested information.

Requests must be filed with the applicant such that they are received by the applicant no later than 45 days after the date that this notice of proposed rulemaking is published in the **Federal Register**.

Within ten (10) days of receiving the request, the applicant must send a written response to the person seeking access. The response must either provide the documents requested (or state that the document will be provided no later than ten days after the date of the response), or state that access has been denied. If access is denied, the response shall state with particularity the reasons for its refusal. The applicant's response must be provided via express mail.

The person seeking access may then request a Commission hearing for the purpose of obtaining a Commission order directing the design certification applicant to disclose the requested information. The person must include copies of the original request (and any subsequent clarifying information provided by the person requesting access to the applicant) and the applicant's response. The Commission will base its decision solely on the person's original request (including any

[7] An informal hearing is deemed to be completed when the period for requesting additional procedures or a formal hearing expires and no request is received.

clarifying information provided to the applicant by the person requesting access), and the applicant's response. Accordingly, a person seeking access to proprietary information should ensure that the request sets forth in sufficient detail and particularity the information required to be included in the request. Similarly, the applicant should ensure that its response to any request states with sufficient detail and particularity the reasons for its refusal to provide the requested information.

If the Commission orders access in whole or part, the Commission will specify the date by which the requesting party must file with the Commission written comments and any request for an informal hearing before a licensing board as discussed in Section V.C., above. A request for an informal hearing must meet the requirements set forth above in Section V.C., in particular the requirements governing the content of the hearing request, and shall be governed by the procedures and standards governing such requests set forth in Section V.C.

2. Access to Proprietary Information in a Hearing

Parties who are granted a hearing may request access to proprietary information. Parties must first request access to proprietary information regarding the proposed design certification from the applicant. The request shall state with particularity:

(i) The nature of the proprietary information sought,

(ii) The reason why the nonproprietary information currently available to the public in the NRC's Public Document Room is insufficient to prepare for the hearing,

(iii) The relevance of the requested information to the hearing issue(s) for which the party has been admitted, and

(iv) A showing that the requesting party has the capability to understand and utilize the requested information.

The request must be filed with the applicant no later than the date established by the Commission for filing discovery requests with the licensing board.

If the applicant declines to provide the information sought, within ten (10) days of receiving the request the applicant must send a written response to the requesting party setting forth with particularity the reasons for its refusal. The party may then request the licensing board to order disclosure. The party must include copies of the original request (and any subsequent clarifying information provided by the requesting party to the applicant) and the applicant's response. The licensing board shall base its decision solely on the party's original request (including any clarifying information provided by the requesting party to the applicant), and the applicant's response.

Accordingly, a party requesting proprietary information from the applicant should ensure that its request sets forth in sufficient detail and particularity the information required to be included in the request. Similarly, the applicant should ensure that its response to any request states with sufficient detail and particularity the reasons for its refusal to provide the requested information. The licensing board may order the applicant to provide access to some or all of the requested information, subject to an appropriate non-disclosure agreement.

F. Ex Parte and Separation of Functions Restrictions

Unless the formal procedures of 10 CFR Part 2, Subpart G are approved for a formal hearing in the design certification rulemaking proceeding, the NRC staff will not be a party in the hearing and separation of functions limitations will not apply. The NRC staff may assist in the hearing by answering questions about the FSER put to it by the licensing board, or to provide additional information, documentation, or other assistance as the licensing board may request. Furthermore, other than in a formal hearing, the NRC staff shall not be subject to discovery by any party, whether by way of interrogatory, deposition, or request for production of documents.

Second, the Commission has determined that once a request for an informal or formal hearing is received, certain elements of the ex parte restrictions in 10 CFR 2.780(a) will be applicable with respect to the subject matter of that hearing request. Under these restrictions, the Commission will communicate with interested persons/parties, the NRC staff, and the licensing board with respect to the issues covered by the hearing request only through docketed, publicly-available written communications and public meetings. Individual Commissioners may communicate privately with interested persons and the NRC staff; however, the substance of the communication shall be memorialized in a document which will be placed in the PDR and distributed to the licensing board and relevant parties.

VI. Finding of No Significant Environmental Impact: Availability

The Commission has determined under the NEPA and the Commission's regulations in 10 CFR part 51, subpart A, that this proposed design certification rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement (EIS) is not required. The basis for this determination, as documented in the environmental assessment, is that the amendment to 10 CFR part 52 would not authorize the siting, construction, or operation of a facility using the U.S. ABWR design; it would only codify the U.S. ABWR design in a rule. The NRC will evaluate the environmental impacts and issue an EIS as appropriate in accordance with NEPA as part of the application(s) for the construction and operation of a facility.

In addition, as part of the environmental assessment for the ABWR design, the NRC reviewed pursuant to NEPA, GE's evaluation of various design alternatives to prevent and mitigate severe accidents that was submitted in GE's ''Technical Support Document for the ABWR''. The Commission finds that GE's evaluation provides a sufficient basis to conclude that there is reasonable assurance that an amendment to 10 CFR part 52 certifying the U.S. ABWR design will not exclude a severe accident design alternative for a facility referencing the certified design that would have been cost beneficial had it been considered as part of the original design certification application. These issues are considered resolved for the U.S. ABWR design.

The environmental assessment, upon which the Commission's finding of no significant impact is based, and the Technical Support Document for the ABWR are available for examination and copying at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies are also available from Mr. Harry Tovmassian, Mailstop T–9 F33, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415–6231.

VII. Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements. The public reporting burden for this collection of information is zero hours. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this

burden, to the Information and Records Management Branch (T 6–F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0151), Office of Management and Budget, Washington, DC 20503.

VIII. Regulatory Analysis

The NRC has not prepared a regulatory analysis for this proposed rule. The NRC prepares regulatory analyses for rulemakings that establish generic regulatory requirements. Design certifications are not generic rulemakings. Rather, design certifications are Commission approvals of specific nuclear power plant designs by rulemaking. Furthermore, design certification rulemakings are initiated by an applicant for a design certification, rather than the NRC. Preparation of a regulatory analysis in this circumstance would not be useful because the design to be certified is proposed by the applicant rather than the NRC. For these reasons, the Commission concludes that preparation of a regulatory analysis is neither required nor appropriate.

IX. Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this proposed rulemaking will not have a significant economic impact upon a substantial number of small entities. The proposed rule provides standard design certification for a light water nuclear power plant design. Neither the design certification applicant, nor nuclear power plant licensees who reference this design certification rule, fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act, 15 U.S.C. 632, or the Small Business Size Standards set out in regulations issued by the Small Business Administration in 13 CFR part 121. Thus, this rule does not fall within the purview of the act.

X. Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule because these amendments do not impose requirements on existing 10 CFR part 50 licensees. Therefore, a backfit analysis was not prepared for this rule.

List of Subjects in 10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Incorporation by reference, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC proposes to adopt the following amendment to 10 CFR part 52.

PART 52—[AMENDED]

1. The authority citation for 10 CFR Part 52 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1243, 1244, 1246, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

2. In § 52.8, paragraph (b) is revised to read as follows:

§ 52.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 52.15, 52.17, 52.29, 52.45, 52.47, 52.57, 52.75, 52.77, 52.78, 52.79, and appendix A.

3. A new appendix A to 10 CFR part 52 is added to read as follows:

Appendix A To Part 52—Design Certification Rule for the U.S. Advanced Boiling Water Reactor

1. Scope.

This appendix constitutes the standard design certification for the U.S. Advanced Boiling Water Reactor (ABWR) design, in accordance with 10 CFR part 52, subpart B. The applicant for certification of the U.S. ABWR design was GE Nuclear Energy.

2. Definitions.

As used in this part:

(a) *Design control document* (DCD) means the master document that contains the Tier 1 and Tier 2 information that is incorporated by reference into this design certification rule.

(b) *Tier 1* means the portion of the design-related information contained in the DCD that is certified by this design certification rule (hereinafter Tier 1 information). Tier 1 information consists of:

(1) Definitions and general provisions;

(2) Certified design descriptions;

(3) Inspections, tests, analyses, and acceptance criteria (ITAAC);

(4) Significant site parameters; and

(5) Significant interface requirements.

The certified design descriptions, interface requirements, and site parameters are derived from Tier 2 information.

(c) *Tier 2* means the portion of the design-related information contained in the DCD that is approved by this design certification rule (hereinafter Tier 2 information). Tier 2 information includes:

(1) The information required by 10 CFR 52.47;

(2) The information required for a final safety analysis report under 10 CFR 50.34(b), and

(3) Supporting information on the inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAAC have been met.

(d) *Tier 2** means the portion of the Tier 2 information which cannot be changed without prior NRC approval. This information is identified in the DCD.

(e) All other terms in this rule have the meaning set out in 10 CFR 50.2, 10 CFR 52.3, or Section 11 of the Atomic Energy Act of 1954, as amended, as applicable.

3. [Reserved].

4. Contents of the design certification.

(a) Both Tier 1 and Tier 2 of the ABWR Design Control Document, GE Nuclear Energy, Revision 2, January 1995 are incorporated by reference. This incorporation by reference was approved by the Director of the Office of the Federal Register on [Insert date of approval] in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the U.S. ABWR DCD may be obtained from [Insert name and address of applicant or organization designated by the applicant]. Copies are also available for examination and copying at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555, and for examination at the NRC Library, 11545 Rockville Pike, Rockville, Maryland 20582–2738.

(b) An applicant for a construction permit, operating license, or combined license that references this design certification shall reference both Tier 1 and Tier 2 of the U.S. ABWR DCD.

(c) If there is a conflict between the U.S. ABWR DCD and either the application for design certification for the U.S. ABWR design or NUREG–1503, ''Final Safety Evaluation Report related to the Certification of the Advanced Boiling Water Reactor Design,'' dated July 1994 (FSER), then the U.S. ABWR DCD is the controlling document.

5. Exemptions and applicable regulations.

(a) The U.S. ABWR design is exempt from portions of the following regulations, as described in the FSER (index provided in Section 1.6 of the FSER):

(1) Section VI(a)(2) of appendix A to 10 CFR part 100—Operating Basis Earthquake Design Consideration;

(2) Section (b)(3) of 10 CFR 50.49—Environmental Qualification of Post-Accident Monitoring Equipment;

(3) Section (f)(2)(iv) of 10 CFR 50.34—Separate Plant Safety Parameter Display Console;

(4) Section (f)(2)(viii) of 10 CFR 50.34—Post-Accident Sampling for Boron, Chloride, and Dissolved Gases; and

(5) Section (f)(3)(iv) of 10 CFR 50.34—Dedicated Containment Penetration.

(b) Except as indicated in paragraph (c) of this section, the regulations that apply to the U.S. ABWR design are those regulations in 10

CFR Parts 20, 50, 73, and 100 (July 1994), that are applicable and technically relevant, as described in the FSER.

(c) In addition to the regulations specified in paragraph (b) of this section, the following regulations are applicable for purposes of 10 CFR 52.48, 52.54, 52.59 and 52.63:

(1) In the standard design, the effects of intersystem loss-of-coolant accidents must be minimized by designing low-pressure piping systems that interface with the reactor coolant pressure boundary to withstand full reactor coolant system pressure to the extent practical.

(2)(i) Piping systems associated with pumps and valves subject to the test requirements set forth in 10 CFR 50.55a(f) must be designed to allow for:

(A) Full flow testing of pumps and check valves at maximum design flow, and

(B) Testing of motor operated valves under maximum achievable differential pressure, up to design basis differential pressure, to demonstrate the capability of the valves to operate under design basis conditions.

(ii) For pumps and valves subject to the test requirements set forth in 10 CFR 50.55a(f), an applicant for a combined license which references this standard design certification rule shall submit as part of the application:

(A) A program for testing check valves that incorporates the use of advanced non-intrusive techniques to detect degradation and monitor performance characteristics, and

(B) A program to determine the frequency necessary for disassembly and inspection of each pump and valve to detect degradation that would prevent the component from performing its safety function and which cannot be detected through the use of advanced non-intrusive techniques. The licensee shall implement these programs throughout the service life of the plant.

(3) For digital instrumentation and control systems, the design must include:

(i) An assessment of the defense-in-depth and diversity of instrumentation and control systems;

(ii) A demonstration of adequate defense against common-mode failures; and

(iii) Provisions for independent backup manual controls and displays for critical safety functions in the control room.

(4) The electric power system of the standard design must include an alternate power source that has sufficient capacity and capability to power the necessary complement of non-safety equipment that would most facilitate the ability of the operator to bring the plant to safe shutdown, following a loss of the normal power supply and reactor trip.

(5) The electric power system of the standard design must include at least one offsite circuit supplied directly from one of the offsite power sources to each redundant safety division with no intervening non-safety buses in such a manner that the offsite source can power the safety buses upon a failure of any non-safety bus.

(6)(i) The requirements of 10 CFR 50.48(a) [1] and 10 CFR part 50, Appendix R, Section III G.1.a, apply to all structures, systems, and components important to safety.

(ii) Notwithstanding any provision in paragraph (i) of this section, all structures, systems, and components important to safety in the standard design must be designed to ensure that:

(A) Safe shutdown can be achieved assuming that all equipment in any one fire area will be rendered inoperable by fire and re-entry into that fire area for repairs and operator actions is not possible, except that this provision does not apply to (1) the main control room, provided that an alternative shutdown capability exists and is physically and electrically independent of the main control room, and (2) the reactor containment;

(B) Smoke, hot gases, or fire suppressant will not migrate from one fire area into another to an extent that could adversely affect safe-shutdown capabilities, including operator actions; and

(C) In the reactor containment, redundant shutdown systems are provided with fire protection capabilities and means to limit fire damage such that, to the extent practicable, one shutdown division remains free of fire damage.

(7) The standard design must include and an applicant for a combined license which references this standard design certification rule shall submit as part of the application:

(i) The description of the reliability assurance program used during the design that includes scope, purpose, and objectives;

(ii) The process used to evaluate and prioritize the structures, systems, and components in the design, based on their degree of risk-significance;

(iii) A list of structures, systems, and components designated as risk-significant; and

(iv) For those structures, systems, and components designated as risk-significant:

(A) A process to determine dominant failure modes that considered industry experience, analytical models, and applicable requirements; and

(B) Key assumptions and risk insights from probabilistic, deterministic, and other methods that considered operation, maintenance, and monitoring activities.

(8) The probabilistic risk assessment required by 10 CFR 52.47(a)(1)(v) must include an assessment of internal and external events. For external events, simplified probabilistic methods and margins methods may be used to assess the capacity of the standard design to withstand the effects of events such as fires and earthquakes. Traditional probabilistic techniques should be used to evaluate internal floods. For earthquakes, a seismic margin analysis must consider the effects of earthquakes with accelerations approximately one and two-thirds the acceleration of the safe-shutdown earthquake.

(9) The standard design must include an on-site alternate ac power source of diverse design capable of powering at least one complete set of equipment necessary to achieve and maintain safe-shutdown for the purposes of dealing with station blackout.

(10)(i) The standard design must include the features in paragraphs (A)–(C) below that reduce the potential for and effect of interactions of molten core debris with containment structures:

(A) Reactor cavity floor space to enhance debris spreading;

(B) A means to flood the reactor cavity to assist in the cooling process; and

(C) Concrete to protect portions of the lower drywell containment liner and other structural members.

(ii) The features required by paragraphs (i) of this section, in combination with other features, must ensure for the most significant severe accident sequences that the best-estimate environmental conditions (pressure and temperature) resulting from core-concrete interaction do not exceed ASME Code Service Level C for steel containments or Factored Load Category for concrete containments for approximately 24 hours.

(11) The standard design must include: (i) A reliable means to depressurize the reactor coolant system and (ii) cavity design features to reduce the amount of ejected core debris that may reach the upper containment.

(12) The standard design must include analyses based on best-available methods to demonstrate that:

(i) Equipment, both electrical and mechanical, needed to prevent and mitigate the consequences of severe accidents is capable of performing its function for the time period needed in the best-estimate environmental conditions of the severe accident (e.g., pressure, temperature, radiation) in which the equipment is relied upon to function; and

(ii) Instrumentation needed to monitor plant conditions during a severe accident is capable of performing its function for the time period needed in the best-estimate environmental conditions of the severe accident (e.g., pressure, temperature, radiation) in which the instrumentation is relied upon to function.

(13) The standard design must include features to limit the conditional containment failure probability for the more likely severe accident challenges.

(14)(i) The standard design must include a systematic examination of features in relation to shutdown risk assessing:

(A) Specific design features that minimize shutdown risk;

(B) The reliability of decay heat removal systems;

(C) Vulnerabilities introduced by new design features; and

(D) Fires and floods occurring with the plant in modes other than full power.

(ii) An applicant for a combined license which references this design certification rule shall submit as part of the application a description of the program for outage planning and control that ensures:

(A) The availability and functional capability during shutdown and low power operations of features important to safety during such operations; and

(B) The consideration of fire, flood, and other hazards during shutdown and low

[1] For the standard design, the footnote reference in 10 CFR 50.48(a) to Branch Technical Position Auxiliary Power Conversion System Branch BTP APCSB9.5–1, ''Guidelines for Fire Protection for Nuclear Power Plants,'' will be to the July 1981 version.

power operations. The licensee shall implement this program throughout the service life of the plant.

6. Issue resolution for the design certification.

(a) All nuclear safety issues associated with the information in the FSER or DCD are resolved within the meaning of 10 CFR 52.63(a)(4).

(b) All environmental issues associated with the information in the NRC's environmental assessment for the ABWR design or the severe accident design alternatives in Revision 1 of the Technical Support Document for the ABWR, dated December 1994, are resolved within the meaning of 10 CFR 52.63(a)(4).

7. Duration of the design certification.

This design certification may be referenced for a period of 15 years from May 8, 1995, except as provided for in 10 CFR 52.55(b) and 52.57(b). This design certification remains valid for an applicant or licensee that references this certification until their application is withdrawn or their license expires, including any period of extended operation under a renewed license.

8. Change process.

(a) Tier 1 information.

(1) Generic (rulemaking) changes to Tier 1 information are governed by the requirements in 10 CFR 52.63(a)(1).

(2) Generic changes to Tier 1 information are applicable to all plants referencing the design certification as set forth in 10 CFR 52.63(a)(2).

(3) Changes from Tier 1 information that are imposed by the Commission through plant-specific orders are governed by the requirements in 10 CFR 52.63(a)(3).

(4) Exemptions from Tier 1 information are governed by the requirements in 10 CFR 52.63(b)(1).

(b) Tier 2 information.

(1) Generic changes to Tier 2 information are governed by the requirements in 10 CFR 52.63(a)(1).

(2) Generic changes to Tier 2 information are applicable to all plants referencing the design certification as set forth in 10 CFR 52.63(a)(2).

(3) The Commission may not impose new requirements by plant-specific order on Tier 2 information of a specific plant referencing the design certification while the design certification is in effect under §§ 52.55 or 52.61, unless:

(i) A modification is necessary to secure compliance with the Commission's regulations applicable and in effect at the time the certification was issued, or to assure adequate protection of the public health and safety or the common defense and security; and

(ii) Special circumstances as defined in 10 CFR 50.12(a) are present.

(4) An applicant or licensee who references the design certification may request an exemption from Tier 2 information. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a). The granting of an exemption on request of an applicant must be subject to litigation in the same manner as other issues in the construction permit, operating license, or combined license hearing.

(5)(i) An applicant or licensee who references the design certification may depart from Tier 2 information, without prior NRC approval, unless the proposed change involves a change to Tier 1 or Tier 2* information, as identified in the DCD, the technical specifications, or an unreviewed safety question as defined in paragraphs (b)(5)(ii) or (b)(5)(iii) of this section. When evaluating the proposed change, an applicant or licensee shall consider all matters described in the DCD, including generic issues and shutdown risk for all postulated accidents including severe accidents. These changes will no longer be considered ''matters resolved in connection with the issuance or renewal of a design certification'' within the meaning of 10 CFR 52.63(a)(4).

(ii) A proposed departure from Tier 2 information, other than severe accident issues identified in Section 19E of the DCD, including attachments EA through EE, must be deemed to involve an unreviewed safety question if:

(A) The probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the DCD may be increased;

(B) A possibility for an accident or malfunction of a different type than any evaluated previously in the DCD may be created; or

(C) The margin of safety as defined in the basis for any technical specification is reduced.

(iii) A proposed departure from information associated with severe accident issues identified in Section 19E of the DCD, including attachments EA through EE, must be deemed to involve an unreviewed safety question if:

(A) There is a substantial increase in the probability of a severe accident such that a particular severe accident previously reviewed and determined to be not credible could become credible; or

(B) There is a substantial increase in the consequences to the public of a particular severe accident previously reviewed.

(iv) Departures from Tier 2 information made in accordance with Section 8(b)(5) above do not require an exemption from this design certification rule.

(c) Other requirements of this design certification rule.

An applicant or licensee who references the design certification may not depart from this rule's requirements, other than Tier 1 or 2 information, other than by an exemption in accordance with 10 CFR 50.12.

9. Records and reports.

(a) *Records.*

(1) The applicant for this design certification shall maintain a copy of the DCD that includes all generic changes to Tier 1 and Tier 2 information.

(2) An applicant or licensee that references this design certification shall maintain records of all changes to and departures from the DCD pursuant to Section 8 of this appendix. Records of changes made pursuant to Section 8(b)(5) must include a written safety evaluation which provides the bases for the determination that the proposed change does not involve an unreviewed safety question, a change to Tier 1 or Tier 2* information, or a change to the technical specifications.

(b) *Reports.* An applicant or licensee that references this design certification shall submit a report to the NRC, as specified in 10 CFR 50.4, containing a brief description of any departures from the DCD, including a summary of the safety evaluation of each. An applicant or licensee shall also submit updates to the DCD to ensure that the DCD contains the latest material developed for both Tier 1 and 2 information. The requirements of 10 CFR 50.71 for safety analysis reports must apply to these updates. These reports and updates must be submitted at the frequency specified below:

(1) During the interval from the date of application to the date of issuance of either a construction permit under 10 CFR part 50 or a combined license under 10 CFR part 52, the report and any updates to the DCD may be submitted along with amendments to the application.

(2) During the interval from the date of issuance of either a construction permit under 10 CFR part 50 or a combined license under 10 CFR part 52 until the applicant or licensee receives either an operating license under 10 CFR part 50 or the Commission makes its findings under 10 CFR 52.103, the report must be submitted quarterly. Updates to the DCD must be submitted annually.

(3) Thereafter, reports and updates to the DCD may be submitted annually or along with updates to the safety analysis report for the facility as required by 10 CFR 50.71, or at such shorter intervals as may be specified in the license.

(c) *Retention period.* The DCD, and the records of changes to and departures from the DCD must be maintained until the date of termination of the construction permit or license.

Dated at Rockville, MD, this 31st day of March 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–8379 Filed 4–6–95; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR PART 52

RIN 3150–AF15

Standard Design Certification for the System 80+ Design

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) proposes to approve by rulemaking a standard design certification for the System 80+ design. The applicant for certification of the System 80+ design was Asea Brown Boveri-Combustion Engineering (ABB–CE). The NRC is

proposing to add a new appendix to 10 CFR part 52 for the design certification. This action is necessary so that applicants or licensees intending to construct and operate a System 80+ design may do so by appropriately referencing the proposed appendix. The public is invited to submit comments on this proposed design certification rule (DCR) and the design control document (DCD) that is incorporated by reference into the DCR (refer to Sections IV and V). The Commission also invites the public to submit comments on the environmental assessment for the System 80+ design (refer to Section VI).

DATES: The comment period expires on August 7, 1995. Comments received after this date will be considered if it is practical to do so, but the Commission is only able to assure consideration for comments received on or before this date. In addition, interested parties may request an informal hearing before the Atomic Safety and Licensing Board Panel, in accordance with 10 CFR 52.51, on matters pertaining to this design certification rulemaking (refer to Section V). Requests for an informal hearing must be submitted by August 7, 1995.

ADDRESSES: Mail written comments and requests for an informal hearing to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Comments may also be delivered to 11555 Rockville Pike, Rockville, MD, between 7:30 am and 4:15 pm on Federal workdays. Copies of comments received will be available for examination and copying at the NRC Public Document Room (PDR) at 2120 L Street NW. (Lower Level), Washington, DC. A copy of the environmental assessment and the design control document is also available for examination and copying at the PDR.

FOR FURTHER INFORMATION CONTACT: Harry S. Tovmassian, Office of Nuclear Regulatory Research, telephone (301) 415–6231, Jerry N. Wilson, Office of Nuclear Reactor Regulation, telephone (301) 415–3145, or Geary S. Mizuno, Office of the General Counsel, telephone (301) 415–1639, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

SUPPLEMENTARY INFORMATION:

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I. Background

On March 30, 1989, Combustion Engineering, Inc. (ABB–CE) applied for certification of the System 80+ standard design with the NRC. The application was made in accordance with the procedures specified in 10 CFR part 50, Appendix O, and the Policy Statement on Nuclear Power Plant Standardization, dated September 15, 1987.

On May 18, 1989 (54 FR 15372), the NRC added 10 CFR part 52 to its regulations to provide for the issuance of early site permits, standard design certifications, and combined licenses for nuclear power reactors. Subpart B of 10 CFR part 52, established the process for obtaining design certifications. A major purpose of this rule was to achieve early resolution of licensing issues and to enhance the safety and reliability of nuclear power plants.

On August 21, 1989, ABB–CE requested that its application, originally submitted pursuant to 10 CFR part 50, appendix O, be considered as an application for design approval and subsequent design certification pursuant to 10 CFR 52.45. The application was docketed on May 1, 1991, and assigned Docket No. 52–002. Correspondence relating to the application prior to this date was also addressed to docket number STN 50–470 and Project No. 675. ABB-CE's application, the Combustion Engineering Standard Safety Analysis Report—Design Certification (CESSAR–DC) up to and including amendment W and the Certified Design Material, is available for inspection and copying at the NRC Public Document Room. By letter dated May 26, 1992, Combustion Engineering, Inc. notified the NRC that it is a wholly owned subsidiary of Asea Brown Boveri, Inc., and the appropriate abbreviation for the company is ABB–CE.

The NRC staff issued a final safety evaluation report (FSER) related to the certification of the System 80+ design in August 1994 (NUREG–1462). The FSER documents the results of the NRC staff's safety review of the System 80+ design against the requirements of 10 CFR part 52, Subpart B, and delineates the scope of the technical details considered in evaluating the proposed design. A copy of the FSER may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Mail Stop SSOP, Washington, DC 20402–9328 or the National Technical Information Service, Springfield, VA 22161. The final design approval (FDA) for the System 80+ design was issued on July 26, 1994, and published in the **Federal Register** on August 2, 1994 (59 FR 39371).

Since the issuance of 10 CFR part 52, the NRC staff has been working to implement subpart B with issues such as the acceptability of using a two-tiered design certification rule and the level of design detail required for design certification. The NRC staff originally proposed a design certification rule for evolutionary standard plant designs in SECY–92–287, ''Form and Content for a Design Certification Rule.'' On March 26, 1993, the NRC staff issued SECY–92–287A in which it responded to issues on SECY–92–287, which were

put forth by the Commission, and to specific questions raised by Commissioner Curtiss in a letter dated September 9, 1992. Subsequently, the NRC staff modified the draft rule in SECY–92–287 to incorporate Commission guidance and published a draft-proposed design certification rule in the **Federal Register** on November 3, 1993 (58 FR 58665), as an Advanced Notice of Proposed Rulemaking (ANPR) for public comment. On November 23, 1993, the NRC staff discussed this ANPR in a public workshop entitled ''Topics Related to Certification of Evolutionary Light Water Reactor Designs.'' All holders of operating licenses or construction permits were informed of the issuance of the ANPR and the planned public workshop through the issuance of NRC Administrative Letter 93–05 on October 29, 1993. Separate announcements of the workshop were also sent to the Union of Concerned Scientists, the Nuclear Information and Resource Service, the Natural Resources Defense Council, the Public Citizen Litigation Group, the Ohio Citizens for Responsible Energy (OCRE), and the State of Illinois Department of Nuclear Safety on October 18, 1993. An official transcript of the workshop proceedings is available in the PDR.

Rulemaking Procedures

10 CFR part 52 provides for Commission approval of standard designs for nuclear power facilities (*e.g.*, design certification) through rulemaking. In accordance with the Administrative Procedure Act (APA), part 52 provides the opportunity for the public to submit written comments on the proposed design certification rule. However, Part 52 goes beyond the requirements of the APA by providing the public with an opportunity to request a hearing before the Atomic Safety and Licensing Board Panel in a design certification rulemaking. While Part 52 describes a general framework for conducting a design certification rulemaking, § 52.51(a) states that more detailed procedures for the conduct of each design certification will be specified by the Commission.

To assist the Commission in developing the detailed rulemaking procedures, the NRC's Office of General Counsel (OGC) prepared a paper, SECY–92–170 (May 8, 1992), which identified issues relevant to design certification rulemaking procedures, and provided OGC's preliminary analyses and recommendations with respect to those issues. SECY–92–170 was made public by the Commission, and a Commission meeting on this paper was held on June 1, 1992.

Thereafter, in SECY–92–185 (May 19, 1992), OGC proposed holding a public workshop for the purpose of facilitating public discussion on the issues raised in SECY–92–170 and obtaining public comments on those issues. The Commission approved OGC's proposal (See the May 28, 1992, Memorandum from Samuel J. Chilk to William C. Parler). Notice of the workshop was published in the **Federal Register** on June 9, 1992 (57 FR 24394). The notice also provided for a 30-day period following the workshop for the public to submit written comments on SECY–92–170. A transcript was kept of the workshop proceedings and placed in the PDR. Nearly 50 non-NRC individuals attended the workshop; an additional eight persons requested copies of SECY–92–170 and workshop materials but did not attend. The workshop was organized in a panel format, with representatives from OCRE (Susan Hiatt), NUMARC (Robert Bishop), GE and Westinghouse—two design certification vendors (Marcus Rowden and Barton Cowan), the State of Illinois Department of Nuclear Safety (Stephen England), the State of New York Public Service Commission (James Brew), the Administrative Conference of the United States (William Olmstead), OGC, the NRC staff, and a moderator. Eleven written comments were received after the workshop, three from OCRE (OCRE August 1992 Comments; OCRE September 1992 Letter; OCRE October 1992 Letter), NUMARC, Winston and Strawn, the State of Illinois Department of Nuclear Safety, Westinghouse Energy Systems, the U.S. Department of Energy, Asea Brown Boveri-Combustion Engineering (ABB–CE), and AECL Technologies.[1] Mr. Rowden submitted an additional comment on behalf of NUMARC which addresses proprietary information.

OGC's final analyses and recommendations for design certification rulemaking procedures were set forth in SECY–92–381 (November 10, 1992). This paper was prepared after consideration of the panel discussions at the public workshop and the written comments received after the workshop. On April 30, 1993, the Commission issued a Memorandum to the General Counsel which sets forth the Commission's determinations with respect to the procedural issues raised by the General Counsel's paper. Section V. below, ''Comments and Hearings in the Design Certification Rulemaking,'' describes the procedures to be utilized in this design certification rulemaking.

[1] AECL is the vendor for the CANDU 3 design.

II. Public Comment Summary and Resolution

The public comment period for the ANPR for rulemakings to grant standard design certification for evolutionary light water reactor designs expired on January 3, 1994. Six comment letters were received. Five comment letters were from the nuclear industry (i.e., vendors, utilities, and industry representatives) and one from a public interest organization. Most of the commenters addressed the nine topics upon which the NRC sought the public's views. The Commission has carefully considered all the comments and wishes to express its sincere appreciation of the often considerable efforts of the commenters.

In the following public comment summary and resolution and in the section-by-section discussion (Section III below), the discussion refers to ''Commission approval'' of NRC staff-proposed positions or recommendations. This should be understood as meaning the Commission's tentative approval of those positions or recommendations for purposes of: (i) The NRC staff's review of the System 80+ design certification application, and (ii) preparation of this notice of proposed rulemaking. The public may submit comments and request an informal hearing with respect to any of the ''Commission approved'' positions or recommendations (comments and hearings are discussed in further detail in Section V).

All of the commenters supported the basic concept of the design certification rulemaking approach including the two-tiered structure for design information. The Nuclear Management and Resources Council, which has since been subsumed within the Nuclear Energy Institute (NEI), commented for the nuclear industry. GE Nuclear Energy, Westinghouse, and ABB–CE stated that they participated in the preparation of the NEI comments and fully supported them. The following is a summary and resolution of the public comments:

Topic 1—Acceptability of a Two-Tiered Design Certification Rule Structure

Comment Summary. On behalf of the nuclear industry, NEI stated that a two-tiered structure to a design certification rule is practical and fully consistent with the intent and requirements of 10 CFR part 52. OCRE stated that it fully supports the concept set forth in the ANPR provided that the Tier 2 information is subject to public

challenge in the standard design certification and any associated hearing.

Response. Although a two-tiered structure for design certification rules was not envisioned or subsequently deemed necessary to implement standard design certifications under 10 CFR part 52, the Commission approved the use of a two-tiered structure for a design certification rule in its SRM of February 15, 1991, on SECY–90–377, ''Requirements for Design Certification Under 10 CFR Part 52,'' in response to a request from NEI dated August 31, 1990. Since then, the NRC staff has worked to develop a two-tiered rule that achieves industry's goal of issue preclusion for a greater amount of information than was originally planned for design certification, while retaining flexibility for design implementation.

Tier 1 information is defined in Section 2(b) of the proposed rule and is treated as the certified information that is controlled by the change standards of 10 CFR 52.63. Tier 2 information is defined in Section 2(c) of the proposed rule and consists primarily of the information submitted in an application for design certification. The information in the two tiers is interdependent. Therefore, an applicant for a construction permit, operating license, or combined license (COL) that references this design certification must reference both tiers of information. The consolidation of both tiers of information into a Design Control Document (DCD) will provide an effective means of maintaining this information and facilitating its incorporation into the rule by reference. All matters covered in each tier, including the determination of what information should be placed in each tier, are subject to public challenge in the design certification rulemaking and any associated hearing.

Topic 2—Acceptability of the Process and Standards for Changing Tier 2 Information

Comment Summary. NEI concurs in the process and standards to be used by COL holders and applicants for evaluating and implementing changes to Tier 2 information via the so-called ''§ 50.59-like'' change process. However, NEI does not agree with the statement in the ANPR (A.13(d)(3)) that ''changes properly implemented through this ''§ 50.59-like'' process cause a loss of finality relative to the affected portion of the design or are subject to subsequent legal challenge.'' NEI contends that these changes would be sanctioned through the design certification rule and that the only issue entertainable at the time of the COL licensing proceeding would be whether the licensee complied with the ''§ 50.59-like'' change process. Likewise, changes made subsequent to COL issuance could be challenged in the Part 52 proceeding before fuel-load authorization only on the basis that the change resulted in noncompliance with applicable acceptance criteria. However, NEI recognizes that changes from Tier 2 that require NRC approval would be subject to a hearing opportunity as specified in 10 CFR part 52.

OCRE stated that it is important that applicant or licensee initiated changes to Tier 2 information made pursuant to the ''§ 50.59-like'' process will no longer be afforded the issue preclusion protection of 10 CFR 52.63. To do otherwise would turn the two-tiered system into a double standard in which utilities could deviate from the standard design but the public could not challenge these deviations. Permitting site-specific litigation of these changes would also serve to discourage changes.

Response. In order to implement the two-tiered structure for design certification rules, the Commission proposes a change process for Tier 2 information that has the same elements as the Tier 1 change process. Specifically, the Tier 2 change process has provisions for generic changes, plant-specific changes, and exemptions similar to those in 10 CFR 52.63. Although the NRC staff proposed that the backfitting standards for making generic changes to Tier 2 information should be less stringent than those for Tier 1 information, the Commission disapproved this proposal in its SRM on SECY–92–287A, dated June 13, 1993, and stated that ''the backfitting standards of 10 CFR 52.63 should be applied for such changes to Tier 2.'' As a result, the NRC staff adopted the backfitting standards of 10 CFR 52.63 in the Tier 2 change process proposed in the ANPR, except that the additional factor regarding ''any decrease in safety that may result from the reduction in standardization'' was not adopted for plant-specific changes and exemptions in order to achieve additional flexibility for Tier 2 information.

The Tier 2 change process also has a provision similar to 10 CFR 50.59 that allows changes to Tier 2 information by an applicant or licensee, without prior NRC approval, subject to certain restrictions. The Commission approved this process in its SRM on SECY–90–377, dated February 15, 1991, provided ''that such changes open the possibility for challenge in a hearing.'' The NRC staff followed the Commission's guidance in developing the process in ANPR A.13(d)(3) that allows certain changes to Tier 2 information, without prior NRC approval. This section of the ANPR states that ''Tier 2 changes will no longer be considered matters resolved in connection with the issuance or renewal of a design certification within the meaning of 10 CFR 52.63(a)(4).'' The NRC staff included this provision to meet Commission guidance and to restrain Tier 2 changes in order to maintain the benefits of standardization, as discussed in SECY–92–287. Also, changes may be challenged in individual COL proceedings since the changes depart from the design information approved in the design certification rulemaking. Therefore, the NRC Commission agrees with the OCRE position on issue preclusion and specifically invites comments on this provision (See Section IV).

Topic 3—The Acceptability of a Tier 2 Exemption

Comment Summary. NEI supports the inclusion of the provision that an applicant or licensee may request, and the NRC may grant, an exemption to Tier 2 information. OCRE indirectly supports the Tier 2 exemption provision but recommends that the sentence ''These Tier 2 changes will no longer be considered matters resolved in connection with the issuance or renewal of a design certification within the meaning of 10 CFR 52.63(a)(4).'' Also be included in the Section A.13(d)(2) of the ANPR on exemptions from Tier 2 information, for clarity, and because 10 CFR 52.63(b)(1) does not mention the two-tiered system.

Response. In SECY–92–287A, the NRC staff proposed the addition of an exemption provision to the Tier 2 change process so that the change process for both tiers would have the same elements and to provide additional flexibility to applicants or licensees that reference a design certification rule. The Commission deferred its decision on an exemption to the Tier 2 change process in its SRM dated June 23, 1993, and requested the NRC staff to solicit public comments on this issue.

Because no commenter objected to the addition of a Tier 2 exemption process and NEI supported the proposal, the provision was retained in the proposed rule. However, OCRE proposed that Tier 2 exemptions lose issue preclusion consistent with Tier 1 exemptions. Because that is consistent with the NRC staff's approach to Tier 2 changes and the Commission's guidance in its SRM on SECY–90–377 (see response to topic #2), OCRE's proposal has been incorporated into the proposed rule.

The additional standard in the Tier 1 exemption process, which requires that ''any decrease in safety that may result from the reduction in standardization caused by the exemption'' outweighs the special circumstances in 10 CFR 50.12, was not included in the Tier 2 exemption process because the Commission views Tier 2 information as more detailed descriptions of Tier 1 information that should have a less stringent change standard than Tier 1 and the industry requested additional flexibility for Tier 2 information. Therefore, the proposed Tier 2 change process uses the same standard that is used for Part 50 exemptions, namely 10 CFR 50.12. The Commission believes that the loss of issue preclusion for Tier 2 exemptions will help minimize the consequences of the loss of standardization caused by these exemptions.

Topic 4—Acceptability of Using a Change Process, Similar to the One in 10 CFR 50.59 Applicable to Operating Reactors, Prior to the Issuance of a Combined License that References a Certified Design

Comment Summary. NEI concurs in the NRC's proposal to have the ''§ 50.59-like'' change process apply to both COL applicants and licensees.

Response. In its SRM on SECY–92–287A, dated June 23, 1993, the Commission approved the NRC staff's proposal to extend the use of the ''§ 50.59-like'' change process for Tier 2 information to applicants that reference a certified design. Because NEI and other commenters supported this proposal, this additional flexibility has been retained for the proposed rule.

Topic 5—The Acceptability of Identifying Selected Technical Positions From the FSER as ''Unreviewed Safety Questions'' That Cannot Be Changed Under a ''Section 50.59–Like'' Change Process

Comment Summary. NEI commented that the proposal to predesignate changes to certain design aspects as constituting ''unreviewed safety questions'' is unnecessary and is tantamount to the creation of a third tier of information, which runs counter to the two-tier structure. NEI proposed that the selected Tier 2 material be designated, not broadly in the rule, but specifically in the SSAR/FSER and the DCD as requiring NRC staff notification before implementing the changes. NEI argued that at the time of notification, the NRC staff could decide whether the proposed change constitutes an ''unreviewed safety question,'' and the applicant or COL holder would be prohibited from making the change without either NRC staff concurrence or a successful appeal of the NRC staff's determination. NEI also envisioned a time, subsequent to completion of designs and the inspections, tests, analyses, and acceptance criteria (ITACC), when the change restriction for selected Tier 2 material will no longer be necessary. NEI further stated that, whether or not the Commission adopts NEI's proposal, the NRC staff should be limited to design areas discussed with plant designers when designations of ''unreviewed safety questions'' are made. Also, these special designations should be as narrow and specific as practicable to avoid the inadvertent broadening of this special category of Tier 2 design information and the excessive restrictions against change that would result.

Response. The NRC's proposal to predesignate certain Tier 2 information that cannot be changed without prior NRC approval does not create a third tier of information or conflict with the two-tiered rule structure. In fact, this so-called Tier 2* information was created as a consequence of industry's implementation of the two-tiered rule structure. Specifically, industry's desire to minimize the amount of information in Tier 1 and to use design acceptance criteria in lieu of design information in certain areas resulted in the need to identify significant Tier 2 information that could not be changed by an applicant or licensee without prior NRC approval. The previous reference to ''identified unreviewed safety questions'' in the ANPR was made to indicate that the process for changing the so-called Tier 2* information would be the same as for changing other Tier 2 information that an applicant or licensee determines to constitute an unreviewed safety question. Therefore, there is no third tier of information. Rather, some Tier 2 information cannot be changed without prior NRC approval and the remainder can. This is no different than the information in a Final Safety Analysis Report relative to the process in 10 CFR 50.59.

The Commission agrees with NEI that it would be clearer to future users of the certified design if the specific information that has been designated as requiring prior NRC approval (Tier 2*) is identified in the DCD rather than summarized in the design certification rule (DCR). However, the requirement for prior NRC approval does need to be specified in the DCR for the Tier 2 change process. Therefore, the NRC instructed the applicants to identify the Tier 2* information in the DCD.

In response to NEI's request, the DCR will not identify the Tier 2* information as an unreviewed safety question because that designation is not required; only prior NRC approval is required. Therefore, the Tier 2 change process has been revised to state that Tier 2* information identified in the DCD cannot be changed without prior NRC approval. Although Tier 2* changes may not result in unreviewed safety questions, the public will be afforded an opportunity to challenge the changes (see response to topic #2). The Commission also agrees that the predesignation of some of the Tier 2* information can expire when the plant first achieves 100% power while other Tier 2* information must remain in effect throughout the life of the plant that references the DCR. This is because there is sufficient information in some of the related areas of Tier 1 to control changes after the plant is completed. The appropriate expiration point is designated in the DCD.

The NEI proposal to require notification of the NRC rather than requiring NRC approval prior to changing the Tier 2* information would create an unnecessary burden on the NRC in the Tier 2 change process. The Commission has already determined that the predesignated Tier 2* information is significant and cannot be changed before NRC approval. Therefore, the Commission has not adopted the ''notification'' proposal. Also, the designation of Tier 2* information is not an excessive restriction on the change process. Rather, it compensates for industry's request to minimize the amount of information in Tier 1.

Topic 6—Need for Modifications to 10 CFR 52.63(b)(2) If the Two-Tiered Structure for the Design Certification Rule is Approved

Comment Summary. OCRE commented that modifications to § 52.63 are not necessary because the design certification rules would also become regulations. NEI commented that changes to 10 CFR part 52 are not needed at this time but that some changes to part 52 may be identified as appropriate for future consideration based on experience with the initial design certifications.

Response. When part 52 was written, § 52.63(b)(2) was intended to be the change process for information that was not referenced in the design certification rule (non-certified information). Now that the Commission has decided to implement a two-tiered rule structure as described in the response to Topic #1, the two-tiered change process applies to

all information referenced by the design certification rule. Therefore, there does not appear to be a need for § 52.63(b)(2) in a two-tiered rule structure.

In the absence of any perceived need for changes to 10 CFR 52.63(b)(2) to accommodate the two-tiered concept in design certification, the Commission does not intend to modify 10 CFR part 52 at this time. However, as NEI suggests, the Commission is evaluating the need for changes to part 52 as it gains experience with the initial design certification reviews.

Topic 7—Whether the Commission Should Either Incorporate or Identify the Information in Tier 1 or Tier 2 or Both in the Combined License

Comment Summary. On the question of whether Tier 1 or Tier 2 information should be incorporated in the combined license (COL) or identified in the COL, NEI stated that this question need not be resolved for design certification purposes but provides two alternatives for future NRC consideration. Alternative one would be to incorporate Tier 1 information and identify Tier 2 information in the COL. The second alternative would be to incorporate both tiers of information in the rule, provided that the Tier 2 change provisions are incorporated in the rule as well.

OCRE stated that both Tier 1 and Tier 2 information should be incorporated in the COL because both tiers contain important design information.

Response. The NRC is deferring the decision on this issue because resolution of this issue is not needed to develop a design certification rule. However, because the commenters all supported incorporation of both tiers of information, the NRC staff will evaluate that option for a combined license under subpart C of 10 CFR part 52.

Topic 8—Acceptability of Using Design Specific Rulemakings Rather Than Generic Rulemaking for the Technical Issues Whose Resolution Exceeds Current Requirements

Comment Summary. NEI, GE Nuclear Energy, and Westinghouse Electric Corporation took exception with the NRC position on the issue of designating severe accident and technical requirements, beyond those in current regulations, as ''applicable regulations'' in the design certification rule. NEI stated that ''Commission approved NRC staff positions will be reflected in a design certification rule by means of design provisions contained in Tier 1 and Tier 2 of the DCD incorporated in the rule.'' NEI argued that the NRC staff's proposed approach would result in needless duplication, complexity, and delay because matters that have been agreed to in detail would then be formulated in broadly stated positions requiring another round of extensive discussions to reach agreement in a process equivalent to a series of complex, discrete rulemakings. In addition, NEI stated that these ''broadly stated, free standing applicable regulations carry the potential for new and diverse interpretations by the NRC staff during the life of the design certification.'' These interpretations may be at odds with the understandings that translated into specific Tier 1 and Tier 2 requirements in the DCD. GE Nuclear Energy reiterated these comments but added that ''The course proposed by the NRC staff would enormously complicate pre-rulemaking preparation, the conduct of the rulemakings themselves and COL licensing and post-licensing facility construction and operation. It would, moreover, impose schedule delays and generate needless duplication, if not outright conflicts.'' Also, NEI saw little difference between the proposal to incorporate applicable regulations in design certification rules and the similar effect of proceeding with generic severe accident rulemaking.

OCRE stated that the resolution of technical issues whose resolution exceeds current requirements will likely be design-specific and therefore, it may make little difference whether the rulemakings are design-specific or generic. OCRE further stated that, if the NRC wants all plants constructed after a certain date to incorporate certain design features or otherwise address certain technical issues, then a generic rulemaking may be the safest and most cost-effective way to accomplish this goal. OCRE also noted that a generic rule would cover an applicant that might decide not to use a standard certified design.

Response. The Commission has used design-specific rulemaking rather than generic rulemaking for the selected technical and severe accident issues that go beyond current requirements for light-water reactors (LWRs). The Commission adopted this approach, early in the review process, because it believed that the new requirements would be design-specific, as OCRE stated. Also, the NRC was concerned that generic rulemakings would cause significant delay in the design certification reviews. The Commission approved this approach in its SRM on SECY–91–262, dated January 28, 1992, and has continued to support this approach for evolutionary LWRs, as stated in its SRM on SECY–93–226, dated September 14, 1993. The Commission has deferred its decision on the need for generic rulemaking for advanced LWRs.

Both the industry and OCRE concluded that there would be little difference in the requirements for the certified designs, regardless if the approach was generic or design-specific. The Commission agrees that at the conclusion of the design certification rulemaking the effect of the new regulations is basically the same but that the specific wording of the regulations may have been different if generic rulemaking was used.

In implementing the goals of 10 CFR part 52 and the Commission's Severe Accident Policy Statement (50 FR 32138; August 8, 1985), the NRC staff set out to achieve a higher level of safety performance for both evolutionary and passive LWR designs in the area of severe accidents and in other selected areas. The NRC staff proposed new requirements to implement these goals in various Commission papers, such as SECY–90–016 and SECY–93–087. The NRC staff then selected the applicable requirements for each evolutionary design and evaluated the design information that describes how those requirements were met in the FSERs for the U.S. ABWR and System 80+ designs. In the proposed rule for each design, the NRC has identified these requirements as applicable regulations in order to specify the requirements that were applicable and in effect at the time the certification was issued for the purposes of §§ 52.48, 52.54, 52.59, and 52.63.

These applicable regulations, which were identified in each FSER, are set forth in the design certification rule, with minor editing, to achieve codification through the design certification rulemaking. These codified regulations, which supplement the list of regulations in § 52.48, become part of the Commission's regulations that are ''applicable and in effect at the time the certification was issued.'' Without this complete list of applicable regulations, the NRC staff could not perform reviews in accordance with §§ 52.59 and 52.63. By codifying these requirements, the NRC intends to make it clear that for the purpose of renewal of a certified design under § 52.59, these requirements are part of the applicable regulations in effect at the time that the design certification was first issued. The NRC also intends to make it clear that the Commission may, pursuant to § 52.63(a)(1) and (3), impose modification of Tier 1 information or to issue a plant-specific order, respectively, to ensure that the certified design or the plant complies with the applicable regulations of the design certification rule. The rationale is that the Commission could not, without

re-reviewing the merits of each position, impose a change to Tier 1 information or issue a plant-specific order merely because the modification was necessary for compliance with a matter involving these proposed requirements. Also, the Commission would not have a complete baseline of regulations for evaluating proposed changes from the public, applicants, or licensees, thereby degrading the predictability of the licensing process.

The codification of these proposed requirements, in reference to § 52.48, is also necessary for two other reasons. First, it serves as a basis for obtaining public comment on the proposed adoption of the requirements as applicable regulations. Second, it provides confirmation that the requirements are being adopted by the Commission as applicable regulations under § 52.54 for the design certification being approved. In the absence of this codification, a design certification applicant could argue that the Commission cannot lawfully condition approval of the design certification on compliance with the proposed requirements used during its review of the design. This is because the requirements are not ''applicable standards and requirements of the * * * Commission's regulations'' without further Commission action under § 52.54.

By identifying the regulations that are applicable to each design, the Commission has improved the stability and predictability of the licensing process. By approving the design information that describes how these regulations were met, the Commission has minimized the potential for a differing interpretation of the regulations. Finally, the NRC staff told NEI in a meeting on April 25, 1994, and in a letter dated July 25, 1994, that the industry-proposed alternative to applicable regulations was unacceptable. The NRC staff stated that design information cannot function as a surrogate for design-specific (applicable) regulations because this information describes only one method for meeting the regulation and would not provide a basis for evaluating proposed changes to the design information. Therefore, consideration of the comments on Topic #8 has not altered the Commission's decision to proceed with design-specific rulemaking for the proposed requirements and to publish the appropriate applicable regulations in each design certification rule.

Topic 9—The Appropriate Form and Content of a Design Control Document

Comment Summary. Concerning the form and content of the DCD, NEI envisioned a document that consisted of three parts including an introductory section, Tier 1 information, and Tier 2 information. NEI also proposed an algorithm that described the industry's view of the contents of a DCD.

NEI stated that, based on its interactions with the NRC staff on the guidance for preparing a DCD, two main issues have emerged. The first issue is the nature and treatment for rulemaking purposes of secondary references contained in the DCD. At issue is the extent to which references to codes, standards, Regulatory Guides, etc. need to be explicitly ''incorporated by reference'' in specific design certification rules (DCRs). It is industry's position that the burden of incorporating these secondary references into the rule would outweigh the increase in regulatory certainty and predictability that such an effort would provide. The second issue relates to the regulatory significance of information contained in the DCD and, in particular, design Probabilistic Risk Assessment (PRA) information. Specifically, NEI is concerned with the inclusion of the design PRA in the DCD and a perceived requirement to use the PRA to support the ''50.59-like'' change process.

Response. As defined in SECY–92–287, the DCD is the master document that contains the Tier 1 and 2 information referenced by the design certification rule. The NRC staff has had several meetings with the design certification applicants on the preparation of a DCD and provided guidance to the applicants in letters dated August 26, 1993; August 3 and 5, 1994; and October 4, 1994. Although the Commission agrees with NEI on the basic form of the DCD, it does not agree with NEI's proposed algorithm on the contents of a DCD.

Because the DCD is the master reference document, it should, to the extent possible, retain as much of the applicant's standard safety analysis report (SSAR), as required in 10 CFR 52.47. Due to the requirement that all information incorporated in the rule be publicly available, proprietary and safeguards information cannot be included in the DCD. Also, the NRC concluded that the detailed methodology and quantitative portions of the design PRA do not need to be included in the DCD but the assumptions, insights, and discussions of PRA analyses must be retained in the DCD. The NRC also decided that COL applicants and licensees will be encouraged, but not required, to use the PRA to support the change process. This position was predicated in part upon NEI's acceptance, in conceptual form, of a future generic rulemaking that requires a COL applicant or holder to have a plant-specific PRA that updates and supersedes the design PRA to account for site-specific and detailed as built aspects of the plant. The Commission approved the requirement for a plant-specific PRA in its SRM on SECY–94–182, ''Probabilistic Risk Assessment (PRA) Beyond Design Certification,'' in approving the development of a generic ''Operational Rule'' that would apply to all COL applicants and holders. The remainder of the applicant's SSAR, including all of the assumptions, issue resolutions, and safety analyses, should be retained in the DCD.

With regard to NEI's concern with secondary references, the NRC staff met with NEI on January 6, 1994, and issued a letter to NEI on May 3, 1994, that documented an agreement with the industry on the resolution of this issue. The agreement states that combined license (COL) applicants and licensees who reference a DCR will treat these secondary references as requirements, in the context that they are described in the documents referenced in the DCD. However, these secondary references will not be incorporated by reference in the DCR, and thus there is no issue preclusion for secondary references. With the above stated guidance, the NRC believes that the appropriate form and content of a DCD has been defined.

III. Section-by-Section Discussion of Design Certification Rule

Pursuant to 10 CFR part 52, subpart B, the NRC has been working for some time to develop a rule that will achieve the Commission's goals for standard design certifications. Therefore, this proposed rule seeks to achieve the early resolution of safety issues and to enhance the safety and reliability of nuclear power plants. The Commission also expects to achieve a more predictable and stable licensing process through the certification of standard designs by rulemaking. An applicant for a combined license (COL) that references a design certification rule (DCR) must meet the requirements in the DCR and in the design control document that is incorporated by reference in the DCR.

The NRC staff's first proposal of a standard design certification rule was provided in Enclosure 1 to SECY–92–287, dated August 18, 1992. This proposal was modified based on

Commission guidance, and an updated version was published in appendix 2 to the ANPR. The proposed rule in this **Federal Register** notice has the same basic form and content as the ANPR version, but there has been some reorganization of the contents. The following discusses the purpose and key aspects of each section of the rule and also discusses issues raised on those sections that are not covered in the public comment summary. Changes made to the ANPR version of the proposed rule for the sake of clarity, brevity, consistency, or organization are not discussed below. All references to the proposed rule are to the provisions in proposed appendix B to 10 CFR part 52.

A. Scope

The purpose of Section 1 of the proposed rule entitled, ''Scope,'' is to identify the standard plant design that is to be approved by this design certification rule. The applicant for certification of the design is also identified in this section. While the design certification applicant does not have special rights pursuant to this rule, the implementation of 10 CFR 52.63(c) depends on whether an applicant for a COL contracts with the design certification applicant to provide the certified design. If the COL applicant necessary to implement this rule.

Because the requirements of 10 CFR 52.63(c) apply to an applicant for a COL, the NRC proposes that this requirement be added to 10 CFR part 52, subpart C, specifically to a new Section 10 CFR 52.79(e). The NRC requests comments on the desirability of making this change to 10 CFR part 52 (refer to Section IV).

B. Definitions

The terms Tier 1, Tier 2, and Tier 2* are defined in Section 2 of the proposed rule entitled ''Definitions'' because these concepts were not envisioned at the time that 10 CFR part 52 was developed. The design certification applicants and the NRC used these terms in implementing the two-tiered rule structure that was proposed by industry after the issuance of part 52 (refer to discussion on Topic #1). The design control document (DCD) contains both the Tier 1 and 2 information, along with an introduction. After the issuance of the ANPR, the phrase Tier 2* was added to the list of definitions. Some of the information in Tier 2 that requires special treatment in the change process and was commonly referred to as Tier 2* during the design review. Therefore, the Commission believes that it would be useful to define and use this phrase in the proposed rule. Further information on changes to or departures from information in the DCD is provided below in the discussion on Section 8, ''Change Process.'' The NRC requests suggestions on other words or phrases that may need to be defined in this rule (refer to Section IV).

C. [Reserved]

The purpose of Section 3, ''Information Collection Requirements,'' in the proposed rule was originally intended to provide the citation for the control number which has been assigned by the Office of Management and Budget when it approved the information collection requirements in this rulemaking. Because this citation has been placed in § 52.8, Section 3 to the rule is no longer necessary.

D. Contents of the Design Certification

Section 4 of the proposed rule entitled ''Contents of the Design Certification'' identifies the design-related information that is incorporated by reference into this rule (4(a)) and includes some related provisions of the proposed rule (4 (b) and (c)). Both tiers of design-related information have been combined into a single document, called the design control document (DCD), in order to effectively control this information and facilitate its incorporation into the rule by reference (refer to Topic #9 for discussion on the DCD). The DCD was prepared to meet the requirements of the Office of the Federal Register (OFR) for incorporation by reference (1 CFR part 51). Section 4(a) of this proposed rule would incorporate the DCD by reference upon approval of the Director, OFR. The legal effect of incorporation by reference is that the material is treated as if it were published in the **Federal Register**. This material, like any other properly issued regulation, has the force and effect of law.

An applicant for a construction permit or COL that references this design certification rule must conform with the requirements in the proposed rule and the DCD. The master DCD for this design certification will be archived at NRC's central file with a matching copy at OFR. Copies of the up-to-date DCD will also be maintained at the NRC's Public Document Room and Library. Questions concerning the accuracy of information in an application that references this design certification will be resolved by checking the master DCD in NRC's central file. If a generic change (rulemaking) is made to the DCD pursuant to the change process in Section 8 of the proposed rule, then at the completion of the rulemaking the NRC will change its copies of the DCD and notify the OFR and design certification applicant to change their copies.

The applicant for this design certification rule is responsible for preparing the DCD in accordance with NRC and OFR requirements and maintaining an up-to-date copy pursuant to Section 9(a)(1) of the proposed rule. Plant-specific changes to and departures from the DCD will be maintained by the applicant or licensee that references this design certification pursuant to Section 9(a)(2) of the proposed rule. In order to meet the requirements of OFR for incorporation by reference, the originator of the DCD (design certification applicant) must make the document available upon request after the final design certification rule is issued. Therefore, the proposed rule states that copies of the DCD can be obtained from the applicant or an organization designated by the applicant. The applicant for this design certification has stated that it may request distribution of its DCD by the National Technical Information Service (NTIS). If the applicant selects an organization, such as NTIS, to distribute the DCD, then the applicant must provide that organization with an up-to-date copy. A copy of the DCD must also be made available at the NRC and OFR.

The DCD contains an introduction that explains the purpose and uses of the DCD and two tiers of design-related information. The significance of designating design information as Tier 1 or Tier 2 is that different change processes and criteria apply to each tier, as explained below in Section H, ''Change Process.'' The introduction to the DCD is neither Tier 1 nor Tier 2 information, and is not part of the information in the DCD that is incorporated by reference into this design certification rule. Rather, the DCD introduction constitutes an explanation of requirements and other provisions of this design certification rule. If there is a conflict between the explanations in the DCD introduction and the explanations of this design certification rule in these statements of consideration (SOC), then this SOC is controlling.

The Tier 1 portion of the design-related information contained in the DCD is certified by this rule. This information consists of an introduction to Tier 1, the certified design descriptions and corresponding inspections, tests, analyses, and acceptance criteria (ITAAC) for systems and structures of the design, design

material applicable to multiple systems of the design, significant interface requirements, and significant site parameters for the design. The NRC staff's evaluation of the Tier 1 information, including a description of how this information was developed is provided in Section 14.3 of the FSER.

The information in the Tier 1 portion of the DCD was extracted from the detailed information contained in the application for design certification. The Tier 1 information addresses the most safety-significant aspects of the design, and was organized primarily according to the structures and systems of the design. Additional design material and related ITAAC is also provided in Tier 1 for selected design and construction activities that are applicable to multiple systems of the design. The Tier 1 design descriptions serve as design commitments for the lifetime of a facility referencing the design certification, and the ITAAC verify that the as-built facility conforms with the approved design and applicable regulations. In accordance with 10 CFR 52.103(g), the Commission must find that the acceptance criteria in the ITAAC are met before operation. After the Commission has made the finding required by 10 CFR 52.103(g), the ITAAC do not constitute regulatory requirements for subsequent modifications. However, subsequent modifications to the facility must comply with the Tier 1 design descriptions, unless changes are made in accordance with the change process in Section 8 of this proposed rule.

The Tier 1 interface requirements are the most significant of the interface requirements for the standard design, which were submitted in response to 10 CFR 52.47(a)(1)(vii), that must be met by the site-specific portions of a facility that references the design certification. The Tier 1 site parameters are the most significant site parameters, which were submitted in response to 10 CFR 52.47(a)(1)(iii), that must be addressed as part of the application for a construction permit or COL.

Tier 2 is the portion of the design-related information contained in the DCD that is approved by this rule but is not certified. The change process defines the procedural differences between Tier 1 and 2. Changes to or departures from the certified design material (Tier 1) must comply with Section 8(a) of this proposed rule. Changes to or departures from the approved information (Tier 2) must comply with Section 8(b) of this proposed rule. Tier 2 includes the information required by 10 CFR 52.47 and supporting information on the inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAAC have been met. Compliance with the more detailed Tier 2 information provides a sufficient method, but not the only acceptable method, for complying with the more general design requirements included in Tier 1. A supplementary description of Tier 2 information is provided in the DCD introduction. If an applicant or licensee used methods other than those described in Tier 2, then the alternative method would be open to staff review and a possible subject for a hearing.

When completing the design information for a plant, an applicant for a COL must conform with all of the requirements in the DCD, unless the information in the DCD is changed pursuant to the process in Section 8 of this proposed rule. Accordingly, an applicant for a construction permit or COL, or licensee that references this certified design must conform with all of the requirements from the DCD, including the codes, standards, and other guidance documents that are referenced from the DCD (so-called secondary references). The industry agreed to treat these secondary references as requirements even though they are not incorporated by reference, in the context as described in the DCD, as set forth in a letter from Dennis Crutchfield of the NRC to Joe Colvin of the Nuclear Energy Institute, dated May 3, 1994.

An applicant for a construction permit or COL that references this proposed rule must also describe those portions of the plant design which are site-specific, and demonstrate compliance with the interface requirements, as required by 10 CFR 52.79(b). The COL applicant does not need to conform with the conceptual design information in the DCD that was provided by the design certification applicant in response to 10 CFR 52.47(a)(1)(ix). The conceptual design information, which are examples of site-specific design features, was required to facilitate the design certification review, and it is neither Tier 1 nor 2. The introduction to the DCD identifies the location of the conceptual design information and explains that this information is not applicable to a COL application.

An applicant must address COL Action Items, which are identified in the DCD as COL License Information, in its COL application. The COL Action Items (COL License Information) identify matters that need to be addressed by an applicant or licensee that references the design certification, as required by 10 CFR 52.77 and 52.79. A further explanation of the status of the COL License Information is provided in the DCD introduction. Also, the detailed methodology and quantitative portions of the design-specific probabilistic risk assessment (PRA), as required by 10 CFR 52.47(a)(1)(v), was not included in the DCD. The NRC agreed with the design certification applicant's request to delete this information because conformance with the deleted portions of the PRA is not required. The Commission's position is also predicated in part upon NEI's acceptance, in conceptual form, of a future generic rulemaking that requires a COL applicant or licensee to have a plant-specific PRA that updates and supersedes the design-specific PRA and maintain it throughout the operational life of the plant.

The application for design certification contained proprietary and safeguards information. This information was part of the NRC staff's bases for its safety findings in the FSER. The proprietary information, or its equivalent, that was provided in the design certification application by reference but not included in the DCD, must be included as part of a COL application. The Commission considers this information to be requirements for plants that reference this rule. Since the proprietary information was not included in the DCD, or otherwise approved by OFR for incorporation by reference, it would not have issue preclusion in a construction permit or COL proceeding.

There is other information that is within the scope of the certified design (i.e., as-built, as-procured, and evolving technology design information) that must be developed by a COL applicant or holder. This detailed design information must be completed in accordance with the requirements in the DCD and the acceptance criteria in ITAAC, including design acceptance criteria (DAC). Since the Tier 1 and 2 information is solely contained within the DCD, the remainder of the design-related information that is developed by a COL applicant or holder that references this proposed rule will not be either Tier 1 or 2 information, whether it is within the scope of the design certification or not. Therefore, the change process in Section 8 of this proposed rule will not control this COL information. Although the change process for this COL information does not need to be developed until a COL application is submitted, the Commission is interested in the public's view on how this information should be controlled (refer to Section IV).

The purpose of Section 4(b) of this proposed rule is to ensure that an applicant that references this design certification references both tiers of information in the DCD. The two tiers of information were developed together and both tiers of information are needed to complete the design of a plant that references the rule. For example, the ITAAC in Tier 1 contains not only the acceptance criteria for verifying that the as-built plant conforms with the approved design, but it also contains various design processes with acceptance criteria (DAC), for completing selected areas of the plant design. The DAC are described in Section 14.3 of the SSAR and FSER. The NRC staff relied on DAC for its evaluation of selected design areas where the applicant for design certification did not provide complete design information. Also, the Tier 2 information contains explanations and procedures on how to implement ITAAC. Therefore, the Commission proposes that an applicant could not reference this design certification rule without meeting ITAAC, even though it is not a requirement in 10 CFR part 50. (see Section J for further discussion)

The applicant for design certification initially prepared the DCD to be consistent with the SSAR and the NRC staff's FSER. The applicant for design certification made some corrections and clarifications to the DCD since the completion of the SSAR and issuance of the FSER. If there is an inconsistency between the SSAR and the FSER, or between either of these documents and the DCD, then the DCD is the controlling document. That is the purpose of Section 4(c) of this proposed rule.

E. Exemptions and Applicable Regulations

The purpose of Section 5 of the proposed rule entitled, ''Exemptions and applicable regulations,'' is to identify the complete set of regulations that were applicable and in effect at the time the design certification was issued for the purposes of 10 CFR 52.48, 52.54, 52.59, and 52.63. In accordance with 10 CFR 52.48, the NRC staff used the technically relevant regulations (safety standards) in 10 CFR parts 20, 50, 73, and 100 in performing its review of the application for design certification. The effective date of these applicable regulations is the date of the FSER, as set forth in Section 5(b) of the proposed rule. During its review of the application for design certification, the NRC staff identified certain regulations for which application of the regulation to the standard design would not serve or was not necessary to achieve the underlying purpose of the regulation. These proposed exemptions to the NRC's current regulations are identified in Section 5(a) of this proposed rule. The basis for these exemptions is provided in the FSER.

In implementing the goals of 10 CFR part 52 and the Commission's Severe Accident Policy Statement, the NRC staff set out to achieve a higher level of safety performance for both evolutionary and passive LWR standard designs in the area of severe accidents and in other selected areas. As a result, the NRC staff proposed new requirements in various Commission papers, such as SECY–90–016 and SECY–93–087, to be used in the design certification review and treated as applicable regulations in the design certification rulemaking (refer to discussion on Topic #8). The bases for these requirements are set forth in SECY–90–016 and SECY–93–087. The Commission approved the use of these proposed regulations for purposes of the design certification review in the respective SRMs. These proposed regulations deviated from or were not embodied in current regulations applicable to the standard design. The NRC staff then selected proposed regulations that were applicable to the design under review and reviewed the design pursuant to these applicable regulations. The FSER identifies the applicable regulations that were used and describes how these regulations were met by the design-related information in the SSAR. The Commission approved the evaluation of the design pursuant to the applicable regulations in its approval to publish the FSER.

These proposed applicable regulations are identified in Section 5(c) of this proposed rule to achieve codification through the design certification rulemaking. The proposed applicable regulations in Section 5(c) are substantively the same as those in the FSER but have been edited for clarity. These codified requirements, which supplement the regulations in Section 5(b), will become part of the Commission's regulations that were ''applicable and in effect at the time the certification was issued,'' if the Commission adopts them in the final design certification rule. The Commission requests comments on whether each specific applicable regulation is justified (refer to Section IV).

The codification of these additional requirements, in reference to 10 CFR 52.48, is necessary for two reasons. First, it serves as a basis for obtaining public comment on the adoption of the proposed requirements as applicable regulations. Second, it provides confirmation that the requirements are being adopted by the Commission as applicable regulations under § 52.54 for the design certification being approved. In the absence of this codification, a design certification applicant could argue that the Commission cannot lawfully condition approval of the design certification on compliance with the requirements used during its review of the design. This is because the proposed requirements, without further Commission action, could be argued as not being ''applicable standards and requirements of the * * * Commission's regulations'' under § 52.54. Also, without codification of the applicable regulations, the NRC could not perform its reviews in accordance with §§ 52.59 and 52.63. By codifying these requirements, the NRC intends that for renewal of a certified design under § 52.59, these requirements are part of the applicable regulations in effect at the time that the design certification was first issued.

The Commission may, pursuant to § 53.63(a) (1) and (3), impose a modification of Tier 1 information or issue a plant-specific order, respectively, to ensure that the certified design or the plant complies with the applicable regulations of the design certification rule. The rationale is that the Commission could not, without re-reviewing the merits of each position, impose a change to Tier 1 information or issue a plant-specific order merely because the modification was necessary for compliance with a matter involving these requirements. Also, the Commission would not have a complete list of regulations for use in evaluating requested changes from the public, applicants, or licensees, thereby degrading the predictability of the licensing process.

By identifying the regulations that are applicable to each design, the Commission has improved the stability and predictability of the licensing process. By approving the design information that describes how these regulations were met, the Commission has minimized the potential for a differing interpretation of the regulations. Finally, the NRC rejected NEI's proposed alternative to applicable regulations in a meeting on April 25, 1994, and in a letter dated July 25, 1994. NEI's proposal to use design information as a surrogate for design-specific (applicable) regulations is not workable for proposed changes because the design information only represents one way of implementing a regulation. The NRC would need the regulation for

the design feature in order to evaluate a proposed change to the design information.

F. Issue Resolution for the Design Certification

The purpose of Section 6 of the proposed rule entitled, ''Issue Resolution for the Design Certification,'' is to identify the issues that are considered resolved, if the Commission adopts a final design certification rule and therefore, these issues receive issue preclusion within the scope and intent of 10 CFR 52.63(a)(4). Specifically, all nuclear safety issues arising from the Atomic Energy Act that are associated with the information in the NRC staff's FSER or the applicant's DCD are resolved within the meaning of § 52.63(a)(4). All issues arising under the National Environmental Policy Act of 1969 associated with the information in the NRC staff's environmental assessment or the severe accident design alternatives in the applicant's Technical Support Document are also resolved within the scope and intent of § 52.63(a)(4). The issues that are associated with information that is not included in the DCD, such as proprietary information, do not have issue preclusion within the meaning of 10 CFR 52.63(a)(4).

G. Duration of the Design Certification

The purpose of Section 7 of the proposed rule entitled, ''Duration of the Design Certification,'' is in part to specify the time period during which the standard design certification may be referenced by an applicant for a construction permit or COL, pursuant to 10 CFR 52.55. This section of the rule also states that the design certification remains valid for an applicant or licensee that references the design certification until their application is withdrawn or their license expires. Therefore, if an application references this design certification during the 15-year period, then the design certification rule continues in effect until the application is withdrawn or the license issued on that application expires. Also, the design certification continues in effect for the referencing license if the license is renewed. The Commission intends for the proposed rule to remain valid for the life of the plant that references the design certification to achieve the benefits of standardization and licensing stability. This means that rulemaking changes to or plant-specific departures from information in the DCD must be made pursuant to the change process in Section 8 of this proposed rule for the life of the plant.

H. Change Process

The purpose of Section 8 of this proposed rule entitled, ''Change Process,'' is to set forth the process for requesting rulemaking changes to or plant specific departures from information in the DCD. The Commission has developed a more restrictive change process than for plants that were licensed pursuant to 10 CFR part 50, in order to achieve a more stable licensing process for applicants and licensees that reference a design certification rule. The change process in Section 8 is substantively the same as the process proposed in the ANPR.[2] As a result, Section 8(a) provides the process for changing Tier 1 information and Section 8(b) provides the process for changing Tier 2 information. The change process for Tier 1 information uses the change process developed by the Commission in the part 52 rulemaking for certified design-related information. Therefore, the provisions in Section 8(a) of the proposed rule simply refer to the appropriate sections in 10 CFR 52.63. A description of the Tier 1 information that is controlled by Section 8(a) is provided in the above discussion on contents of the design certification (III.D).

As discussed in Topic #2, the NRC developed a change process for Tier 2 that has the same elements as the Tier 1 change process. Specifically, the Tier 2 change process in Section 8(b) has provisions for generic changes, plant-specific orders, and exemptions similar to those in 10 CFR 52.63, but some of the standards for plant-specific orders and exemptions are different. The standards that must be met in order to justify a generic change to either Tier 1 or 2 information are the same. When NEI proposed a two-tiered structure for design certification rules in its letter of August 31, 1990, it also stated that ''NRC backfits involving matters described in the first tier would be governed by the provisions of § 52.63, whereas § 50.109 would govern backfitting as respects the second tier.'' As a result, the NRC staff used the backfit standards in § 50.109 for generic changes to Tier 2 in its proposed design certification rule in SECY–92–287. Subsequently, in a letter dated October 5, 1992, NEI changed its position and agreed with the Commission that the standard for generic changes to Tier 2 should be the same as the Tier 1 standard. This issue is discussed further in SECY–92–287A, dated March 26, 1993. Therefore, Section 8 of this proposed rule uses the same standards for generic changes to both Tier 1 and 2 information.

Although the process in Section 8 for plant-specific orders and exemptions is the same for Tier 1 and 2 information, the standards are different. In order to preserve the benefits of standardization, which is one of the important goals of design certification, the Commission proposes in Section 8(a)(3) that plant-specific orders or exemptions from Tier 1 information must consider whether the special circumstances which § 50.12(a)(2) required to be present outweigh any decrease in safety that may result from the reduction in standardization, as required in 10 CFR 52.63(a)(3). The Commission is not proposing to adopt this additional consideration for plant-specific orders or exemptions from Tier 2 information, in order to achieve additional flexibility. The Commission believes this is acceptable because the Tier 2 information is not as safety significant as the Tier 1 information. Therefore, Sections 8(b) (3) and (4) of the proposed rule do not require the additional consideration of the reduction in standardization caused by proposed departures from Tier 2 information.

A generic change to either Tier 1 or 2 information in the DCD is accomplished by rulemaking. Any person seeking to make a generic change to the DCD, including the applicant for this design certification, must submit a petition pursuant to 10 CFR 2.802. This petition must describe how the proposed change meets the standards in 10 CFR 52.63(a)(1) for justifying a generic change to the DCD. Any generic changes to the DCD resulting from the rulemaking will be noticed in the **Federal Register**. The NRC will update the master DCD in its central files and the copies in the NRC Library and public document room (refer to the discussion in Section III.D). Under Sections 8 (a)(2) and (b)(2), generic changes to Tier 1 and Tier 2, respectively, will be applicable to all plants referencing the design certification. However, if the Commission determines that a generic change is not technically relevant to a particular plant, based on plant-specific changes made pursuant to Section 8, then the generic rulemaking will indicate that the change will not be applicable to that plant. If the proposed change to the DCD also results in a

[2] This change process has been reorganized for clarity and conformance to the two-tiered rule structure, and to distinguish between generic changes to Tier 1 and 2 information, which are accomplished via rulemaking, and plant-specific departures from Tier 1 and 2 information which may be accomplished by the process defined in Section 8 of this proposed rule. For brevity, this SOC refers to both aspects as constituting the ''change process'' for this design certification rule.

violation of an underlying regulation that is applicable to this design certification, then an exemption to that regulation is also required.

A plant-specific departure from either Tier 1 or 2 information in the DCD does not require rulemaking. Any person requesting a Commission order directing a plant-specific change, including the applicant for this design certification, must submit a petition pursuant to 10 CFR 2.206. This petition must describe how the proposed change meets the standards in 10 CFR 52.63(a)(3) or Section 8(b)(3) for departures from Tier 1 or 2 information, respectively. By contrast, an applicant or licensee that references this design certification rule may request exemptions from Tier 1 or 2 information pursuant to 10 CFR 52.63(b)(1) or Section 8(b)(4) of this rule, respectively. The NRC recognized that there may be special circumstances pertaining to a particular applicant or licensee that would justify an exemption from the DCD. The request must describe how the exemption from Tier 1 or 2 meets the standards in 10 CFR 52.63(b)(1) or Section 8(b)(4) of this proposed rule, respectively. The exemption may be contested in a hearing, if the exemption is granted in connection with issuance of a construction permit, operating license, or combined license; it may also be contested in a hearing, if the exemption also requires the issuance of a license amendment. If a plant-specific change or exemption from the DCD also results in a violation of the underlying regulation that is applicable to this design certification, then an exemption to that regulation is also required.

In addition to the plant-specific changes described above, an applicant or licensee that references this design certification rule may depart from Tier 2 information, without prior NRC approval pursuant to Section 8(b)(5) of this proposed rule. However, the Commission believes that these changes should open the possibility for challenge in a hearing (refer to discussion on Topic #2). The Commission approved the use of this ''§ 50.59-like'' change process in its SRMs on SECY–90–377 and SECY–92–287A. The NRC is interested in the public's view on how these changes could be challenged in a hearing (refer to Section IV).

As in 10 CFR 50.59, an applicant or licensee cannot make changes that involve an unreviewed safety question (USQ) or technical specifications, without prior NRC approval. Also, for changes pursuant to Section 8(b)(5), an applicant or licensee cannot make changes to Tier 1 or Tier 2* information without prior NRC approval. If the proposed change does not involve these factors, then the NRC will allow changes to previously approved information in Tier 2 without prior NRC approval. However, if the change involves an issue that the Commission has not previously approved, then NRC approval is required. The process for evaluating proposed tests or experiments not described in Tier 2 will be developed for an operating or combined license that references this design certification (refer to Section IV).

The restriction on changing Tier 1 information is included in the process in Section 8(b)(5) because this information can only be changed pursuant to Section 8(a) of the proposed rule. Whereas, the restriction on changing Tier 2* information resulted from the development of the Tier 1 information in the DCD. A description of the Tier 1 information is provided in the discussion in Section III.D on contents of the design certification. During the development of the Tier 1 information, the applicant for design certification requested that the amount of information in Tier 1 be minimized to provide additional flexibility for the applicant or licensee that references this design certification. Also, many codes, standards, and design processes, which were not specified in Tier 1, that are acceptable for meeting ITAAC were specified in Tier 2. The result of these actions is that certain relatively significant information only exists in Tier 2 and the Commission does not want this significant information changed without prior NRC approval. The NRC specified this information in its FSER and the design certification applicant has identified this information in its DCD. This information has come to be known as Tier 2* information and it has compensated for industry's desire to minimize the amount of information in Tier 1.

In the ANPR, the NRC referred to the Tier 2* information as pre-identified unreviewed safety questions (USQs) because there was already an established procedure in 10 CFR 50.59 for FSAR changes that constitute USQs, which require NRC approval. NEI stated in its comments on the ANPR that it was not necessary to create an artificial set of USQs in order to accomplish the NRC's objective of requiring prior approval. Therefore, the proposed rule was changed from the ANPR to simply state that the Tier 2* information cannot be changed without prior NRC approval. Also, NEI requested in its comments that the Tier 2* information not be identified in the design certification rule, as was proposed in the ANPR, and that an expiration date be considered for the restriction in the change process for Tier 2* information. NRC agrees that Tier 2* information can be identified in the DCD and Section 8(b)(5) of the proposed rule was changed accordingly. The NRC also reevaluated the duration of the change restriction for Tier 2* information and determined that some of the Tier 2* information can expire when the plant first achieves 100% power while other Tier 2* information must remain in effect throughout the life of the plant that references the DCR. The DCD sets forth an expiration date for some of the Tier 2* information.

As part of this rulemaking, the NRC is seeking public comments on the appropriate regulatory process to use for review of proposed changes to Tier 2* information. Currently, pursuant to 10 CFR 50.59, the NRC approves changes to FSAR information that constitute a USQ or involve technical specifications through the issuance of license amendments. However, if an applicant or licensee requests NRC approval for a proposed change to Tier 2* information, should the NRC review process be similar to that for a USQ? While it is clear that these proposed changes would all involve significant design-related information and that prior review of proposed departures from Tier 2 information is necessary, the NRC has not determined if it is always appropriate to process the approved changes as either an amendment to the license application or an amendment to the license, with the requisite hearing rights. Therefore, the NRC requests the public's view on the preferred regulatory process for these changes (refer to Section IV).

An applicant or licensee that plans to depart from Tier 2 information, pursuant to Section 8(b)(5), must prepare a safety evaluation which provides the bases for the determination that the proposed change does not involve an unreviewed safety question, a change to Tier 1 or Tier 2* information, or a change to the technical specifications. In order to achieve the Commission's goals for design certification, the evaluation needs to consider all of the matters that were resolved in the DCD, including the generic issues discussed in Chapter 20 of the FSER. The benefits of the early resolution of safety issues would be lost if changes were made to the DCD that violated these resolutions without NRC approval. The evaluation of the resolved issues needs to consider the proposed change over the full range of power operation from startup to shutdown, including issues resolved under the heading of shutdown risk, as it relates

to anticipated operational occurrences, transients, and design basis accidents. The evaluation should consider the tables in Sections 14.3 and 19.15 of the DCD to ensure that the proposed change does not impact Tier 1. These tables contain various cross-references from the plant safety analyses in Tier 2 to the important parameters that were included in Tier 1. Although many issues and analyses could have been cross-referenced, the listings in these tables were developed only for key plant safety analyses for the design. GE provided more detailed cross-references to Tier 1 for these analyses in a letter dated March 31, 1994, and ABB-CE provided more detailed cross-references in a letter dated June 10, 1994. The NRC does not endorse NSAC–125, ''Guidelines for 10 CFR 50.59 Safety Evaluations,'' for performing the safety evaluations required by Section 8(b)(5) of the proposed rule. However, the NRC will work with industry, if it is desired, to develop an appropriate guidance document for implementing Section 8 after the final rule is issued.

During the review of its DCD, GE requested that the determination of whether a proposed departure from Tier 2 information that involves severe accident issues constitutes a USQ use criteria that are different from the criteria for USQ determinations proposed in the ANPR (10 CFR 50.59(a)(2)). GE argued that not all increases in the probability or consequences of severe accidents are significant from a safety standpoint. Minor increases in the probability of some accident scenarios will not affect the overall core damage frequency or the conclusions of the severe accident evaluations. Therefore, GE proposed that changes to Tier 2 information that result in insignificant increases in the probability or consequences of severe accidents not constitute a USQ.

The NRC believes that it is important to preserve and maintain the resolution of severe accident issues just like all other safety issues that were resolved during the design certification review (refer to SRM on SECY–90–377). However, because of the increased uncertainty in severe accident issue resolutions, the NRC has proposed, in Section 8(b)(5), separate criteria for determining whether a departure from information associated with severe accident issues constitutes a USQ. The new criteria in Section 8(b)(5)(iii) will only apply to Tier 2 information that is associated with the severe accident issues discussed in the section of the DCD identified in the rule. The criteria for USQ determinations in Section 8(b)(5)(ii), which are the same as those proposed in the ANPR, will apply to other Tier 2 information. If the proposed departure from Tier 2 information involves the resolution of other safety issues in addition to the severe accident issues, then the USQ determination should be based upon the criteria in Section 8(b)(5)(ii). The NRC is interested in the public's view on whether the Tier 2 information involving resolutions of severe accident issues should be treated differently for USQ determinations than all other safety issues? If so, are the proposed criteria in Section 8(b)(5)(iii) sufficient to determine if a proposed departure from information associated with severe accident issues constitutes a USQ? (Refer to Section IV.)

The NRC is also proposing two additional provisions to the change process that were not in the ANPR. The first is Section 8(b)(5)(iv), which provides that changes made pursuant to Section 8(b)(5) do not also require an exemption from the design certification rule. Because the Tier 2 information is incorporated by reference into the design certification, a departure from Tier 2 pursuant to Section 8(b)(5) would also require an exemption from the design certification rule absent this proposed provision. The second provision is Section 8(c), which makes it clear that proposed changes to requirements in this design certification rule that are neither Tier 1 nor Tier 2 must be done by exemption pursuant to 10 CFR 50.12. Such requirements include the recordkeeping and reporting requirements in Section 9 of this proposed rule.

I. Records and Reports

The purpose of Section 9 of this proposed rule entitled, ''Records and Reports,'' is to set forth the requirements for maintaining records of DCD changes and submitting reports to the NRC. This section is similar to the requirements for records and reports in 10 CFR Part 50 and § 52.63(b)(2), with the following differences. Section 9(a)(1) requires an applicant for design certification to maintain an up-to-date copy of the DCD that includes all generic changes to Tier 1 and 2 information that are made by rulemaking. This will ensure that the design certification applicant provides up-to-date versions of the DCD to prospective applicants that want to reference this design certification or to other interested parties who want copies of the DCD. Section 9(a)(2) requires an applicant or licensee that references this design certification to maintain an up-to-date plant-specific version of the DCD that includes both generic changes to the DCD, as well as plant-specific departures from the DCD. This ensures that the plant records which include an accurate DCD reflecting information specific to the plant as well as changes to the DCD.

The proposed rule also establishes reporting requirements in Section 9(b) for applicants or licensees that reference this design certification rule. The requirements in Section 9(b) are similar to the reporting requirements in 10 CFR part 50, except that they include reporting of changes to or departures from the plant-specific DCD. In addition, the reporting requirements in Section 9(b) vary according to whether the changes are made as part of an application, during plant construction, or during operation. Also, the reporting frequency of summary reports of departures from and periodic updates to the DCD increases during plant construction. If an applicant that references this design certification rule decides to adopt departures from the DCD that were developed, but not approved pursuant to Section 8 of this proposed rule, before its application (i.e., first of a kind engineering), then the proposed departures from the DCD must be submitted with the initial application for a construction permit or combined license.

For currently operating plants, a licensee is required to maintain records of the basis for any design change made to the plant pursuant to 10 CFR 50.59. Further, a licensee is required to provide a summary of these changes to the NRC annually or along with updates to the final safety analysis report pursuant to 10 CFR 50.71. The proposed rule allows departures from the DCD during the periods of application, construction, and operation of the plant. Therefore, the proposed rule requires timely submittal of summary reports of departures from, as well as updates to, the DCD during each of these intervals, consistent with the Commission's guidance on reporting frequency in its SRM on SECY–90–377.

NEI proposed reporting of design changes at a 6-month interval, in its comments on the ANPR, to ''avoid unnecessarily diverting owner/operator resources to meet excessive reporting requirements.'' The NRC modified the provisions in the proposed rule to relax the reporting requirements before issuance of a construction permit or combined license. During this interval, summary reports of changes and updates to the DCD should be submitted to the NRC as part of the amendments to the construction permit or combined license application. However, the NRC does not agree with the NEI proposal for semi-annual reporting of design changes during plant construction because it

does not provide for sufficiently timely notification of design changes. Therefore, the Commission retained the requirement for quarterly reporting of changes in the proposed rule during this interval. Also, the NRC relaxed the provisions in Section 9(b) so that during operation of a plant, the reporting requirements are the same as for currently operating plants.

The Commission believes that quarterly reporting of design changes during the period of construction are necessary to closely monitor the status and progress of the construction of the plant. As required by 10 CFR 52.99, the NRC must find that the ITAAC have been successfully met. The ITAAC verify that the as-built facility conforms with the approved design and emphasize design reconciliation and design verification of the as-built plant. To make its finding, the NRC must tailor its inspection program to monitor plant construction and adjust its program to accommodate changes. Quarterly reporting of design changes will facilitate these adjustments in a timely manner and aids in a common understanding of the plant as the changes are being made. This is particularly important in times where the number of design changes could be significant, such as during the procurement of components and equipment, detailed design of the plant at the start of construction, and during pre-operational testing.

Section 9(c) of the proposed rule requires that records are kept for the lifetime of a facility, as in 10 CFR part 50 and § 52.63(b)(2).

J. Applicability of a DCR in 10 CFR Part 50 Licensing Proceedings

Several provisions in 10 CFR part 52, subpart B suggest that design certification rules (DCRs) may be referenced not only in combined license proceedings under 10 CFR part 52, subpart C but also in licensing proceedings under 10 CFR part 50. Section 52.63(c) states:

> The Commission will require, prior to granting a construction permit, combined license, or operating license which references a standard design certification, that information normally contained in certain procurement specifications and construction and installation specifications be completed and available for audit if such information is necessary for the Commission to make its safety determination, including the determination that the application is consistent with the certified design. (Emphasis supplied.)

See also §§ 52.41, 52.55(b), 52.55(c), 52.63(a)(4), 52.63(b)(1). However, these provisions of 10 CFR part 52, subpart B are inconsistent in identifying the type of part 50 proceeding in which design certification rules may be referenced. For example, although § 52.63(c) (quoted above) and § 52.55(c) explicitly provide for referencing of design certification rules in 10 CFR part 50 construction permit proceedings, §§ 52.55(b), 52.63(a)(4) and 52.63(b)(1) refer only to operating license proceedings. Section 52.63(a)(4) is illustrative:

> Except as provided for in 10 CFR 2.758, in making the findings required for issuance of a combined license or operating license, or for any hearing under § 52.103, the Commission shall treat as resolved those matters resolved in connection with the issuance or renewal of a design certification. (Emphasis supplied.)

Therefore, some might question whether the Commission intended construction permits applicants under 10 CFR part 50 to have the option of referencing design certification rules. However, the Commission has not identified any regulatory or policy reasons for precluding a construction permit applicant from referencing a design certification rule while allowing an operating license applicant to do so. Thus, the Commission believes that 10 CFR part 52 provides the discretion to authorize a construction permit applicant under 10 CFR part 50 to reference a design certification rule.

Assuming that the Commission has such discretion, there are a number of issues that present themselves. Should the Commission exercise its discretion to allow construction permit applicants to reference this design certification rule? Should the Commission require that if a design certification rule is to be relied upon in 10 CFR part 50 licensing proceedings, it must be referenced in both the construction permit and operating license applications? Would it make sense to allow an operating license applicant to reference a design certification if the underlying construction permit did not reference the design certification? The Commission recognizes that consideration of these issues depends in part upon the legal significance of a design certification in the 10 CFR part 50 licensing proceeding, as well as its significance for the permittee or licensee once the construction permit or operating license is granted. In particular, 10 CFR part 52, subpart B does not say what the legal effect is (if any) of ITAAC in a part 50 operating license proceeding in which the underlying construction permit references a design certification.

In view of the status of ITAAC as Tier 1 information, how would a construction permit applicant referencing a design certification rule avoid referencing the ITAAC? What would be the consequences for the construction permit applicant of referencing ITAAC? If the underlying construction permit referenced ITAAC, then what (if any) would be the scope and nature of ''issue preclusion'' at the operating license stage, in terms of staff/Commission review and approval of the operating license application, as well as issues which are precluded from consideration under 10 CFR 2.758? The Commission seeks the public's views on the referencing of design certification rules in 10 CFR part 50 applications (refer to Section IV).

IV. Specific Requests for Comments

In addition to the general invitation to submit comments on the proposed rule, the DCD, and the environmental assessment, the NRC also invites specific comments on the following questions:

1. Should the requirements of 10 CFR 52.63(c) be added to a new 10 CFR 52.79(e)? (Refer to discussion in III.A.)

2. Are there other words or phrases that should be defined in Section 2 of the proposed rule? (Refer to discussion in III.B.)

3. What change process should apply to design-related information developed by a COL applicant or holder that references this design certification rule? (Refer to discussion in III.D.)

4. Are each of the applicable regulations set forth in Section 5(c) of the proposed rule justified? (Refer to discussion in III.E.)

5. Section 8(b)(5)(i) authorizes an applicant or licensee who references the design certification to depart from Tier 2 information without prior NRC approval if the applicant or licensee makes a determination that the change does not involve a change to Tier 1 or Tier 2* information, as identified in the DCD, the technical specifications, or an unreviewed safety question as defined in Sections 8(b)(5)(ii) and (iii). Where Section 8(b)(5)(i) states that a change made pursuant to that paragraph will no longer be considered as a matter resolved in connection with the issuance or renewal of a design certification within the meaning of 10 CFR 52.63(a)(4), should this mean that the determination may be challenged as not demonstrating that the change may be made without prior NRC approval or that the change itself may be challenged as not complying with the Commission's requirements? (Refer to discussion in III.H.)

6. How should the determinations made by an applicant or licensee that

changes may be made under Section 8(b)(5)(i) without prior NRC approval be made available to the public in order for those determinations to be challenged or for the changes themselves to be challenged? (Refer to discussion in III.H.)

7. What is the preferred regulatory process (including opportunities for public participation) for NRC review of proposed changes to Tier 2* information and the commenter's basis for recommending a particular process? (Refer to discussion in III.H.)

8. Should determinations of whether proposed changes to severe accident issues constitute an unreviewed safety question use different criteria than for other safety issues resolved in the design certification review and, if so, what should those criteria be? (Refer to discussion in III.H.)

9(a)(1) Should construction permit applicants under 10 CFR part 50 be allowed to reference design certification rules to satisfy the relevant requirements of 10 CFR Part 50? (Refer to discussion in III.J.)

(2) What, if any, issue preclusion exists in a subsequent operating license stage and NRC enforcement, after the Commission authorizes a construction permit applicant to reference a design certification rule?

(3) Should construction permit applicants referencing a design certification rule be either permitted or required to reference the ITAAC? If so, what are the legal consequences, in terms of the scope of NRC review and approval and the scope of admissible contentions, at the subsequent operating license proceeding?

(4) What would distinguish the ''old'' 10 CFR part 50 2-step process from the 10 CFR part 52 combined license process if a construction permit applicant is permitted to reference a design certification rule and the final design and ITAAC are given full issue preclusion in the operating license proceeding? To the extent this circumstance approximates a combined license, without being one, is it inconsistent with Section 189(b) of the Atomic Energy Act (added by the Energy Policy Act of 1992) providing specifically for combined licenses?

9(b)(1) Should operating license applicants under 10 CFR part 50 be allowed to reference design certification rules to satisfy the relevant requirements of 10 CFR part 50? (Refer to discussion in III.J.)

(2) What should be the legal consequences, from the standpoints of issue resolution in the operating license proceeding, NRC enforcement, and licensee operation if a design certification rule is referenced by an applicant for an operating license under 10 CFR pPart 50?

(c) Is it necessary to resolve these issues as part of this design certification, or may resolution of these issues be deferred without adverse consequence (*e.g.*, without foreclosing alternatives for future resolution).

V. Comments and Hearings in the Design Certification Rulemaking

A. Opportunity to Submit Written and Electronic Comments

Any person may submit written comments on the proposed design certification rule to the Commission for its consideration.[3] Commenters have 120 days from the publication of this notice to file written comments on the proposed design certification rule. Commenters needing access to proprietary information in order to provide written comments must follow the procedures and filing deadlines (including the date for filing written comments) which are set forth in Section V.E. below.

Commenters are encouraged to submit, in addition to the original paper copy, a copy of the comment letter in electronic format on a DOS-formatted (IBM compatible) 3.5 or 5.25 inch computer diskette. Text files should be provided in WordPerfect format or unformatted ASCII code. The format and version should be identified on the diskette's external label. Comments may also be submitted electronically, in either ASCII text or Wordperfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll free number (1–800–303–9672). Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI terminal emulation, the NRC rules subsystem can then be accessed by selecting the ''Rules'' option from the ''NRC Main Menu.'' For further information about options available for NRC at FedWorld consult the ''Help/Information Center'' from the ''NRC Main Menu.'' Users will find the ''FedWorld Online User's Guides'' particularly helpful. Many NRC subsystems and databases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS: 703–321–3339; Telnet via Internet: fedworld.gov (192.239.92.3); File Transfer Protocol (FTP) via Internet: ftp.fedworld.gov (192.239.92.205); and World Wide Web using: http://www.fedworld.gov (this is the Uniform Resource Locator (URL)).

If using a method other than the toll free number to contact FedWorld, then the NRC subsystem will be accessed from the main FedWorld menu by selecting the ''U.S. Nuclear Regulatory Commission'' option from FedWorld's ''Subsystems/Databases'' menu or by entering the command ''/go nrc'' at a FedWorld command line. If NRC access is obtained through FedWorld's ''Subsystems/Databases'' menu, then return to FedWorld is accomplished by selecting the ''Return to FedWorld'' option from the ''NRC Main Menu.'' However, if NRC access at FedWorld is accomplished by using NRC's toll-free number, access to all NRC systems is available, but there will be no access to the main FedWorld system. For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

Public Meeting

The NRC staff plans to conduct a public meeting on this proposed rule on May 11, 1995, at the NRC Auditorium in Two White Flint North. Further details on the meeting are provided in a document published in this issue of the **Federal Register**. The purpose of the public meeting will be to discuss this proposed rule and respond to questions on the meaning and intent of any provisions of this proposed rule. It is hoped that this meeting will be helpful to persons who intend to submit written comments on the proposed rule. An official transcript of the proceedings of the public meeting will be prepared.

B. Opportunity to Request Hearing

Any person may request an informal hearing on one or more specific matters with respect to the proposed design certification rule.[4] An informal hearing provides the admitted party with an opportunity to provide written and oral presentations on those matters to an Atomic Safety and Licensing Board, and to request that the licensing board

[3] An opportunity for public comment is required by Section 553 of the Administrative Procedures Act and 10 CFR 52.51(b).

[4] An opportunity for a hearing is provided by 10 CFR 52.51(b).

question the applicant on those matters. The conduct of an informal hearing is discussed in more detail in Section C. below. Under certain circumstances, a party in an informal hearing may request that the Commission hold a formal hearing on specific and substantial factual disputes necessary to resolution of the matters for which the party was granted an informal hearing (see Section C.11 below).

A person may request an informal hearing even though that person has not submitted separate written comments on the design certification rule (i.e., is not a commenter). Requests for an informal hearing must be received by the Commission no later than 120 days from the publication of this notice, and a copy of the request must be sent via overnight mail to the design certification applicant at the following address: Mr. Charles B. Brinkman, Director, Nuclear Systems Licensing, ABB-Combustion Engineering, Inc., P.O. Box 500, 1000 Prospect Hill Road, Windsor, CT 06095–0500. The information which a person requesting a hearing must provide in the hearing request, as well as the procedures and standards to be used by the Commission in its determination of the request, are discussed in Sections C.1 through C.4 below.

A person who needs to review proprietary information submitted by the design certification applicant in order to prepare a request for an informal hearing must follow the procedures and filing schedule set forth in Section V.E. below.

The Commission is also providing an opportunity for interested State, county, and city/municipal and other local Governments, as well as Native American tribal governments to participate as ''interested governments'' in any informal hearings which the Commission authorizes, similar to their participation as ''interested governments'' in subpart G hearings under 10 CFR 2.715. State, county, city/municipal, local, and tribal Governments wishing to participate as an ''interested government'' in any design certification rulemaking hearings which may be held must file their request to participate no later than 120 days from the publication of this notice.

C. Hearing Process

1. Filings and Computation of Times

All notices, papers, or other filings discussed in this section must be filed by express mail.[5] The time periods specified in this section have been established based upon such a filing. The express mail filing requirement shall be considered in establishing other filing deadlines.

In computing any period of time, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or legal holiday at the place where the action or event is to occur, in which case the period runs until the next day which is neither a Saturday, Sunday, nor holiday.

2. Content of Hearing Request

The Commission will grant a request for an informal hearing only if the hearing request satisfies each of the following two requirements. First, the hearing request must include the written presentations which the requestor wishes to be included in the record of the hearing. The written presentations must:

(i) Identify the specific portion of the proposed design certification rule or supporting bases which are challenged,

(ii) Describe the reasons why the proposed rule or supporting bases are incorrect or insufficient, and

(iii) Identify the references or sources upon which the person requesting the hearing relies.

If the requestor has submitted written comments in the public comment period addressing these three factors for the specific issue for which the requestor seeks a hearing, it will be sufficient for the requestor to identify the portions of the written comments which the requestor intends to submit as a written presentation. Also, the hearing request must demonstrate that the requestor (or other persons identified in the hearing request who will represent, assist, or speak on behalf of the requestor at the hearing) has appropriate knowledge and qualifications to enable the requestor to contribute significantly to the development of the hearing record on the specific matters at issue. The Commission does not intend that the requestor meet a judicial ''expert witness'' standard in order to meet the second criterion. Nonetheless, given the substantial commitment of time and resources associated with any hearing, the Commission believes it to be a reasonable prerequisite that the hearing requestor demonstrate that he/she (or his/her assistant) has:

(i) Substantial familiarity with the publicly available docketed information relevant to the issue for which a hearing is requested;

(ii) The requisite technical capability to understand the factual matters and develop a record on the issue for which a hearing is requested, and

(iii) An understanding of the NRC's hearing procedures in 10 CFR part 2.[6]

3. Request to Hold Hearing Outside of Washington, DC

Any hearing(s) which the Commission may authorize ordinarily will be conducted in the Washington, DC. metropolitan area. However, the Commission at its discretion may schedule hearings outside the Washington, DC. metropolitan area in response to requests submitted by a person requesting a hearing that all or part of the hearing be held elsewhere. These requests must be submitted in conjunction with the request for hearing, and must specifically explain the special circumstances for holding a hearing outside the Washington, DC. metropolitan area.

4. Responses to Hearing Request

The applicant may file a response to any hearing request within 15 days of the date of the hearing request. The NRC staff will not provide a response to the hearing request unless requested to do so by the Commission but may assist the Commission in its ruling on the request.

5. Commission Determination of Hearing Request

The Commission intends to rule on a hearing request within 20 days of the close of the period for requesting a hearing. The Commission's determination will be based upon the materials accompanying the hearing request and the applicant's response (and the NRC staff's response, if requested by the Commission). The hearing request shall be granted if:

(i) The request is accompanied by a written presentation containing the information required by Section C.2. above; and

(ii) the requestor has the appropriate knowledge and qualifications to enable the requestor to contribute significantly to the development of the hearing record on the matters sought to be controverted.

The Commission may consult with the NRC staff before its determination of

[5] Filings discussed in this section may also be served upon the Commission in electronic form in lieu of express mail. However, parties must serve copies of their filings on other parties by express mail, unless the receiving party agrees to filing in electronic form. These filings must be transmitted no later than the last day of the time period specified for filing and must be in accordance with the requirements specified in the Summary.

[6] Requestors will satisfy this requirement by stating that they possess and have read a copy of 10 CFR part 2, subparts A, G, and L.

a hearing request. A written decision either granting or denying the hearing request will be published by the Commission.

If a hearing request is granted in whole or in part, the Commission's decision will delineate the controverted matter that will be the subject of the hearing and whether any issues and/or parties are to be consolidated (*see* Section C.7. below). The Commission's decision granting the hearing will direct the establishment of a licensing board to preside over the informal hearing. Finally, the Commission's decision will specify:

(i) The date by which any requests for discovery must be filed with the licensing board (normally 20 days after the date of the Commission's decision), and

(ii) The date by which any objections to discovery must be filed (*see* Section C.9. below).

The Commission's decision will be sent to each admitted party by overnight mail. Separate hearings may be granted for each controverted matter or set of consolidated matters. Thus, if there are three different controverted matters, the Commission may establish three separate hearings. In this fashion, closing of the hearing record on a controverted matter and its referral to the Commission for resolution need not await completion of the hearing on the other controverted matters. Finally, the Commission's decision will rule on any requests for hearings outside of the Washington, DC. metropolitan area (*see* Section C.3 above).

6. Authority of the Licensing Board

If the Commission authorizes an informal hearing on a controverted matter, the licensing board will function as a ''limited magistrate'' in that hearing with the authority and responsibility for assuring that a sufficient record is developed on those controverted matters which the Commission has determined are appropriate for consideration in that hearing. The licensing board shall have the following specific responsibilities and authority:

(i) Schedule and expeditiously conduct the informal hearing for each admitted controverted matter, consistent with the rights of all the parties,

(ii) Review all discovery requests against the criteria established by the Commission, and refer all appropriate requests to the Commission with a decision explaining the licensing board's action,

(iii) Preside over and resolve any issues regarding the scheduling and conduct of any discovery authorized by the Commission,

(iv) Order such further consolidation of parties and issues as the licensing board determines is necessary or desirable,

(v) Orally examine persons making oral presentations in the informal hearing, based in part upon the licensing board's review of the parties' proposed oral questions to be asked of persons making oral presentations,

(vi) Request that the NRC staff:

(A) Answer licensing board questions about the SER or the proposed rule,

(B) Provide additional information or documentation with respect to the design certification, and

(C) Provide other assistance as the licensing board may request. Licensing board requests for NRC staff assistance should be framed such that the NRC staff does not assume a role as an adversary party in the informal hearing (see Section C.8 below),

(vii) Review all requests for additional hearing procedures and refer all appropriate requests to the Commission with a decision explaining the licensing board's action,

(viii) Certify the hearing record to the Commission, based upon the licensing board's determination that the hearing record contains sufficient information for the Commission to make a reasoned determination on the controverted matter; and

(ix) Include with its certification any concerns identified by the licensing board in the course of the hearing which, although neither raised by the parties nor necessary to resolution of the controverted hearing matters, are significant enough in the licensing board's view to warrant attention by the Commission.

Licensing board determinations with respect to referral of requests to the Commission, as well as licensing board determinations of parties' motions, are not appealable to the Commission as an interlocutory matter. Instead, any disagreements with the licensing board's determinations and a specific discussion of how the hearing record is deficient with respect to the contested issue must be set forth in the parties' proposed findings of fact which are submitted directly to the Commission (see Section C.13 below).

As suggested by Item (10) above, the licensing board shall not have any ''sua sponte'' authority analogous to 10 CFR 2.760a. The Commission believes that in the absence of a request for an informal hearing on a matter, the Commission should resolve issues with respect to the design certification rule in the same manner as other agency-identified rulemaking issues, *viz.*, through NRC staff consideration of the issue followed by the Commission's review and its final resolution of the matter. However, when it certifies the completed hearing record to the Commission (see Section C.12. below), the licensing board should identify to the Commission any concerns identified during the hearing that are significant enough to warrant Commission consideration but that are unnecessary or irrelevant to the resolution of the controverted hearing matter.

The licensing board shall close the hearing and certify the record to the Commission only after it determines that the record on the controverted matter is sufficiently complete for the Commission to make a reasoned determination with respect to that matter. However, the licensing board shall not have any responsibility or authority to resolve and decide controverted matters in either an informal or a formal hearing. Rather, the Commission retains its traditional authority in rulemaking proceedings to evaluate and resolve all rulemaking issues identified in public comments on a proposed rule. Therefore, the Commission will resolve any controverted matters that are the subject of a hearing in this design certification rulemaking.

7. Consolidation of Parties and Issues; Joint Hearings on Related Issues

If two or more persons seek an informal hearing on the same or similar matters, the Commission may, in its discretion, grant an informal hearing and consolidate the matters into a single issue (as defined by the Commission). The Commission may also, in its discretion, require that the parties be consolidated analogous to the consolidation permitted under 10 CFR 2.715a. If the Commission consolidates two or more issues into a single consolidated issue but does not consolidate parties, each admitted person will be deemed a separate party with an individual right to:

(i) Submit separate written presentations,

(ii) Submit separate sets of proposed oral questions to be asked by the licensing board (see Section C.10 below),

(iii) Make separate oral presentation, and

(iv) Submit and separately respond to motions. If the Commission also requires that parties be consolidated, the consolidated parties must participate jointly, including deciding upon written and oral presentations, submitting a single set of written questions, submitting motions supported by each of the consolidated parties, and

responding to motions filed by other parties.

During the informal hearing, the licensing board may decide that further consolidation of issues or parties would simplify the overall conduct of informal hearings or materially reduce the time or resources devoted to the hearings. In these instances, the licensing board may direct such consolidation. The licensing board shall set forth the issues and/or parties to be consolidated and the reasons for such consolidation in a written order.

8. Status of the Design Certification Applicant, the NRC staff, and Requesting Party

The design certification applicant shall be a party in the informal hearing, with the right to submit written and oral presentations, propose questions to be asked by the licensing board of oral presenters, and file and submit appropriate motions.

The NRC staff shall not be a party in the informal hearing but shall be available in the informal hearing to answer licensing board questions about the FSER or the proposed rule, provide additional information or documentation with respect to the design certification, and provide other assistance that the licensing board may request without the NRC staff assuming the role of a party in the informal hearing.

A party whose hearing requests have been granted with respect to a particular controverted matter shall not participate with respect to any controverted matter on which the party was not granted a hearing. For example, if Person 1 has been authorized as a party on Issue A and Person 2 has been authorized as a party on Issue B, then Person 1 may participate only in the informal hearing on Issue A, and may not participate in the informal hearing on Issue B. Conversely, Person 2 may participate only in the informal hearing on Issue B, and may not participate in the informal hearing on Issue A.

9. Requests for Discovery

Any party may request the opportunity to conduct discovery against another party before the oral phase of the informal hearing. The request for discovery must:

(i) Identify the type of discovery permitted under 10 CFR 2.740, 2.740a, 2.740a(b), 2.741, and 2.742 which the party seeks to use;

(ii) Identify the subject matter or nature of the information sought to be obtained by discovery; and

(iii) Explain with particularity the relevance of the information sought to the controverted matter which is the subject of the hearing and why this information is indispensable to the presentation of the party's position on the controverted matter.

The request shall be filed with the licensing board, with copies of the request to be filed with the party against which discovery is sought, and the NRC staff. The requests must be received no later than the deadline specified by the Commission in its decision granting a party's hearing request (*see* Section C.5. above). A party against whom discovery is sought may file a response objecting to part or all of the request. Such a response must explain with particularity why the discovery request should not be granted.

The licensing board shall review all discovery requests and refer to the Commission those requests that it believes should be granted within 7 days after the date for receiving a party's objections to a discovery request. The licensing board shall issue a written decision explaining its basis for either referring the request to the Commission or declining to refer it. The written decision shall accompany the discovery requests which are referred by the licensing board to the Commission.

The Commission will determine whether to grant any discovery requests forwarded to it based upon the licensing board's decision, together with the request and the design certification applicant's response (and any NRC staff response requested by the licensing board). Discovery will be at the discretion of the Commission. In this regard, the Commission notes that there are several docket files in which the NRC staff has placed information and documents received from the design certification applicant for the System 80+ design certification review. The application was docketed on May 1, 1991 and assigned Docket No. 52–002. Correspondence relating to the application prior to this date was also addressed to Docket No. STN 50–470 and Project No. 675. This information includes the Design Control Document and the Technical Support Document for Amendments to 10 CFR part 51 Considering Severe Accidents Under NEPA for Plants of the System 80+ Design, Revision 2. Furthermore, the docket files contain NRC staff communications and documents, such as written questions and comments provided to the design certification applicant, and summaries of meetings held between the NRC staff and the design certification applicant. The NRC staff's bases for approving the System 80+ design are set forth in the FSER (NUREG–1462), dated August 1994. The Commission also notes that each admitted party has already disclosed a substantial amount of information in its hearing request, relating both to bases for the party's position with respect to the controverted matter as well as information on the qualifications of the party (or its representatives and witnesses in the hearing).

As discussed above, much of the information documenting the NRC staff's review and approval of the design certification application has been routinely placed in the docket file. Furthermore, as discussed above in Section C.8., the NRC staff is not a party in an informal hearing. Therefore, the Commission has decided that in an informal hearing, the parties should not be afforded discovery against the NRC staff.

10. Conduct of Informal Hearing

If the Commission authorizes discovery, the licensing board shall establish a schedule for the conduct and completion of discovery. Normally, the licensing board should not permit more than one round of discovery. The Commission will not entertain any interlocutory appeals from licensing board orders resolving any discovery disputes or otherwise complaining of the scheduling of discovery.

Following the completion of discovery, the licensing board should issue an order setting forth the date of commencement of the oral phase of each informal hearing, and the date (no less than 30 days before the commencement of the oral phase of the hearing) by which parties must submit:

(i) The identities and curriculum vitae of those persons providing oral presentations;

(ii) The outlines of the oral presentations; and

(iii) Any questions which a party would like the licensing board to ask.

The licensing board may schedule the oral phases of two or more informal hearings to be held during the same session. The licensing board shall publish a notice in the **Federal Register** announcing the commencement of the oral phase of the informal hearing(s). The notice shall set forth the place and time of the oral hearing session, the subject matter(s) of the informal hearing(s), a brief description of the informal hearing procedures, and a statement indicating that the public may observe the informal hearing.

Based upon the parties' outlines of the oral presentations and proposed questions, the licensing board should determine whether it has specific questions of the NRC staff with respect to the staff's review of the design

certification application. These questions should be submitted in writing to the NRC staff no less than 20 days before the commencement of the oral phase of the hearing and must specify the date by which the NRC staff shall provide its written answers to the licensing board. The licensing board shall send copies of the request by overnight mail to all parties. The NRC staff shall file its written answers with the licensing board and the parties.

During the oral phase of the hearing, the licensing board shall receive into evidence the written presentations of the parties and permit each party (or the representatives identified in their hearing request) to make oral presentations addressing the controverted matter. Normally, the party raising the controverted matter should make their presentations, followed by the presentations of the design certification applicant. The licensing board may question the persons making oral presentations, using its own questions as well as those submitted to the licensing board by the other parties. Based upon the parties' oral presentations and/or responses to licensing board questions, the licensing board may also orally question the NRC staff.

11. Additional Hearing Procedures and Formal Hearings

After the parties have made their oral presentations and the licensing board has concluded its questioning of the presenters (and, as applicable, the NRC staff), the licensing board should declare that the oral phase of an informal hearing on a controverted matter (or consolidated set of controverted matters) is complete.

No later than 10 days after the licensing board has declared that the oral phase of the informal hearing has been completed, parties may file with the licensing board (with copies to the applicant and the NRC staff) a request that some or all of the procedures described in 10 CFR part 2, subpart G (*e.g.*, direct and cross-examination by the parties) be utilized. The request shall:

(i) Identify the specific hearing procedures which the party seeks, or state that a formal hearing is requested;

(ii) Identify the specific factual issues for which the additional procedures would be utilized;

(iii) Explain why resolution of these factual disputes are necessary to the Commission's decision on the controverted issue;

(iv) Explain, with specific citations to the hearing record, why the record is insufficient on the controverted matter; and

(v) Identify the nature of the evidence that would be developed utilizing the additional procedures requested.

The design certification applicant may file a response to these requests no later than 7 days after the applicant's receipt of a request for additional procedures. The NRC staff will not provide a response unless specifically requested to do so by the licensing board.

The licensing board will review all requests for additional hearing procedures or a formal hearing and refer those that it believes should be granted to the Commission for its determination. The licensing board shall issue a written decision explaining its determination whether to forward the request to the Commission no later than 7 days after receipt of any applicant response to the request. The decision will provide the basis for either forwarding the request to the Commission or declining to forward it. In the absence of any requests for hearing procedures or if the licensing board concludes that none of the requests should be referred to the Commission, the licensing board should declare that the hearing record is closed (see Section C.12 below).

The Commission will determine whether to grant any requests for additional procedures or a formal hearing that are forwarded by the licensing board. The Commission's determination shall be based upon the licensing board's decision along with the request and the design certification applicant's response. If the Commission directs that a formal hearing be held on a controverted factual matter, the NRC staff shall be a party in the formal hearing. After either the additional hearing procedures authorized by the Commission are completed or the formal hearing is concluded on the factual dispute, the licensing board should declare the hearing record closed (see Section C.12 below).

12. Licensing Board's Certification of Hearing Record to the Commission

After the oral phase of a hearing is completed and either:

(i) There are no requests for additional hearing procedures or a formal hearing; or

(ii) The licensing board concludes that none of the requests should be referred to the Commission, then the licensing board should declare that the hearing record is closed.

If the Commission directs that additional hearing procedures should be utilized or a formal hearing be held on specific factual disputes, the licensing board should declare the hearing record closed after completion of the additional hearing procedures or the formal hearing. Within 30 days of the closing of the hearing record the licensing board should certify the hearing record to the Commission on each controverted matter (or consolidated set of controverted matters).[7]

The licensing board's certification for each controverted matter (or consolidated set of controverted matters) shall contain:

(i) The hearing record, including a transcript of the oral phase of the hearing (and any pre-hearing conferences) and copies of all filings by the parties and the licensing board,

(ii) A list of all documentary evidence admitted by the licensing board, including the written presentations of the parties,

(iii) Copies of the documentary evidence admitted by the licensing board,

(iv) A list of all witnesses who provided oral testimony,

(v) The NRC staff's written answers to licensing board requests, and

(vi) A licensing board statement that the hearing record contains sufficient information for the Commission to make a reasoned determination on the controverted matter.

Finally, as discussed in Section C.6 above, the licensing board should identify any issues not raised by the parties or otherwise are not relevant to the controverted matters in the hearing, that the licensing board believes are significant enough to warrant attention by the Commission.

13. Parties' Proposed Findings of Fact and Conclusions

The applicant must file directly with the Commission proposed findings of fact and conclusions for each controverted hearing matter (or consolidated set of controverted matters) within 30 days following the close of the hearing record on that matter in the form of a proposed final rule and statement of considerations with respect to the controverted hearing issues.

Other parties are encouraged, but not required, to file with the Commission proposed findings of fact and conclusions limited to those issues which a party was afforded a hearing by the Commission (i.e., a party may not file proposed findings of fact and conclusions on issues which it was not

[7] An informal hearing is deemed to be completed when the period for requesting additional procedures or a formal hearing expires and no request is received.

admitted). Any findings that a party wishes the Commission to consider must be received by the Commission no later than 30 days after the licensing board closes the hearing record on that issue. Although parties are not required to file proposed findings and conclusions, a party who does not file a finding may not, upon appeal, claim or otherwise argue that the Commission either misunderstood the party's position, or failed to address a specific piece of evidence or issue.

D. Resolution of Issues for the Final Rulemaking

1. Absence of Qualifying Hearing Request

If the Commission does not receive any request for hearing within the 120-day period for submitting a request, or does not grant any of the requests (see Section B. above), the Commission will determine whether the proposed design certification rule meets the applicable standards and requirements of the Atomic Energy Act of 1954, as amended (AEA), the National Environmental Policy Act of 1969, as amended (NEPA), and the Commission's rules and regulations. The Commission's determination will be based upon the rulemaking record, which includes: The application for design certification, including the SSAR and DCD; the applicant's responses to the NRC staff's requests for additional information; the NRC staff's FSER and any supplements thereto; the report on the application by the ACRS; the applicant's Technical Support Document addressing consideration of severe accident mitigation design alternatives (SAMDAs) for purposes of NEPA; the NRC staff's EA and draft FONSI; the proposed rule, and the public comments received on the proposed rule. If the Commission makes an affirmative finding, it will issue a standard design certification in the form of a rule by adding a new appendix to 10 CFR part 52, and publish the design certification rule and a statement of considerations in the **Federal Register**.

2. Commission Resolution of Issues Where a Hearing is Granted

All matters related to the proposed design certification rule, including those matters for which the Commission authorizes a hearing (see Sections B. and C. above), will be resolved by the Commission after the licensing board has closed the hearing record and certified it to the Commission. The Commission will determine whether the proposed design certification rule meets the applicable standards and requirements of the AEA, NEPA, and the Commission's rules and regulations. The Commission's determination will be based upon the rulemaking record as described in Section D.1 above, with the addition of the hearing record for controverted matters. If the Commission makes an affirmative finding, the Commission will issue a final design certification rule as described in Section D.1.

E. Access to Proprietary Information in Rulemaking

1. Access to Proprietary Information for the Preparation of Written Comments or Informal Hearing Requests

Persons who determine that they need to review proprietary information submitted by the design certification applicant to the NRC in order to submit written comments on the proposed certification or to prepare an informal hearing request, may request access to such information from the applicant.

The request shall state with particularity:

(i) The nature of the proprietary information sought,

(ii) The reason why the nonproprietary information currently available to the public in the NRC's Public Document Room is insufficient either to develop public comments or to prepare for the hearing,

(iii) The relevance of the requested information either to the issue which the commenter wishes to comment on, and

(iv) A showing that the person requesting the information has the capability to understand and utilize the requested information.

Requests must be filed with the applicant such that they are received by the applicant no later than 45 days after the date that this notice of proposed rulemaking is published in the **Federal Register**.

Within ten (10) days of receiving the request, the applicant must send a written response to the person seeking access. The response must either provide the documents requested (or state that the document will be provided no later than ten days after the date of the response), or state that access has been denied. If access is denied, the response shall state with particularity the reasons for its refusal. The applicant's response must be provided via express mail.

The person seeking access may then request a Commission hearing for the purpose of obtaining a Commission order directing the design certification applicant to disclose the requested information. The person must include copies of the original request (and any subsequent clarifying information provided by the person requesting access to the applicant) and the applicant's response. The Commission will base its decision solely on the person's original request (including any clarifying information provided to the applicant by the person requesting access), and the applicant's response. Accordingly, a person seeking access to proprietary information should ensure that the request sets forth in sufficient detail and particularity the information required to be included in the request. Similarly, the applicant should ensure that its response to any request states with sufficient detail and particularity the reasons for its refusal to provide the requested information.

If the Commission orders access in whole or part, the Commission will specify the date by which the requesting party must file with the Commission written comments and any request for an informal hearing before a licensing board as discussed in Section V.C. above. A request for an informal hearing must meet the requirements set forth above in Section V.C., in particular the requirements governing the content of the hearing request, and shall be governed by the procedures and standards governing such requests set forth in Section V.C.

2. Access to Proprietary Information in a Hearing

Parties who are granted a hearing may request access to proprietary information. Parties must first request access to proprietary information regarding the proposed design certification from the applicant. The request shall state with particularity:

(i) The nature of the proprietary information sought,

(ii) The reason why the nonproprietary information currently available to the public in the NRC's Public Document Room is insufficient to prepare for the hearing,

(iii) The relevance of the requested information to the hearing issue(s) for which the party has been admitted, and

(iv) A showing that the requesting party has the capability to understand and utilize the requested information. The request must be filed with the applicant no later than the date established by the Commission for filing discovery requests with the licensing board.

If the applicant declines to provide the information sought, within 10 days of receiving the request the applicant must send a written response to the requesting party setting forth with particularity the reasons for its refusal.

The party may then request the licensing board to order disclosure. The party must include copies of the original request (and any subsequent clarifying information provided by the requesting party to the applicant) and the applicant's response. The licensing board shall base its decision solely on the party's original request (including any clarifying information provided by the requesting party to the applicant), and the applicant's response.

Accordingly, a party requesting proprietary information from the applicant should ensure that its request sets forth in sufficient detail and particularity the information required to be included in the request. Similarly, the applicant should ensure that its response to any request states with sufficient detail and particularity the reasons for its refusal to provide the requested information. The licensing board may order the Applicant to provide access to some or all of the requested information, subject to an appropriate non-disclosure agreement.

F. Ex Parte and Separation of Functions Restrictions

Unless the formal procedures of 10 CFR part 2, subpart G are approved for a formal hearing in the design certification rulemaking proceeding, the NRC staff will not be a party in the hearing and separation of functions limitations will not apply. The NRC staff may assist in the hearing by answering questions about the FSER put to it by the licensing board, or to provide additional information, documentation, or other assistance as the licensing board may request. Furthermore, other than in a formal hearing, the NRC staff shall not be subject to discovery by any party, whether by way of interrogatory, deposition, or request for production of documents.

Second, the Commission has determined that once a request for an informal or formal hearing is received, certain elements of the ex parte restrictions in 10 CFR 2.780(a) will be applicable with respect to the subject matter of that hearing request. Under these restrictions, the Commission will communicate with interested persons/parties, the NRC staff, and the licensing board with respect to the issues covered by the hearing request only through docketed, publicly-available written communications and public meetings. Individual Commissioners may communicate privately with interested persons and the NRC staff; however, the substance of the communication shall be memorialized in a document which will be placed in the PDR and distributed to the licensing board and relevant parties.

VI. Finding of No Significant Environmental Impact: Availability

The Commission has determined under NEPA and the Commission's regulations in 10 CFR part 51, subpart A, that this proposed design certification rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement (EIS) is not required. The basis for this determination, as documented in the environmental assessment, is that the amendment to 10 CFR Part 52 would not authorize the siting, construction, or operation of a facility using the System 80+ design; it would only codify the System 80+ design in a rule. The NRC will evaluate the environmental impacts and issue an EIS as appropriate in accordance with NEPA as part of the application(s) for the construction and operation of a facility.

In addition, as part of the environmental assessment for the System 80+ design, the NRC reviewed pursuant to NEPA, ABB–CE's evaluation of various design alternatives to prevent and mitigate severe accidents that was submitted in ABB–CE's ''Technical Support Document for the System 80+.'' The Commission finds that ABB–CE's evaluation provides a sufficient basis to conclude that there is reasonable assurance that an amendment to 10 CFR part 52 certifying the System 80+ design will not exclude a severe accident design alternative for a facility referencing the certified design that would have been cost beneficial had it been considered as part of the original design certification application. These issues are considered resolved for the System 80+ design.

The environmental assessment, upon which the Commission's finding of no significant impact is based, and the Technical Support Document for the System 80+ are available for examination and copying at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies are also available from Mr. Harry Tovmassian, Mailstop T–9 F33, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415–6231.

VII. Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements. The public reporting burden for this collection of information is zero hours. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (T 6–F33), U.S. Nuclear Regulatory Commission, Washington, DC. 20555–0001; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0151), Office of Management and Budget, Washington, DC 20503.

VIII. Regulatory Analysis

The NRC has not prepared a regulatory analysis for this proposed rule. The NRC prepares regulatory analyses for rulemakings that establish generic regulatory requirements. Design certifications are not generic rulemakings. Rather, design certifications are Commission approvals of specific nuclear power plant designs by rulemaking. Furthermore, design certification rulemakings are initiated by an applicant for a design certification, rather than the NRC. Preparation of a regulatory analysis in this circumstance would not be useful because the design to be certified is proposed by the applicant rather than the NRC. For these reasons, the Commission concludes that preparation of a regulatory analysis is neither required nor appropriate.

IX. Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this proposed rulemaking will not have a significant economic impact upon a substantial number of small entities. The proposed rule provides standard design certification for a light water nuclear power plant design. Neither the design certification applicant, nor nuclear power plant licensees who reference this design certification rule, fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act, 15 U.S.C. 632, or the Small Business Size Standards set out in regulations issued by the Small Business Administration in 13 CFR part 121. Thus, this rule does not fall within the purview of the act.

X. Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule because these amendments do not impose requirements on existing 10 CFR part 50

licensees. Therefore, a backfit analysis was not prepared for this rule.

List of Subjects in 10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Incorporation by reference, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC proposes to adopt the following amendment to 10 CFR part 52.

1. The authority citation for 10 CFR part 52 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1243, 1244, 1246, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

2. In § 52.8, paragraph (b) is revised to read as follows:

§ 52.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 52.15, 52.17, 52.29, 52.45, 52.47, 52.57, 52.75, 52.77, 52.78, 52.79, appendix A, and appendix B.

3. A new appendix B to 10 CFR part 52 is added to read as follows:

Appendix B to Part 52—Design Certification Rule for the System 80+ Standard Plant

1. Scope.

This Appendix constitutes the standard design certification for the System 80+ [1] design, in accordance with 10 CFR part 52, subpart B. The applicant for certification of the System 80+ design was Combustion Engineering, Inc. (ABB-CE).

2. Definitions.

As used in this part:

(a) *Design control document (DCD)* means the master document that contains the Tier 1 and Tier 2 information that is incorporated by reference into this design certification rule.

(b) *Tier 1* means the portion of the design-related information contained in the DCD that is certified by this design certification rule (hereinafter Tier 1 information). Tier 1 information consists of:

(1) Definitions and general provisions,

(2) Certified design descriptions,

(3) Inspections, tests, analyses, and acceptance criteria (ITAAC),

(4) Significant site parameters, and

(5) Significant interface requirements.

The certified design descriptions, interface requirements, and site parameters are derived from Tier 2 information.

(c) *Tier 2* means the portion of the design-related information contained in the DCD that is approved by this design certification rule (hereinafter Tier 2 information). Tier 2 information includes:

(1) The information required by 10 CFR 52.47,

(2) The information required for a final safety analysis report under 10 CFR 50.34(b), and

(3) Supporting information on the inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAAC have been met.

(d) *Tier 2** means the portion of the Tier 2 information which cannot be changed without prior NRC approval. This information is identified in the DCD.

(e) All other terms in this rule have the meaning set out in 10 CFR 50.2, 10 CFR 52.3, or Section 11 of the Atomic Energy Act of 1954, as amended, as applicable.

3. [Reserved].

4. Contents of the design certification.

(a) Both Tier 1 and Tier 2 of the System 80+ Design Control Document, ABB-CE, Revision 1, February 1995 are incorporated by reference. This incorporation by reference was approved by the Director of the Office of the Federal Register on [Insert date of approval] in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the System 80+ DCD may be obtained from [Insert name and address of applicant or organization designated by the applicant]. Copies are also available for examination and copying at the NRC Public Document Room, 2120 L Street NW, Washington, DC 20555, and for examination at the NRC Library, 11545 Rockville Pike, Rockville, Maryland 20582–2738.

(b) An applicant for a construction permit, operating license, or combined license that references this design certification must reference both Tier 1 and Tier 2 of the System 80+ DCD.

(c) If there is a conflict between the System 80+ DCD and either the application for design certification for the System 80+ design or NUREG–1462 ''Final Safety Evaluation Report related to the Certification of the System 80+ Design,'' dated August 1994 (FSER), then the System 80+ DCD is the controlling document.

5. Exemptions and applicable regulations.

(a) The System 80+ design is exempt from portions of the following regulations, as described in the FSER (index provided in Section 1.6 of the FSER):

(1) Section VI(a)(2) of appendix A to 10 CFR part 100—Operating Basis Earthquake Design Consideration;

(2) Section (b)(3) of 10 CFR 50.49—Environmental Qualification of Post-Accident Monitoring Equipment;

(3) Section (f)(2)(iv) of 10 CFR 50.34—Separate Plant Safety Parameter Display Console;

(4) Section (f)(2)(viii) of 10 CFR 50.34—Post-Accident Sampling for Hydrogen, Boron, Chloride, and Dissolved Gases;

(5) Section (f)(3)(iv) of 10 CFR 50.34—Dedicated Containment Penetration;

(6) Section III.A.1.(a) of appendix J to 10 CFR part 50—Containment Leakage Testing; and

(7) Sections (f)(2) (vii), (viii), (xxvi), and (xxviii) of 10 CFR 50.34—Accident Source Terms.

(b) Except as indicated in paragraph (c) of this section, the regulations that apply to the System 80+ design are those regulations in 10 CFR Parts 20, 50, 73, and 100 (August 1994), that are applicable and technically relevant, as described in the FSER.

(c) In addition to the regulations specified in paragraph (b) of this section, the following regulations are applicable for purposes of 10 CFR 52.48, 52.54, 52.59 and 52.63:

(1) In the standard design, the effects of intersystem loss-of-coolant accidents must be minimized by designing low-pressure piping systems that interface with the reactor coolant pressure boundary to withstand full reactor coolant system pressure to the extent practical.

(2)(i) Piping systems associated with pumps and valves subject to the test requirements set forth in 10 CFR 50.55a(f) must be designed to allow for:

(A) Full flow testing of pumps and check valves at maximum design flow, and

(B) Testing of motor operated valves under maximum achievable differential pressure, up to design basis differential pressure, to demonstrate the capability of the valves to operate under design basis conditions.

(ii) For pumps and valves subject to the test requirements set forth in 10 CFR 50.55a(f), an applicant for a combined license which references this standard design certification rule shall submit, as part of the application:

(A) A program for testing check valves that incorporates the use of advanced non-intrusive techniques to detect degradation and monitor performance characteristics, and

(B) A program to determine the frequency necessary for disassembly and inspection of each pump and valve to detect degradation that would prevent the component from performing its safety function and which cannot be detected through the use of advanced non-intrusive techniques. The licensee shall implement these programs throughout the service life of the plant.

(3) For digital instrumentation and control systems, the design must include:

(i) An assessment of the defense-in-depth and diversity of instrumentation and control systems;

(ii) A demonstration of adequate defense against common-mode failures; and

(iii) Provisions for independent backup manual controls and displays for critical safety functions in the control room.

(4) The electric power system of the standard design must include an alternate power source that has sufficient capacity and capability to power the necessary complement of non-safety equipment that would most facilitate the ability of the operator to bring the plant to safe shutdown, following a loss of the normal power supply and reactor trip.

[1] ''System 80+'' is a trademark of Combustion Engineering, Inc.

(5) The electric power system of the standard design must include at least one offsite circuit supplied directly from one of the offsite power sources to each redundant safety division with no intervening non-safety buses in such a manner that the offsite source can power the safety buses upon a failure of any non-safety bus.

(6)(i) The requirements of 10 CFR 50.48(a)[2] and 10 CFR part 50, appendix R, Section III G.1.a, apply to all structures, systems, and components important to safety.

(ii) Notwithstanding any provision in paragraph (i) of this section, all structures, systems, and components important to safety in the standard design must be designed to ensure that:

(A) Safe shutdown can be achieved assuming that all equipment in any one fire area will be rendered inoperable by fire and re-entry into that fire area for repairs and operator actions is not possible, except that this provision does not apply to (1) the main control room, provided that an alternative shutdown capability exists and is physically and electrically independent of the main control room, and (2) the reactor containment;

(B) Smoke, hot gases, or fire suppressant will not migrate from one fire area into another to an extent that could adversely affect safe-shutdown capabilities, including operator actions; and

(C) In the reactor containment, redundant shutdown systems are provided with fire protection capabilities and means to limit fire damage such that, to the extent practicable, one shutdown division remains free of fire damage.

(7) The standard design must include and an applicant for a combined license which references this standard design certification rule shall submit as part of the application:

(i) The description of the reliability assurance program used during the design that includes scope, purpose, and objectives;

(ii) The process used to evaluate and prioritize the structures, systems, and components in the design, based on their degree of risk-significance;

(iii) A list of structures, systems, and components designated as risk-significant; and

(iv) For those structures, systems, and components designated as risk-significant:

(A) A process to determine dominant failure modes that considered industry experience, analytical models, and applicable requirements; and

(B) Key assumptions and risk insights from probabilistic, deterministic, and other methods that considered operation, maintenance, and monitoring activities.

(8) The probabilistic risk assessment required by 10 CFR 52.47(a)(1)(v) must include an assessment of internal and external events. For external events, simplified probabilistic methods and margins methods may be used to assess the capacity of the standard design to withstand the effects of events such as fires and earthquakes. Traditional probabilistic techniques should be used to evaluate internal floods. For earthquakes, a seismic margin analysis must consider the effects of earthquakes with accelerations approximately one and two-thirds the acceleration of the safe-shutdown earthquake.

(9) The standard design must include an on-site alternate ac power source of diverse design capable of powering at least one complete set of equipment necessary to achieve and maintain safe-shutdown for the purposes of dealing with station blackout.

(10)(i) The standard design must include the features in paragraphs (A)–(C) below that reduce the potential for and effect of interactions of molten core debris with containment structures:

(A) Reactor cavity floor space to enhance debris spreading;

(B) A means to flood the reactor cavity to assist in the cooling process; and

(C) Concrete to protect portions of the containment liner and other structural members.

(ii) The features required by paragraph (i) of this section, in combination with other features, must ensure for the most significant severe accident sequences that the best-estimate environmental conditions (pressure and temperature) resulting from core-concrete interaction do not exceed ASME Code Service Level C for steel containments or Factored Load Category for concrete containments for approximately 24 hours.

(11) The standard design must include: (i) A reliable means to depressurize the reactor coolant system and (ii) cavity design features to reduce the amount of ejected core debris that may reach the upper containment.

(12) The standard design must include analyses based on best-available methods to demonstrate that:

(i) Equipment, both electrical and mechanical, needed to prevent and mitigate the consequences of severe accidents is capable of performing its function for the time period needed in the best-estimate environmental conditions of the severe accident (e.g., pressure, temperature, radiation) in which the equipment is relied upon to function; and

(ii) Instrumentation needed to monitor plant conditions during a severe accident is capable of performing its function for the time period needed in the best-estimate environmental conditions of the severe accident (e.g., pressure, temperature, radiation) in which the instrumentation is relied upon to function.

(13) The standard design must include features to limit the conditional containment failure probability for the more likely severe accident challenges.

(14)(i) The standard design must include a systematic examination of features in relation to shutdown risk assessing:

(A) Specific design features that minimize shutdown risk;

(B) The reliability of decay heat removal systems;

(C) Vulnerabilities introduced by new design features; and

(D) Fires and floods occurring with the plant in modes other than full power.

(ii) An applicant for a combined license which references this design certification rule shall submit as part of the application a description of the program for outage planning and control that ensures:

(A) The availability and functional capability during shutdown and low power operations of features important to safety during such operations; and

(B) The consideration of fire, flood, and other hazards during shutdown and low power operations. The licensee shall implement this program throughout the service life of the plant.

(15) The standard design must include a best-estimate, systematic evaluation of the plant response to a steam generator tube rupture (SGTR) to:

(i) Identify potential design vulnerabilities, and

(ii) Assess potential design improvements to mitigate the amount of containment bypass leakage that could result from a SGTR.

6. Issue resolution for the design certification.

(a) All nuclear safety issues associated with the information in the FSER or DCD are resolved within the meaning of 10 CFR 52.63(a)(4).

(b) All environmental issues associated with the information in the NRC's Environmental Assessment for the System 80+ design or the severe accident design alternatives in Revision 2 of the Technical Support Document for the System 80+ dated January 1995 are resolved within the meaning of 10 CFR 52.63(a)(4).

7. Duration of the design certification.

This design certification may be referenced for a period of 15 years from [insert date 30 days after publication in the **Federal Register**], except as provided for in 10 CFR 52.55(b) and 52.57(b). This design certification remains valid for an applicant or licensee that references this certification until their application is withdrawn or their license expires, including any period of extended operation under a renewed license.

8. Change process.

(a) Tier 1 information.

(1) Generic (rulemaking) changes to Tier 1 information are governed by the requirements in 10 CFR 52.63(a)(1).

(2) Generic changes to Tier 1 information are applicable to all plants referencing the design certification as set forth in 10 CFR 52.63(a)(2).

(3) Changes from Tier 1 information that are imposed by the Commission through plant-specific orders are governed by the requirements in 10 CFR 52.63(a)(3).

(4) Exemptions from Tier 1 information are governed by the requirements in 10 CFR 52.63(b)(1).

(b) Tier 2 information.

(1) Generic changes to Tier 2 information are governed by the requirements in 10 CFR 52.63(a)(1).

(2) Generic changes to Tier 2 information are applicable to all plants referencing the design certification as set forth in 10 CFR 52.63(a)(2).

(3) The Commission may not impose new requirements by plant-specific order on Tier 2 information of a specific plant referencing the design certification while the design

[2] For the standard design, the footnote reference in 10 CFR 50.48(a) to Branch Technical Position Auxiliary Power Conversion System Branch BTP APCSB9.5–1, ''Guidelines for Fire Protection for Nuclear Power Plants,'' will be to the July, 1981 version.

certification is in effect under §§ 52.55 or 52.61, unless:

(i) A modification is necessary to secure compliance with the Commission's regulations applicable and in effect at the time the certification was issued, or to assure adequate protection of the public health and safety or the common defense and security; and

(ii) Special circumstances as defined in 10 CFR 50.12(a) are present.

(4) An applicant or licensee who references the design certification may request an exemption from Tier 2 information. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a). The granting of an exemption on request of an applicant must be subject to litigation in the same manner as other issues in the construction permit, operating license, or combined license hearing.

(5)(i) An applicant or licensee who references the design certification may depart from Tier 2 information, without prior NRC approval, unless the proposed change involves a change to Tier 1 or Tier 2* information, as identified in the DCD, the technical specifications, or an unreviewed safety question as defined in paragraphs (b)(5)(ii) or (b)(5)(iii) of this section. When evaluating the proposed change, an applicant or licensee shall consider all matters described in the DCD, including generic issues and shutdown risk for all postulated accidents including severe accidents. These changes will no longer be considered ''matters resolved in connection with the issuance or renewal of a design certification'' within the meaning of 10 CFR 52.63(a)(4).

(ii) A proposed departure from Tier 2 information, other than severe accident issues identified in Section 19.11 of the DCD, including appendices 19.11A through 19.11L, must be deemed to involve an unreviewed safety question if:

(A) The probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the DCD may be increased;

(B) A possibility for an accident or malfunction of a different type than any evaluated previously in the DCD may be created; or

(C) The margin of safety as defined in the basis for any technical specification is reduced.

(iii) A proposed departure from information associated with severe accident issues identified in Section 19.11 of the DCD, including appendices 19.11A through 19.11L, must be deemed to involve an unreviewed safety question if:

(A) There is a substantial increase in the probability of a severe accident such that a particular severe accident previously reviewed and determined to be not credible could become credible; or

(B) There is a substantial increase in the consequences to the public of a particular severe accident previously reviewed.

(iv) Departures from Tier 2 information made in accordance with Section 8(b)(5) above do not require an exemption from this design certification rule.

(c) Other requirements of this design certification rule.

An applicant or licensee who references the design certification may not depart from this rule's requirements, other than Tier 1 or 2 information, other than by an exemption in accordance with 10 CFR 50.12.

9. Records and Reports.

(a) *Records.*

(1) The applicant for this design certification shall maintain a copy of the DCD that includes all generic changes to Tier 1 and Tier 2 information.

(2) An applicant or licensee that references this design certification shall maintain records of all changes to and departures from the DCD pursuant to Section 8 of this appendix. Records of changes made pursuant to Section 8(b)(5) must include a written safety evaluation which provides the bases for the determination that the proposed change does not involve an unreviewed safety question, a change to Tier 1 or Tier 2* information, or a change to the technical specifications.

(b) *Reports.* An applicant or licensee that references this design certification shall submit a report to the NRC, as specified in 10 CFR 50.4, containing a brief description of any departures from the DCD, including a summary of the safety evaluation of each. An applicant or licensee shall also submit updates to the DCD to ensure that the DCD contains the latest material developed for both Tier 1 and 2 information. The requirements of 10 CFR 50.71 for safety analysis reports must apply to these updates. These reports and updates must be submitted at the frequency specified below:

(1) During the interval from the date of application to the date of issuance of either a construction permit under 10 CFR part 50 or a combined license under 10 CFR part 52, the report and any updates to the DCD may be submitted along with amendments to the application.

(2) During the interval from the date of issuance of either a construction permit under 10 CFR part 50 or a combined license under 10 CFR part 52 until the applicant or licensee receives either an operating license under 10 CFR part 50 or the Commission makes its findings under 10 CFR 52.103, the report must be submitted quarterly. Updates to the DCD must be submitted annually.

(3) Thereafter, reports and updates to the DCD may be submitted annually or along with updates to the safety analysis report for the facility as required by 10 CFR 50.71, or at such shorter intervals as may be specified in the license.

(c) *Retention period.* The DCD and the records of changes to and departures from the DCD must be maintained until the date of termination of the construction permit or license.

Dated at Rockville, MD, this 31st day of March, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–8380 Filed 4–6–95; 8:45 am]

BILLING CODE 7590–01–P

10 CFR Part 52

Standard Design Certification for the U.S. Advance Boiling Water Reactor and the System 80+ Standard Designs; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) will conduct a meeting on May 11, 1995, to discuss proposed design certification rules (DCRs) for the U.S. Advanced Boiling Water Reactor (ABWR) and System 80+ Standard Designs. The applicant for certification of the U.S. ABWR design is GE Nuclear Energy and the applicant for certification of the System 80+ design is Combustion Engineering, Inc. The purpose of the public meeting is to discuss the meaning and intent of the proposed DCRs, in order to facilitate written comments.

DATES: The meeting will be held on Thursday, May 11, 1995.

ADDRESSES: The meeting will be held in the NRC Auditorium. The NRC Auditorium is located on an underground level between the One White Flint North Building and the Two White Flint North Building at 11545 Rockville Pike, Rockville, Maryland 20852. The NRC buildings are located across the street from the White Flint Metro Station. The entrance to the auditorium is located underneath the glass pyramid, near the Two White Flint North Building.

The proposed DCRs, the design control documents that are incorporated by reference into the DCRs, and the environmental assessments for each design are available for examination and copying at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC, between the hours of 7:45 a.m. and 5:15 p.m. on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Jerry N. Wilson or Dino C. Scaletti, Office of Nuclear Reactor Regulation, Mail Stop O–11 H–3, U.S. NRC, Washington, DC 20555–0001, telephone (301) 415–3145 or (301) 415–1104, respectively.

SUPPLEMENTARY INFORMATION: The NRC's regulations in subpart B to 10 CFR part 52 provide the requirements applicable to issuing a design certification for a standard nuclear power plant design. The NRC has issued two proposed DCRs pursuant to Subpart B in this issue of the **Federal Register.** These rules will be added as separate appendices to 10 CFR part 52. The NRC is seeking public participation in the development of

these DCRs and the supporting documents identified below. In order to explain the proposed approach and to facilitate written comments on the DCRs, the NRC is holding a public meeting on this topic. The NRC will also answer questions on the process for requesting an informal hearing on the DCRs. The meeting will begin at 9 a.m. and end after all questions and comments have been accommodated.

Agenda for May 11, 1995

8:30 a.m.—Registration.
9 a.m.—Introduction and Background.
9:30 a.m.—NRC panel responds to questions on proposed DCRs.

Dated at Rockville, MD, this 27th day of March, 1995.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Director, Standardization Project Directorate, Associate Directorate for Advanced Reactors and License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 95–8381 Filed 4–6–95; 8:45 am]

BILLING CODE 7590–01–M

Federal Register

Friday
April 7, 1995

Part IV

Environmental Protection Agency

40 CFR Parts 122 and 124

National Pollutant Discharge Elimination System (NPDES) Permits for Storm Water Discharges; Amendment to Requirements; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 124

[FRL–5182–8]

RIN 2040–AC60

Amendment to Requirements for National Pollutant Discharge Elimination System (NPDES) Permits for Storm Water Discharges Under Section 402(p)(6) of the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Today, EPA is promulgating changes to its National Pollutant Discharge Elimination System (NPDES) storm water permit application regulations under the Clean Water Act (CWA) to establish a sequential application process for all phase II storm water discharges. (Phase II storm water discharges include all discharges composed entirely of storm water, except those specifically classified as phase I discharges. Phase I discharges include discharges issued a permit before February 4, 1987; discharges associated with industrial activity; discharges from a municipal separate storm sewer system serving a population of 100,000 or more; and discharges that EPA or an NPDES State/Indian Tribe determine to be contributing to a violation of a water quality standard or a significant contributor of pollutants to the waters of the United States.) Application deadlines are in two tiers. This action will provide the NPDES permitting authority (either a State/Indian Tribe or EPA) flexibility to target those phase II dischargers that are contributing to a water quality impairment or are a significant contributor of pollutants for permitting within the next six years. All other phase II dischargers are required to apply for a permit only after six years, and only if the phase II regulatory program in place at that time requires such applications.

EPA has also initiated a process by inviting its partners who are stakeholders in this matter to assist in the development of additional phase II rules, which will be finalized by March 1, 1999. These rules will determine the nature and extent of requirements, if any, that will apply to the various types of phase II facilities. Both the changes to the rules issued today as well as the development of the comprehensive phase II program through an inclusionary process is a response by EPA to the direction of the President on February 21, 1995, regarding regulatory reform.

DATES: This final rule will be effective on August 2, 1995 unless significant adverse or critical comments that would cause the Agency to change its position are received by June 6, 1995. In accordance with 40 CFR 23.2, this rule shall be considered final for purposes of judicial review at 1 p.m. (Eastern time) on August 2, 1995.

ADDRESSES: Written comments on this rule may be submitted using one of two different methods. See **SUPPLEMENTARY INFORMATION** for information on submitting comments.

FOR FURTHER INFORMATION CONTACT: Nancy Cunningham, Office of Wastewater Management, Permits Division (4203), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 260–9535.

SUPPLEMENTARY INFORMATION:

Submission of Comments

First, comments may be sent to the Comment Clerk, Water Docket (Storm Water Phase II Direct Final Rule), MC–4101, Environmental Protection Agency, 401 M Street, SW, Washington DC 20460. It is requested that an original and one copy of the comments be provided to this address. Comments will be considered to be timely if they are postmarked by June 6, 1995. Commenters who would like acknowledgment of receipt of their comments should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

In the alternative, EPA will accept comments electronically; EPA is experimenting with electronic commenting. Comments should be addressed to the following Internet address: SWPH2–DFR@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Electronic comments will be transferred into a paper version for the official record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission. Comments provided electronically will be considered timely if they are submitted electronically by 11:59 p.m. (Eastern time) June 6, 1995. Since this is still experimental, commenters may want to submit both electronic comments and duplicate paper comments. This document has also been placed on the Internet for public review and downloading at the following location: gopher.epa.gov.

A copy of the supporting information for this rule is available for review at EPA's Water Docket, Room L–102, 401 M Street, SW, Washington, DC 20460. For access to the docket materials, call (202) 260–3027 between 9 a.m. and 3:30 p.m. (Eastern time) for an appointment.

I. Overview of Today's Action

Today, EPA is promulgating changes to its NPDES storm water permit application regulations under the CWA to establish a commonsense approach which will provide for a sequential application process for all phase II storm water discharges. Application deadlines are in two tiers. To obtain real environmental results earlier, the highest priority is being assigned to those phase II dischargers that the NPDES permitting authority (either a State/Indian Tribe or EPA) determines are contributing to a water quality impairment or are a significant contributor of pollutants. These dischargers will be required to apply for a permit to the permitting authority within 180 days of receipt of notice, unless permission for a later date is granted. This process will allow the permitting authority to focus their current efforts on those facilities that will produce the greatest environmental benefit earlier. All phase II facilities that are not designated shall apply to the permitting authority no later than six years from the effective date of this regulation, and only if the phase II regulatory program in place at that time requires such applications. EPA is also establishing application requirements for these discharges, as well as making other conforming changes to other portions of its NPDES regulations.

Today's action is the first step in EPA's approach to develop a comprehensive phase II program under Clean Water Act (CWA) section 402(p)(6) and is consistent with President Clinton's February 21, 1995, direction on regulatory reform as well as the Office of Water's ''National Program Agenda for the Future.'' EPA cannot deal with all storm water issues in today's action. Some issues raised by stakeholders, such as funding for storm water best management practices and certain issues with regard to compliance with water quality standards, can only be resolved by legislative action. In fact, EPA supported certain statutory changes or clarifications to the storm water program last year in President Clinton's Clean Water Initiative. Some issues, such as the nature and extent of requirements, if any, that will apply to the various types of phase II sources, can be resolved through rulemaking. EPA has initiated a process of inviting its partners who are stakeholders to participate in development of

expectations and requirements for more comprehensive phase II rules, as well as revisions and refinements to phase I. EPA expects stakeholders will consider the lessons learned from the phase I storm water program in relooking at the phase I application process and requirements. EPA intends to propose those rules by September 1, 1997, and finalize those rules by March 1, 1999. If the CWA is amended in a manner to deal with these storm water issues, EPA will move to expeditiously implement the statutory changes. Today's rulemaking will promote the public interest by relieving dischargers of the requirement to apply for permits until (1) a phase II program is in place that can be defined by regulation or changes to the statute or (2) the permitting authority makes an affirmative finding of the need for a permit to protect water quality.

II. Background

A. Phase I of the Storm Water Program

The Clean Water Act

The 1972 amendments to the Federal Water Pollution Control Act (referred to as the Clean Water Act) prohibit the discharge of any pollutant to navigable waters from a point source unless the discharge is authorized by a NPDES permit. While water pollution control measures in the United States for industrial process wastewater and municipal sewage have had major success, urban and agricultural runoff continue to contribute to our Nation's remaining water quality problems. EPA's Report to Congress under section 305(b) entitled The National Water Quality Inventory, 1992 Report to Congress, provides a national assessment of surface water impacts associated with runoff from various land uses. The latest report concludes that storm water runoff from a number of diffuse sources, including municipal separate storm sewers and urban runoff is a leading cause of water quality impairment cited by States.

Section 402(p) was added to the CWA in 1987 to require implementation of a comprehensive two-phased approach for addressing storm water discharges under the NPDES program. Section 402(p)(1) currently prohibits EPA or NPDES States (including Indian Tribes authorized to operate the NPDES program) from requiring permits for discharges composed entirely of storm water (storm water discharges) until October 1, 1994, except for the following five classes of phase I storm water discharges specifically listed under section 402(p)(2):

(a) discharges issued a permit before February 4, 1987,

(b) discharges associated with industrial activity,

(c) discharges from a municipal separate storm sewer system serving a population of 250,000 or more,

(d) discharges from a municipal separate storm sewer system serving a population of 100,000 or more but less than 250,000,

(e) discharges that EPA or an NPDES State [or Tribe authorized to be treated as a State for this purpose] determine to be contributing to a violation of a water quality standard or a significant contributor of pollutants to the waters of the United States. (EPA issued guidance on August 8, 1990 that included a discussion of designation authority.)

Under CWA section 402(l)(2), permits are not required for certain dischargers, specifically, storm water runoff from mining operations or oil and gas facilities * * * if the storm water discharge is not contaminated by contact with * * * any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of such operations. CWA section 502(14) excludes agricultural storm water discharges from the definition of point source, thereby excluding these discharges from the NPDES permit requirement.

Section 402(p)(3) established requirements for permits issued under phase I of the storm water program while section 402(p)(4) established statutory deadlines for the initial steps in implementing the phase I program.

Phase I Regulatory Program

EPA promulgated regulations defining application requirements in 40 CFR 122.26 for phase I storm water discharges on November 16, 1990 (55 FR 47990). Permits are required for large (over 250,000 population served) and medium (100,000–250,000 population served) municipal separate storm sewer systems (MS4); storm water discharges issued a permit before February 4, 1987; storm water discharges ''associated with industrial activity,'' which are identified in the regulations by 11 specific categories; and those dischargers designated by the NPDES State or EPA.

EPA amended the November 1990 application regulations in various respects in 1992 in response to a court ruling in *NRDC* v. *EPA*, 966 F.2d 1292 (9th Cir., 1992) in which EPA established generally applicable permit issuance deadlines. In addition, EPA noted that the Agency was not requiring permit applications from the two categories of storm water discharges associated with industrial activity (construction activities disturbing less than 5 acres and light industry without exposure to storm water) until application requirements were established by regulation. (57 FR 60444, December 18, 1992.)

Phase I Implementation Activities

The efforts of EPA and the authorized NPDES States to implement the phase I storm water program have focused on (1) issuing general permits for industrial storm water discharges, (2) reviewing group applications for industrial storm water dischargers, (3) publishing a proposed multi-sector general permits for storm water discharges from 29 industrial sectors, (4) reviewing applications and issuing permits for municipal separate storm sewer systems, and (5) conducting outreach activities.

B. Phase II of the Storm Water Program.

Water Quality Act of 1987 and Later Amendments

The 1987 amendments established a process for EPA to evaluate potential phase II sources and designate sources for regulation to protect water quality.

Section 402(p)(5) requires EPA, in consultation with the States, to conduct two studies of storm water discharges other than phase I sources (i.e., potential phase II sources). The first study, under section 402(p)(5) (A) and (B) (to be completed by October 1, 1988), was to identify storm water discharges not covered under phase I and determine, to the maximum extent practicable, the nature and extent of pollutants in such discharges. The second study, under section 402(p)(5)(C) (to be completed by October 1, 1989), was to establish procedures and methods to control storm water discharges to the extent necessary to mitigate impacts on water quality.

Section 402(p)(6) of the CWA requires EPA, in consultation with State and local officials and based on the findings of the reports required under section 402(p)(5), to issue regulations that designate additional storm water discharges to be controlled to protect water quality under phase II of the program and to establish a comprehensive program to regulate such designated sources. The program shall, at a minimum, establish priorities, requirements for State storm water management programs, and expeditious deadlines. The program may include performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate. These regulations were to be issued by October 1, 1993. EPA did

not issue these regulations by the statutory deadline. Today's action is a common sense approach which defines and establishes application submittal requirements for phase II of the NPDES program for storm water. As noted below, EPA will be revising these requirements over the next several years in partnership with its numerous stakeholders.

September 9, 1992 Notice — Phase II Issues

On September 9, 1992, EPA published a notice requesting information and public comment on the phase II program (57 FR 41344). The notice identified three sets of issues associated with developing phase II regulations, including (1) how sources should be identified, (2) types of control strategies for these sources, and (3) deadlines for implementing the requirements. The notice presented a range of alternatives under each issue in an attempt to illustrate, and obtain input on, the full range of potential approaches for a phase II strategy. EPA received more than 130 comments on the notice from municipalities, trade groups or industries, State or Federal agencies, and other miscellaneous sources. No comments were received from environmental groups.

Rensselaerville Phase II Effort

In early 1993, the Rensselaerville Institute and EPA held public and expert meetings to assist in developing and analyzing options for identifying phase II sources and controls. One of the options most favored by the various groups participating included use of a tiered approach that would provide for EPA selection of high priority sources for control by NPDES permits and State selection of other sources for control under a State program other than the NPDES program.

Storm Water Reports to Congress

EPA is transmitting to Congress concurrently with this action, its first report required under sections 402(p)(5)(A) and (B). This report is contained in the record for this rule. This report was broadly circulated in November 1993 by the Agency to the States, trade groups, environmental groups, Congressional staff, other interested parties, and all people who requested a copy. EPA received comments from various States and other groups and made changes, as appropriate, to respond to those comments.

Section 402(p)(5)(C) requires a second study of storm water discharges for the purpose of establishing procedures and methods to control storm water discharges that were not addressed as part of the first phase of the NPDES storm water program to the extent necessary to mitigate impacts on water quality. President Clinton's Clean Water Initiative, which was released on February 1, 1994, contains the Agency's recommendations for phase II and is considered by EPA to be the second Report to Congress. EPA has included these materials in its report that is being submitted to Congress.

President Clinton's Clean Water Initiative

President Clinton's Clean Water Initiative addresses a number of issues associated with NPDES requirements for storm water discharges, including (1) establishing a phased approach for compliance of discharges from municipal separate storm sewer systems with water quality standards with a focus on controlling discharges from growth and development areas, (2) clarifying that the Maximum Extent Practical standard should be applied in a site specific, flexible manner taking into account cost considerations as well as water quality effects, (3) providing for an exemption from the storm water program for industrial facilities with no activities or no significant materials exposed to storm water, (4) providing for deadline extensions for phase II of the storm water program, (5) providing for a targeted approach for phase II storm water program requirements, including regulation of storm water from industrial facilities by municipalities, and (6) providing for control of discharges from inactive and abandoned mines located on Federal lands in a more targeted, flexible manner.

Several bills to reauthorize the CWA which include amendments to NPDES requirements for storm water were introduced in the House and Senate in the 103rd Congress; however, substantive changes to the CWA were not made. Provisions contained in the President's Initiative, as well as the other bills, will be considered by the Agency in its comprehensive rulemaking involving stakeholders, to the extent the Agency is authorized to make changes discussed there under existing law.

The Agency recognizes that there may be action in the 104th Congress to change storm water requirements. Stakeholders have raised some issues that go well beyond the scope of EPA's regulatory authority and can only be addressed by legislation. Certain parties have requested that the Agency delay issuance of this regulation until Congress acts. EPA is obligated to implement the current law and is taking this action to provide certainty to phase II dischargers as to when their permit applications are due if relief is not provided through regulatory or legislative action. EPA is willing to work with affected parties on statutory issues and, if the law is changed, will move to expeditiously implement the changes.

October 1, 1994, Deadline for Permits under Phase II

On October 18, 1994, EPA issued guidance interpreting the October 1, 1994, statutory deadline pertaining to phase II storm water dischargers. The memorandum recognized that EPA had not issued regulations implementing the requirements of section 402(p)(6) before October 1, 1994; and the Agency and approved NPDES States are unable to waive the statutory requirement that point source discharges of pollutants to waters of the United States need an NPDES permit. The memorandum also recognized that at the time of the guidance, EPA had completed a draft study identifying potential point source discharges of storm water for regulatory consideration under the requirements of section 402(p)(6) (as noted, EPA is transmitting the Reports to Congress); and the Agency had initiated a process to develop implementing regulations (of which today's action is a part). The guidance also referred to the general application requirements for the NPDES program and the Agency's January 12, 1994, storm water enforcement strategy.

EPA Instituting Federal Advisory Committee Effort

The Agency has established a Federal Advisory Committee Act advisory committee to provide advice on various wet weather issues. EPA will work with a subcommittee of this advisory committee to form a partnership to specifically address phase II storm water issues. This action will complement the specific regulatory action EPA is taking today. Both actions are part of the Agency's response to the President's direction on regulatory reform. EPA wants to develop a common sense approach to allow EPA and the States/Indian Tribes to manage for results in developing a phase II storm water program that will provide ecosystem protection. EPA believes there is considerable latitude and flexibility within the existing language contained in section 402(p)(6) in establishing the scope and extent of the phase II program and the nature of the controls used. Some questions EPA will advance build upon the input the Agency has received earlier on phase II, including questions

addressing (1) the scope, mechanisms and timing of phase II, (2) how EPA can work more effectively with the varying interests to provide outreach and technical assistance for phase II, and (3) consideration of lessons learned from phase I. EPA would be receptive to including in the inclusionary process other issues that have developed broad-based support; these issues may include research, cost-effective solutions and expedited implementation. EPA is in the early stages of development of the specifics of the phase II program, which can and will include revisions and refinements to phase I, including relooking at the phase I application process and requirements. EPA recognizes that many of the municipalities and industrial facilities that are subject to the phase I requirements believe there is a need to make major changes to phase I.

EPA is committed to conducting this phase II process, including improvements to limited portions of phase I, in an inclusionary manner, inviting representatives of affected stakeholders ''to the table'' to discuss their respective interests.

Today's regulatory action is being taken as a common sense approach to provide a framework under existing law for these actions to be undertaken in an orderly fashion, as well as certainty regarding the status of phase II discharges. This approach will allow the permitting authority to manage for results by providing the flexibility to call certain phase II dischargers into the program based upon a finding of water quality impact.

III. Today's Action

Regulation Changes

Today, EPA is promulgating changes to its NPDES storm water permit application regulations to establish a sequential application process for all phase II storm water discharges. Application deadlines are in two tiers. To obtain real environmental results earlier, the highest priority is being assigned to those phase II dischargers that the NPDES permitting authority (either a State/Indian Tribe or EPA) determines are contributing to a water quality impairment or are a significant contributor of pollutants. These dischargers will be required to apply for a permit within 180 days of receipt of notice from the permitting authority, unless permission for a later date is granted. All other phase II facilities will be required to apply to the permitting authority no later than six years from the effective date of this regulation if the phase II regulatory program in place at that time requires such applications. EPA is also establishing application requirements for these discharges, as well as making other conforming changes to other portions of its NPDES regulations. The specifics of the changes follow.

First, to codify the already existing statutory requirement upon the expiration of the moratorium for phase II storm water discharges, EPA is adding 40 CFR 122.26(a)(9) to bring into the NPDES program, as of October 1, 1994, discharges composed entirely of storm water that are not otherwise already required by the phase I regulations to obtain a permit. EPA considers the portions of the two phase I categories that were remanded by the court in *NRDC* v. *EPA* to be covered by these phase II requirements, as are the facilities owned by municipalities that were otherwise excluded from phase I by the Intermodal Surface Transportation Efficiency Act of 1991 (Transportation Act). These phase II storm water dischargers will be required to apply for a permit according to the application requirements in new § 122.26(g). This provision continues to recognize the applicability of statutory NPDES exemptions provided by CWA sections 402(l) and 502(14).

Second, EPA is adding 40 CFR 122.26(g), which will contain the regulatory requirements for discharges composed entirely of storm water under section 402(p)(6). Any operator of a point source required to obtain a permit under § 122.26(a)(9) shall submit an application in accordance with the following requirements.

Section 122.26(g)(1) contains the application deadlines. If a phase II discharger complies with these application deadlines, the facility will not be subject to enforcement action for discharge without a permit or for failure to submit a permit application. First, if the permitting authority (the regulations use the term ''Director'' which means either the NPDES State/Indian Tribe Director or EPA Regional Administrator, or authorized representative) determines and notifies the discharger that a discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States, the operator shall apply for a permit to the permitting authority within 180 days of receipt of notice, unless permission for a later date is granted (see 40 CFR 124.52(c)). This provision will allow the NPDES permitting authority to manage for environmental results by providing the flexibility to bring certain phase II sources within the NPDES program at this time, as determined necessary by the State/Indian Tribe or EPA. This determination can be done on a watershed or class basis where the permitting authority determines there is a significant impact or contribution. In addition, the NPDES permitting authority may find the information contained in the Storm Water Reports to Congress useful in determining the location and nature of such impacts. The August 9, 1990, guidance EPA issued on designation authority may be useful in making this determination. The 180 day time period provided for submission of an application is consistent with the time period provided for other situations in the NPDES program where a facility is asked to submit an application (40 CFR 122.21(c)(1) and (2)) and the time period generally provided for applications for permit renewal (40 CFR 122.21(d)). EPA recognizes that this time period is longer than that provided by existing regulations for those phase I storm water dischargers designated into the program (40 CFR 122.26(e)(5)). EPA is establishing this longer time period to provide an opportunity for the phase II discharger to communicate with the permitting authority about necessary information, as well as to collect and submit the application information.

All other phase II facilities shall apply to the State/ Indian Tribe or EPA Region no later than six years from the effective date of this regulation. EPA may change this application deadline for at least certain categories of dischargers in the future as part of the rulemaking process involving its various partners dealing with the scope, nature and extent to the phase II program. However, if changes are not made, all phase II storm water dischargers will have to submit applications by August 2, 2001.

Section 122.26(g)(2) contains provisions for application requirements for phase II discharges. At this time, the existing phase I individual industrial application requirements in § 122.26(c)(1) or application requirements for municipal separate storm sewer discharges contained in § 122.26(d) will be the requirements for phase II discharges, unless otherwise modified by the permitting authority. As noted earlier, EPA will be relooking at the application requirements as part of the advisory committee on wet weather issues.

EPA is also specifically providing for and encouraging the use of general permits for phase II discharges and would require submission of a notice of intent to be covered by the general permit, consistent with the current requirements of 40 CFR 122.28(b)(2) for phase I storm water discharges. EPA and

the authorized States have effectively and efficiently used general permits for phase I storm water discharges and EPA believes general permits also will be an effective mechanism to use in phase II, when NPDES permits are required. Group applications for phase II discharges are not provided for because the general permit process will be available to almost all phase II discharges.

In developing phase II permits, the permitting authority may apply the requirements contained in section 402(p)(3), which are the requirements for phase I permits, on a case-by-case basis at this time using best professional judgment.

EPA is also making several conforming changes to other portions of 40 CFR 122.26. First, EPA is changing the date for the permit moratorium contained in § 122.26(a)(1) to October 1, 1994, to reflect the change in this date provided by the Water Resources Development Act of 1992. Second, EPA is amending the title to § 122.26(e) to read ''Application deadlines under paragraph (a)(1)'' to make clear that these are phase I requirements and application deadlines, as interpreted by EPA. Third, EPA is amending § 122.26(e)(1)(ii) which are the permit application requirements for those municipally owned facilities for whom application deadlines were postponed by the Transportation Act to reflect the fact that these are now phase II facilities. (Section 1068(c) of the Transportation Act amended the CWA to provide that EPA shall not require any municipality with a population of less than 100,000 to apply for or obtain a permit for any storm water discharge associated with industrial activity other than an airport, power plant, or uncontrolled sanitary landfill owned or operated by such municipalities before October 1, 1992.) Because EPA is not making available the group application process in phase II, similar changes are not being made to § 122.26(e)(2).

EPA is also making changes to other applicable NPDES regulatory provisions. EPA is modifying the requirements of 40 CFR 122.21(c)(1) to clarify that new phase II storm water discharges do not have to submit a permit application until six years after the effective date of this regulation, or earlier if designated by the permitting authority. EPA is making conforming changes to 40 CFR 124.52(c) to clarify the application of these provisions to both phase I and phase II storm water discharges.

Basis of Regulations

Today's action is the first step of EPA's approach to develop a comprehensive phase II program under section 402(p)(6), and is consistent with President Clinton's February 21, 1995, direction on regulatory reform and the Office of Water's December 30, 1994, ''National Water Program Agenda for the Future.'' EPA has initiated an inclusionary process involving its partners to develop more comprehensive phase II rules; EPA intends to propose those rules by September 1, 1997, and finalize those rules by March 1, 1999. In the comprehensive phase II rulemaking, EPA will consider input from all stakeholders, as well as the input that has already been provided to the Agency on the phase II September 1992 notice and the 1993 Rensselaerville Institute phase II effort discussed earlier in this notice. EPA will also consider the information in the Storm Water Reports to Congress, and the recommendations in President Clinton's Clean Water Initiative. Finally, EPA will implement any statutory changes that are enacted during program development. Today's action is based on recommendations in those documents to the extent they envision an orderly, tiered process for regulation of storm water, allowing the NPDES permitting authority to manage for results at this time. EPA is considering making other changes to improve its operation of the phase I storm water program in the comprehensive phase II rulemaking action, including revising phase I municipal application requirements.

The regulation issued today fulfills, in part, the requirements contained in section 402(p)(6) of the CWA. It is being issued by EPA today after consultation with State, local officials, Indian Tribes, and parts of the regulated and environmental community. The regulation, which is the first of a sequential process, is consistent with the information contained in the Storm Water Reports to Congress and the President's Initiative as it is providing the framework of a tiered implementation of phase II requirements, allowing the NPDES permitting authority current flexibility to manage for results. The application requirements allow the NPDES permitting authority to bring within the phase II program at this time those phase II discharges impacting water quality or who are a significant contributor of pollutants and, if EPA does not take action to change its regulations, will require a permit application from all phase II storm water discharges in 6 years.

The regulations also establish a comprehensive program containing current permit application requirements. The permitting authority will be able to establish appropriate permit requirements on a case-by-case basis at this time. This first portion of the phase II program establishes priorities and deadlines for permit applications, which, as currently structured, will be a part of the NPDES program. These requirements and changes to 40 CFR 122.26 and conforming changes to other NPDES requirements in part 122 are required parts of State/Tribal NPDES programs (see 40 CFR 123.25). The initial portion of the phase II program which is being established today does not contain a comprehensive set of performance standards, guidelines, guidance, management practices, and treatment requirements. These conditions can be established by the permitting authority on a case-by-case basis upon permit issuance to designated phase II discharges. Finally, these conditions may be further defined by EPA when it revises the phase II program regulations as described above.

Today's action adopts a tiered approach for selection of high priority sources to be controlled by NPDES permits, which was the lead option presented for public comment in the September 1992 notice, and one of the options most favored by the various groups participating in the effort conducted in early 1993 by the Rensselaerville Institute and EPA, as well as the Storm Water Reports to Congress and the President's Clean Water Initiative. In its rulemaking effort, EPA believes there will be discussion with its partners of other approaches that will provide flexibility to the States to deal with sources that are not of as high a priority using other frameworks and approaches.

In the September 1992 phase II notice, EPA invited comment on various issues regarding phase II of the storm water program, including the appropriate deadlines for implementing phase II requirements. The comments EPA received on this issue generally recommended implementation of phase II in stages and reiterated the need for time to prepare regulations and to conduct outreach to implement the program, as well as the need to wait and study the results of implementation of phase I of the program. The actions EPA is taking today are consistent with these comments.

Supporting Documentation

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. The Order defines ''significant regulatory action'' as one that is likely to lead to a rule that may:

(1) Have 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 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, or the rights and obligations, of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this rulemaking significantly reduces the current regulatory burden imposed on phase II facilities. This rule was submitted to OMB for review.

B. Executive Order 12875

Under Executive Order 12875, entitled ''Enhancing the Intergovernmental Partnership'', issued by the President on October 26, 1993, the Agency is required to develop an effective process to allow elected officials and other representatives of State and Tribal governments to provide meaningful and timely input in the development of regulatory proposals.

EPA fully supports this objective and has initiated a consultation process with both States and Tribes which will be continued through public comment period on these actions.

Specifically, EPA has discussed this action with the representatives of the States, locals governments, the Agency's American Indian Environmental Office (AIEO), and parts of the regulated community.

The reaction of the States is positive. The States and the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) support the approach that is being taken under existing law; the States and ASIWPCA also support concurrent changes to the law. ASIWPCA has submitted a letter to the Agency dated March 3, 1995, which is included in the record for this matter. EPA has responded to many of ASIWPCA's comments in this preamble.

The reaction of the municipalities is that they prefer a statutory change now to clarify the issue once and for all. Municipalities' representatives (National Association of Counties, National League of Cities, U.S. Conference of Mayors, and the National Association of Flood and Stormwater Management Agencies) have raised many issues to the Agency and have submitted a letter dated February 16, 1995, to the Agency which is contained in the record for this matter. The municipalities believe that it is inappropriate for EPA to act now when Congress may act on this matter, that the action taken by EPA is not in conformance with the law, and that EPA did not consult with local officials on this matter. EPA has responded to many of the municipalities' concerns including the legal basis of its action and potential changes to the statute in this preamble. EPA did consult with various representatives of local governments early in the development of this regulation as well as more comprehensively in February.

The reaction of EPA's AIEO is positive; the Office of Water will work through the AIEO to provide for a Tribal representative to participate in the inclusionary process.

EPA believes that it has developed an effective process to obtain input from State, Tribal and local governments before issuance of this rule, as well as receiving comments on the direct final rule and accompanying proposed rulemaking, and has met the consultation requirements for States, federally recognized Tribes and localities under the terms of Executive Order 12875.

C. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and record-keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by the Office of Management and Budget.

EPA's existing information collection request (ICR) entitled ''Application for NPDES Discharge Permit and Sewage Sludge Management Permit'' (OMB Number 2040–0086) contains information that responds to this issue for all storm water discharges, including those facilities designated into the program. EPA will review and revise the estimates contained in this ICR, as appropriate, in its renewal process.

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, EPA must prepare a Regulatory Flexibility Analysis for regulations having a significant impact on a substantial number of small entities. The RFA recognizes three kinds of small entities, and defines them as follows:

(1) Small governmental jurisdictions—any government of a district with a population of less than 50,000.

(2) Small business—any business which is independently owned and operated and not dominant in its field, as defined by the Small Business Administration regulations under the Small Business Act.

(3) Small organization—any not-for-profit enterprise that is independently owned and operated and not dominant in its field.

EPA has determined that today's rule would not have a significant impact on a substantial number of small entities, and that a Regulatory Flexibility Analysis therefore is unnecessary. The basis for this determination is through today's action EPA is benefiting small entities as this action (1) adopts a common sense approach to deal with the issue of storm water phase II requirements, (2) provides the ability for the State/Tribe or EPA to manage for results by providing flexibility to the permitting authority to deal with storm water phase II permitting at this time based on water quality violations or significant contribution of pollutants, and (3) clarifies and reduces currently applicable burdens for those facilities current subject to phase II statutory requirements. Finally, the Agency is committed to issue its comprehensive storm water phase II program regulations by March 1, 1999; in that rulemaking EPA will reconsider its Regulatory Flexibility Act analysis.

E. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a written statement to accompany proposed rules where the estimated costs to State, local, or tribal governments, or to the private sector, will be $100 million or more in any one year. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of such a rule and that is consistent with statutory requirements. Section 203 requires EPA to establish a

plan for informing and advising any small governments that may be significantly and uniquely affect by any rule.

EPA estimates that the costs to State, local, or tribal governments, or the private sector, from this rule will be less than $100 million. This rulemaking significantly reduces the immediate regulatory burden imposed on phase II facilities. EPA has determined that an unfunded mandates statement therefore is unnecessary.

Although not required to make a finding under section 206, EPA concludes that this rule is cost-effective and a significant reduction in burden for State and local governments. In a September 9, 1992, **Federal Register** notice, EPA invited comment process for public consideration of reasonable alternative approaches for the phase II storm water program. Today's rule provides for the first step for any of those alternatives by providing for an orderly process for development of regulations. By establishing regulatory relief until development of those alternative approaches, today's rulemaking itself provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule at this stage, consistent with statutory requirements.

As discussed previously, EPA initiated consultation with representative organizations of small governments under Executive Order 12875. In doing so, EPA provided notice to potentially affected small governments to enable them to provide meaningful and timely input. EPA plans to inform, educate, and advise small governments on compliance with any requirements that may be develop in further development of storm water phase II rules in the course of the wet weather advisory committee convened for this purpose. That committee will also provide advice related to reconsideration of existing application requirements that already affect small governments.

F. Administrative Procedure Requirements

The Agency is publishing this action as a ''direct final'' rule. A direct final rule is not an ''interim final'' rule (*i.e.* a rule which provides for public comment *after* it has gone into effect); rather it is a rule which is published with a delayed effective date allowing for the receipt of and response to public comment before the rule goes into effect. A response to all comments received will be placed in the docket for this rulemaking prior to the effective date. This rulemaking thus fully complies with notice-and-comment requirements under the Administrative Procedure Act (APA). EPA has chosen to use the direct final approach for this rule because the Agency does not expect to receive significant adverse or critical comment and to allow for the most expeditious implementation possible, consistent with the APA. Because in the absence of this rule, thousands of municipalities and other storm water discharges are currently operating in violation of the CWA, EPA believes that prompt implementation of this rule is very important.

However, consistent with APA requirements, if EPA does receive significant adverse or critical comment, EPA will withdraw this rule prior to its effective date and proceed with a normal rulemaking process. As a result, elsewhere in today's **Federal Register**, EPA is also *proposing* this rule. If EPA decides to withdraw the direct final rule based on public comment, EPA will proceed with rulemaking based on this proposal. There will not be an additional comment period, so parties interested in commenting on the proposed rule should do so at this time.

List of Subjects

40 CFR Part 122

Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Hazardous waste, Indian lands, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: March 29, 1995.

Carol M. Browner,

Administrator.

For the reasons set forth in this preamble, parts 122 and 124 of title 40 of the Code of Federal Regulations are amended as follows:

PART 122—[AMENDED]

1. The authority citation for part 122 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 122.21 is amended by adding a sentence to the end of paragraph (c)(1) to read as follows:

§ 122.21 Application for a permit (applicable to State programs, see § 123.25).

* * * * *

(c) *Time to apply.*

(1) * * * New discharges composed entirely of storm water, other than those dischargers identified by § 122.26(a)(1), shall apply for and obtain a permit according to the application requirements in § 122.26(g).

* * * * *

3. Section 122.26 is amended as follows:

a. In paragraph (a)(1) introductory text by revising ''October 1, 1992'' to read ''October 1, 1994''.

b. By adding paragraph (a)(9) as set forth below.

c. By revising the title of paragraph (e) introductory text as set forth below;

d. In paragraph (e)(1)(ii) by revising the phrase ''permit applications requirements are reserved'' to read ''permit application requirements are contained in paragraph (g) of this section''.

e. By adding paragraph (g) as set forth below.

§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).

(a) * * *

(9) On and after October 1, 1994, discharges composed entirely of storm water, that are not otherwise already required by paragraph (a)(1) of this section to obtain a permit, shall be required to apply for and obtain a permit according to the application requirements in paragraph (g) of this section. The Director may not require a permit for discharges of storm water as provided in paragraph (a)(2) of this section or agricultural storm water runoff which is exempted from the definition of point source at §§ 122.2 and 122.3.

* * * * *

(e) *Application deadlines under paragraph (a)(1).* * * *

* * * * *

(g) *Application requirements for discharges composed entirely of storm water under Clean Water Act section 402(p)(6).* Any operator of a point source required to obtain a permit under paragraph (a)(9) of this section shall submit an application in accordance with the following requirements.

(1) *Application deadlines.* The operator shall submit an application in accordance with the following deadlines:

(i) A discharge which the Director determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States shall apply for a permit to the Director within 180 days of receipt of notice, unless permission for a later date is granted by the Director (*see* 40 CFR 124.52(c)); or

(ii) All other discharges shall apply to the Director no later than August 2, 2001.

(2) *Application requirements.* The operator shall submit an application in accordance with the following requirements, unless otherwise modified by the Director:

(i) *Individual application for non-municipal discharges.* The requirements contained in paragraph (c)(1) of this section.

(ii) *Application requirements for municipal separate storm sewer discharges.* The requirements contained in paragraph (d) of this section.

(iii) *Notice of intent to be covered by a general permit issued by the Director.* The requirements contained in 40 CFR 122.28(b)(2).

PART 124—[AMENDED]

4. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 3901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; Clean Air Act, 42 U.S.C. 7401 *et seq.*

5. Section 124.52 is amended by revising the parenthetical statement in paragraph (c) to read as follows:

§ 124.52 Permits required on a case-by-case basis.

* * * * *

(c) * * * (*see* 40 CFR 122.26 (a)(1)(v), (c)(1)(v), and (g)(1)(i)) * * *

6. Section 124.52 is amended by revising the next to the last sentence in paragraph (c) to read as follows:

§ 124.52 Permits required on a case-by-case basis.

* * * * *

(c) * * * The discharger must apply for a permit under 40 CFR 122.26 (a)(1)(v) and (c)(1)(v) within 60 days of notice or under 40 CFR 122.26(g)(1)(i) within 180 days of notice, unless permission for a later date is granted by the Regional Administrator. * * *

[FR Doc. 95–8209 Filed 4–6–95; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 124

[FRL–5182–9]

RIN 2040–AC60

Amendment to Requirements for National Pollutant Discharge Elimination System (NPDES) Permits for Storm Water Discharges Under Section 402(p)(6) of the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Today, EPA is proposing changes to its National Pollutant Discharge Elimination System (NPDES) storm water permit application regulations under the Clean Water Act (CWA) to establish a sequential application process for all phase II storm water discharges. EPA is also proposing to establish application requirements for these discharges, as well as making other conforming changes to other portions of its NPDES regulations. In the final rules section of this **Federal Register**, the Agency is promulgating these changes as a ''direct'' final rule because the Agency does not expect significant adverse or critical comments and wants to provide prompt implementation of the rule as soon as possible to provide for certainty for phase II storm water dischargers; the Agency also believes it is contrary to the public interest to further delay the establishment of permit application requirements for phase II storm water discharges at this time. This proposal invites comment on the substance of the direct final rule in the ''final rules'' section of today's **Federal Register**.

DATES: Comments on this proposed rule must be received in writing by June 6, 1995.

ADDRESSES: Written comments on this proposed rule may be submitted using one of two different methods.

First, comments may be sent to the Comment Clerk, Water Docket (Storm Water Phase II Proposed Rule), MC–4101, Environmental Protection Agency, 401 M Street, SW, Washington DC 20460. It is requested that an original and one copy of the comments be provided to this address. Comments will considered to be timely if they are postmarked by June 6, 1995. Commenters who would like acknowledgement of receipt of their comments should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

In the alternative, EPA will accept comments electronically; EPA is experimenting with electronic commenting. Comments should be addressed to the following Internet address: SWPH2–DFR@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Electronic comments will be transferred into a paper version for the official record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission. Comments provided electronically will be considered timely if they are submitted electronically by 11:59 p.m. (Eastern time) June 6, 1995. Since this is still experimental, commenters may want to submit both electronic comments and duplicate paper comments. This document has also been placed on the Internet for public review and downloading at the following location: gopher.epa.gov.

A copy of the supporting information for this rule is available for review at EPA's Water Docket, Room L–102, 401 M Street, SW, Washington, DC 20460. For access to the docket materials, call (202) 260–3027 between 9 a.m. and 3:30 p.m. (Eastern time) for an appointment.

FOR FURTHER INFORMATION CONTACT: Nancy Cunningham, Office of Wastewater Management, Permits Division (4203), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 260–9535.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action which is located in the rules section of this **Federal Register**.

Dated: March 29, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–8210 Filed 4–6–95; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Friday
April 7, 1995

Part V

Department of Housing and Urban Development

Joint Community Development Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N–95–3907; FR–3870–N–01]

Office of the Assistant Secretary for Policy Development and Research; Joint Community Development Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Funding Availability (NOFA) for FY 1995.

SUMMARY: This notice announces the availability of up to $12 million of FY 1994 and FY 1995 special purpose grant funding for the Joint Community Development Program (referred to in this Notice as the Joint CD Program). The Joint CD Program, authorized by Title I of the Housing and Community Development Act of 1974, and as amended by the Housing and Community Development Act of 1992, provides special purpose grants to institutions of higher education or to States and units of general local government submitting applications with institutions of higher education to HUD to undertake Community Development Block Grant eligible activities.

For this funding round, HUD seeks to support approximately four to five Centers for Community Revitalization at institutions of higher education. These Centers, funded at up to $3 million, will undertake large-scale, multi-phased, multi-year local community revitalization and community building activities. Funded Centers can assist neighborhoods or entire localities. Institutions of higher education are required to apply on their own, rather than submitting jointly with a State or unit of general local government. However, institutions are encouraged to form partnerships with units of general local government by making part of this funding available to these governments. Institutions will be expected to show not only that they have demonstrated capacity to undertake community development activities, but also that they currently have, or can readily obtain, the capacity to implement a large-scale, multi-phased, multi-year community revitalization agenda.

Additional funding for development projects undertaken through the Joint CD program will be available from the Structured Employment Economic Development Corporation (Seedco), a national nonprofit community development support organization. In 1986, Seedco received major funding from the Ford Foundation for the National Urban Institutions Program, aimed at revitalizing low-income neighborhoods through partnerships embracing community-based groups, anchor public benefit institutions such as universities and hospitals, and other key organizations including local foundations. Seedco has begun additional neighborhood revitalization programs in a total of 38 cities with the financial support of several philanthropic foundations, socially responsible corporate investors, and HUD. Seedco will make available a total of up to $2 million in low-interest rate ''gap'' financing for eligible community revitalization projects undertaken in cooperation with the Centers funded under this NOFA. Only nonprofit tax-exempt community-based organizations can be the recipients of Seedco loans.

The NOFA contains information concerning:

(1) The purpose of the NOFA and information on the funding available, objectives, eligible applicants and activities, and selection criteria;

(2) The application process, including how to apply and how selections will be made; and

(3) A checklist of application submission requirements.

DATES: Application kits may be requested on or after April 26, 1995 from the address set forth below under **ADDRESSES.**

Applications must be physically received by the Office of University Partnerships, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, in care of the Division of Budget, Contracts, and Program Control, in Room 8230 by 4:30 p.m. Eastern Standard Time on July 5, 1995. Applications faxed to this address will not be accepted. The above-stated application deadline is firm as to date, hour, and place. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

ADDRESSES: To obtain a copy of the application kit, contact: HUD USER, ATTN: Joint CD Program, P.O. Box 6091, Rockville, Maryland 20850. Requests for application kits must be in writing, but requests may be faxed to: 301–251–5747. (This is not a toll free number.) Requests for application kits must include the applicant's name, mailing address (including zip code), telephone number (including area code) and must refer to document ''FR–3870.''

FOR FURTHER INFORMATION CONTACT: Jane Karadbil, Office of University Partnerships in the Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 8110, Washington, DC 20410. Telephone number (202) 708–1537; TDD Number (202) 708–1455. (These are not toll-free numbers.) Ms. Karadbil can also be contacted via Internet at Jane__R.__Karadbil@HUD.GOV.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2535–0084.

I. Purpose and Substantive Description

Purpose

This program is designed to assist institutions of higher education, on their own or with States and units of general local government, to expand their role and effectiveness in addressing local community development problems.

Objectives

The objective of this funding round is to nurture and sustain the capacity of institutions of higher education to engage in local community revitalization and community building activities. HUD seeks to support entities that will have the capacity to undertake such activities over the long term. Thus, HUD has decided to use this funding round to support a small number of Centers for Community Revitalization, rather than a larger number of small development projects. These Centers can assist neighborhoods or entire localities. They can be new or existing entities. Institutions will be expected to show not only that they have demonstrated capacity to undertake community development activities, but also that they currently have, or can readily obtain, the capacity to implement a large-scale, multi-phased, multi-year community revitalization agenda in concert with their local communities. These agendas should both result in measurable benefits to their communities and enable the Centers to build the capacity they need to institutionalize their role in future local community revitalization activities.

In addition, Seedco, a national nonprofit community development support organization specializing in forging partnerships between urban institutions (such as colleges, universities, and medical centers), will make available a total of up to $2 million in low-interest rate ''gap'' financing for eligible community revitalization projects undertaken in cooperation with the Centers funded under this NOFA.

A. Authority

This program is authorized under section 801(c)(2) of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992), which amended section 107 of Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) to add a new category of special purpose grants. The program is governed by regulations contained in 24 CFR 570.411.

B. Allocation Amounts and Form of Award

This notice announces HUD's intention to award up to $12 million (from the FY 1994 and FY 1995 appropriations) to fund approximately four to five Centers. The maximum amount awarded to any applicant will be $3 million. Because of the multi-phase nature of the projects the Centers will undertake, grant funds will be available until expended. The loans made available through Seedco will be made after grant award at a point when they are needed for development activities. In response to this NOFA, an applicant should submit only a general description of the Seedco loan requirements associated with the Center's project(s).

C. Eligibility

1. Eligible Applicants.

Under this funding round, only institutions of higher education with demonstrated capacity to carry out eligible activities under Title I may apply. Consortia of institutions of higher education are not eligible to apply for this funding round. However, institutions are encouraged to engage units of general local government to undertake development activities. Institutions can use up to 20 percent of the grant funds to establish and maintain Centers and assist localities in planning projects. Institutions may also use the remaining part of the grant for other CDBG eligible activities. However, they are encouraged to involve their appropriate units of general local government by making available to these governments as much of the funding as is feasibly possible. Units of general local government can pass these funds through to others, including community-based organizations. The only entities eligible to receive the Seedco loans are nonprofit tax-exempt community-based organizations undertaking development projects in cooperation with the Centers.

Demonstrated capacity to carry out eligible activities means recent satisfactory performance by the institution of higher education's staff designated to work on the program, including subrecipients and consultants firmly committed to work on the proposed activities, in Title I programs or similar programs without the need for oversight by a State or unit of general local government.

Institution of higher education means a college or university granting 4-year degrees and accredited by a national or regional accrediting agency recognized by the U.S. Department of Education.

2. Eligible Activities.

Activities that may be funded under this section are those eligible under 24 CFR part 570—Community Development Block Grants, subpart C—Eligible Activities. Activities may be designed to assist residents of colonias, as defined in Section 916(d) of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625), to improve living conditions and standards within colonias.

Applicants are expected to propose a large-scale, multi-phased, multi-year strategy for addressing local community revitalization needs. The strategy can focus on one neighborhood, several neighborhoods, or the entire locality. The applicant may also choose to assist more than one locality. In this case, activities are limited to a central city and one contiguous jurisdiction. For example, an applicant could work with its unit of general local government on rebuilding a neighborhood, including housing rehabilitation, job training, and education. An applicant could work with its local school district on a multi-faceted approach involving all levels of the public schools in order to prevent youths from dropping out of school. An applicant could work with its central city and a contiguous suburb on developing affordable housing. Or an applicant could work with several localities to implement a strategic economic development plan for the region. If any applicant proposes to work in multiple jurisdictions, it must demonstrate the benefits to all jurisdictions involved. Because of the size of these grants, applicants are expected to propose programs which will have a measurable, substantive, and long-term impact on the communities they assist. Applicants will also be expected to use these programs as a vehicle for developing the capacity to sustain the Center in conducting similar work over the long term.

For the Seedco loans, eligible activities include affordable housing, business development or expansion, and economic development projects including social services, health, education, and other similar facilities.

While Seedco loans will be available for eligible activities, applicants should understand that they are not required to develop projects involving Seedco loans, nor will selection be based on the inclusion or exclusion of such activities in an application.

Applicants must ensure that all project activities meet one of the national objectives of the Community Development Block Grant program, as described in 24 CFR 570.200. Applicants are also bound by the statutory requirement that not more than 20 percent of the total grant be spent on planning and administration. The 15 percent public service limitation, applicable to units of general local government, is not applicable to institutions of higher education who may, thus, choose to spend any portion of the grant on public service activities.

The use of grant funds awarded under this NOFA to pay Seedco to provide technical assistance or any other needed services will be an ineligible activity. It should be noted that this restriction is imposed solely to prevent any appearance of a conflict of interest, since Seedco is a partner to HUD in this joint venture, and is not intended to single out Seedco for any other reason.

3. Environmental Review

(a) General information. Joint community development planning and institution building activities are not subject to environmental review procedures, but proposed physical development must be reviewed for environmental impact. Physical development includes acquisition, rehabilitation, conversion, lease, repair, demolition or construction of property. Since the application will identify general locations of joint community development activities rather than specific sites to be assisted, the environmental review procedures will not be conducted until specific sites for physical development (if any) are identified by the grant recipient. Any activities which require an environmental review cannot be undertaken, nor any grant funds expended on these activities, until such

reviews are completed. Grants will be made conditional upon the performance of environmental review and no grant funds for physical development of specific sites can be drawn down until these reviews are completed. Applicants who anticipate the use of the grant for physical development of specific sites are encouraged to select hazard-free and problem-free properties for their joint community development activities.

(b) Environmental assurance. Applications shall contain an assurance that the applicant agrees to assist HUD to comply with the environmental laws and authorities at 24 CFR part 50, and that the applicant will (i) supply HUD with information necessary for HUD to perform any necessary environmental review of each property; (ii) carry out mitigating measures required by HUD or select alternate eligible property; and (iii) not acquire, rehabilitate, convert or demolish, lease, repair or construct or otherwise carry out any program activities with respect to any eligible site or property, until HUD environmental clearance for the site or property is received.

(c) Environmental procedures and standards. HUD shall determine whether a NEPA environmental assessment is required. Also HUD shall determine whether the proposed property triggers thresholds for the applicable Federal environmental laws and authorities listed at 24 CFR 50.4 as follows:

(1) For minor rehabilitation of a building and any property acquisition (including lease), Federal environmental laws and authorities may apply when the property is: (i) Located within designated coastal barriers; (ii) Contaminated by toxic chemicals or radioactive materials; (iii) Located within a floodplain; (iv) A building for which flood insurance protection is required; (v) Located within a runway clear zone at a civil airport or within a clear zone or accident potential zone at a military airfield; (vi) Listed on, or eligible for listing on, the National Register of Historic Places; located within, or adjacent to an historic district, or is a property whose area of potential effects includes a historic district or property;

(2) For major rehabilitation of a building and also for substantial improvement in floodplains, in addition to paragraphs (c) (i) through (vi) of this section, other Federal environmental laws and authorities may apply when the property: (i) Has significant impact to the human environment; (ii) Is a project involving five or more dwelling units severely noise-impacted; (iii) Affects coastal zone management.

(3) For new construction, conversion or increase in dwelling unit density, in addition to paragraphs (c)(1) (i) through (vi) and paragraphs (c)(2) (i) through (iii) of this section, other Federal environmental laws and authorities may apply when the property: (i) Is located near hazardous industrial operations handling fuels or chemicals of an explosive or flammable nature; (ii) Affects a sole source aquifer; (iii) Affects endangered species; or (iv) Is located within a designated wetland.

(d) Minor rehabilitation means proposed fixing and repairs: (i) Whose estimated cost is less than 75 percent of the property value after completion; (ii) That does not involve changes in land use from residential to nonresidential, or from nonresidential to residential; (iii) That does not involve the demolition of one or more buildings, or parts of a building, containing the primary use served by the property; and (iv) That does not increase unit density more than 20 percent.

(e) Responsibility for compliance. HUD shall conduct the environmental review in accordance with 24 CFR part 50. Another agency's environmental review—including a review prepared by a state, local, or tribal government authorized under 24 CFR part 58—may be adopted in cases where HUD has obtained such other review and confirmed that the previous review covers the issues that require environmental review under this 24 CFR 50.

II. Selection Process

A. General

Applications for funding under this NOFA will be evaluated competitively, and points will be awarded as specified in the Selection Factors section below. Seedco will serve as a technical advisor to HUD in the application review process, reviewing applications and providing advice to HUD on the feasibility of proposed development projects. However, authority to select Joint CD grantees will rest solely with HUD. After points have been assigned based on the factors, all applications will be put in rank order. Applications will then be funded in rank order until all funds have been exhausted. However, in order to be funded, an application must receive a minimum score of 70. HUD reserves the right to fund all or portions of the proposed activities identified in each application, based on eligibility of the proposed activities. If more than 50 percent of the amount requested in the application is for ineligible activities, the application will not be funded.

If two or more applications have the same number of points, the application with the most points for selection factor (3), ''Institutionalization of the community building partnership,'' shall be selected. If there is still a tie, the application with the most points for selection factor (5) ''Match,'' shall be selected.

If the amount of funds remaining after funding as many of the highest ranking applications as possible is insufficient for the next highest ranking application, HUD shall determine (based upon the proposed activities) if it is feasible to fund part of the application and offer a smaller grant to the applicant. If HUD determines that given the proposed activities a smaller grant amount would make the activities infeasible, or if the applicant turns down the reduced grant amount, HUD shall make the same determination for the next highest ranking application until all applications with scores of at least 70 points or available funds have been exhausted.

If HUD receives an insufficient number of applications to award all funds, or if funds remain after HUD selects all approvable applications, HUD may negotiate increased amounts of grant awards. Increased grants will be offered in rank order to applicants with scores of at least 70 points.

B. Geographic Distribution

HUD reserves the right to make selections out of rank order to provide for a geographic distribution of funded projects. If HUD decides to implement this option, it will select at least one project in each Federal Census Region.

C. Negotiations

HUD requires that all successful applicants participate in negotiations to determine the specific terms of the Statement of Work and grant budget (see IV.A.4). In cases where HUD cannot successfully conclude negotiations, awards will not be made. In such instances, HUD may elect to offer an award (in an amount not to exceed the amount of remaining funds available for the competition) to the next highest ranking applicant and proceed with negotiations as described above.

D. Optional Match

Although applicants are not required to provide a match in order to qualify for funding, those that do will be at a competitive advantage (see section II.E.5).

E. Selection Factors

HUD will use the following criteria to rate and rank applications received in

response to this NOFA. The factors and maximum points for each factor are provided below. The maximum number of points is 100.

Rating of the ''applicant'' or the ''applicant's organization and staff,'' unless otherwise specified, will include any subrecipients and consultants which are firmly committed to the project.

1. Addressing the Objectives (Maximum Points: 25)

The extent to which the applicant addresses the objectives of this program as stated in paragraph I above. Applicants must address how the proposed activities will both revitalize some aspect of the locality(ies) being assisted (e.g., for a pressing urban problem such as housing, education, or crime prevention or for a neighborhood) while at the same time building long-term institutional capacity for the Center to undertake other community revitalization activities.

In rating this factor, the Department will consider:

a. The extent to which the applicant demonstrates that the proposed activities and program will expand its role and effectiveness in addressing community revitalization/development needs in the locality(ies) being assisted. The applicant should explain its current role in community revitalization and how that role would change and be enhanced as a result of this grant. The applicant should also describe the process or rationale used to determine that the activities selected could best ensure this sustainability.

b. The extent to which the applicant demonstrates how the proposed activities will make a substantial contribution to achieving local community revitalization/development objectives. The applicant should identify measurable results expected to be achieved from undertaking the proposed activities.

c. The extent to which institutionalization of the proposed functions at the college or university will occur.

d. The extent to which there is non-Federal (e.g., State and local government, private sector, or foundation) interest in sustaining the Center, e.g., in the form of pledges for future funding or identification of future projects to be undertaken.

2. Impact of the Project (Maximum Points: 20)

The extent to which participation of the Center in these activities strengthens the community revitalization activities of the locality(ies) being assisted.

In rating this factor, the Department will consider the extent to which the Center is innovative or defines a role for itself which does not duplicate or substitute for the work of any other entity serving the community.

3. Institutionalization of the Community Building Partnership (Maximum Points: 10)

The extent to which the applicant demonstrates that the proposed project will result in the institutionalization of a community building partnership between the institution of higher education and the local community.

In rating this factor, HUD will consider:

a. The extent to which the Center results in a formalization of a long-term partnership with the unit of general local government, including the extent to which funds will be made available to the unit of general local government(s).

b. The extent to which the Center results in the creation or continuance of a structure within the institution of higher education to undertake community revitalization and community building activities.

4. Management Approach (Maximum Points: 20)

The extent to which the applicant demonstrates that the proposed management approach will enable the applicant to achieve the objectives in section I.

In rating this factor, the Department will consider:

a. The extent to which the applicant's proposed management plan:

i. Clearly delineates staff responsibilities and accountability for all work required;

ii. Clearly delineates a multi-phased agenda;

iii. Presents a work plan with a clear and feasible schedule for conducting all project tasks; and

iv. Presents a reasonable and adequate planned budget as reflected in the budget by task and supporting rationale and justification for the budget.

b. The extent to which the institution, rather than sub-recipients, is responsible for planning and administration.

5. Match (Maximum Points: 10)

The extent to which the applicant demonstrates the financial feasibility of achieving the objectives, including the long-term sustainability of the Center.

In rating this factor, the Department will consider the extent to which the applicant demonstrates the commitment of matching funds, staffing, services, and other in-kind resources to the project. Maximum points will be awarded to applications that provide a match at least equal to the grant request.

6. *Capacity* (Maximum Points: 15)

The extent to which the applicant demonstrates the capacity to carry out satisfactorily the proposed activities in a timely fashion, including successful performance in carrying out any prior HUD-assisted projects or activities.

In considering this factor, the Department will consider:

a. The extent to which the applicant demonstrates how recent and relevant the experiences of the staff proposed to undertake the project are.

b. The extent to which the applicant demonstrates that its past and current projects funded by HUD and/or other Federal or private sector sources are or have been completed on schedule and have met or are meeting the goals established for that funding.

c. The extent to which the capacity developed under this grant can sustain the Center over the long term.

d. The extent to which the applicant demonstrates a commitment to fair housing and equal opportunity, through activities such as support for Minority/Women Owned Businesses or innovative fair housing programs.

III. Application Process

A. Obtaining Applications

To obtain a copy of the application kit, contact: HUD USER, ATTN: Joint CD Program, P.O. Box 6091, Rockville, Maryland 20850. Requests for application kits must be in writing, but requests may be faxed to: 301–251–5747 (this is not a toll-free number). Requests for application kits must include the applicant's name, mailing address (including zip code), telephone number (including area code) and must refer to document ''FR–3870''. HUD strongly recommends the use of the fax transmission option to promote accuracy and expedite HUD response time. Application kits may be requested on or after April 26, 1995.

B. Application Deadline

To be considered for funding, the application package must be physically received by the Office of University Partnerships, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, in care of the Division of Budget, Contracts, and Program Control, Room 8230, 451 Seventh Street, SW., Washington, DC 20410 by 4:30 p.m. Eastern Standard Time on July 5, 1995. Applications faxed to this address will

not be accepted. The application deadline is firm as to date, hour and place. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

IV. Checklist of Application Submission Requirements

A. Application Content

The application kit contains instructions which must be followed in submitting an application. The following is a checklist of the application contents that will be specified in the Request for Grant Applications (the technical term for the application kit):

(1) Transmittal letter signed by the Chief Executive Officer of the institution;

(2) OMB Standard Forms 424 (Application for Federal Assistance), Form 424B (Non-Construction Assurances) and Budget Summary;

(3) Executive summary of the proposed project;

(4) Statement of Work (no more than 15 pages) which must describe the community(ies) and, if appropriate, neighborhood(s) to be assisted and the tasks or activities that will be undertaken with project funds.

(5) If the applicant proposes to work in more than one jurisdiction, an explanation of the benefits to all jurisdictions involved.

(6) Narrative summary of Project Management Work Plan, describing the tasks, schedule, and staff needed to accomplish the project.

(7) A general description of the kinds of activities for which Seedco assistance would be needed.

(8) Letters from the appropriate sources attesting to the provision of any matching funds.

(9) Narrative statement addressing each of the rating factors in Section II.E.

(10) Where there are any fair housing or civil rights issues, the applicant should address them. The applicant should also address any unresolved civil rights and/or equal opportunity issues that resulted from findings or attempted resolutions with respect to agencies or departments other than HUD, e.g., the Department of Education, the Department of Labor, the Department of Health and Human Services, or the Department of Agriculture, that are known or become known to the applicant.

B. Certifications and Exhibits

Applications must also include the following documents. In the absence of independent evidence which tends to challenge, in a substantial manner, the certifications made by the applicant, the required certifications will be accepted by HUD. However, if independent evidence is available, HUD may require further information or assurances to be submitted in order to determine whether the applicant's certifications are satisfactory.

(1) Drug-Free Workplace Certification.

(2) Form SF-LLL, Disclosure of Lobbying Activities, if applicable.

(3) Form HUD–2280, Applicant/Recipient Disclosure/Update Report.

(4) A copy of the institution's most recent audit specifying that the applicant's accounting system meets the requirements of OMB Circulars A–21 and A–110 or a letter from the Chief Financial Officer of the applicant's organization stipulating they are in compliance with the requirements of OMB Circulars A–21 and A–110.

(5) A letter from the chief executive officer or resolution of the governing body of the affected locality or localities in which the activities are to be undertaken that the activities are not inconsistent with the locality's Consolidated Plan (see 24 CFR part 91). If the activities will take place in more than one locality, a letter or resolution from each locality should be submitted.

(6) A certification that the citizens likely to be affected by the project, regardless of race, color, creed, sex, national origin, familial status, or handicap, have been provided an opportunity to comment on the proposal or application.

V. Corrections to Deficient Applications

After the submission deadline date, HUD will screen each application to determine whether it is complete. If an application lacks certain technical items or contains a technical error, such as an incorrect signatory, HUD will notify the applicant in writing that it has 14 calendar days from the date of HUD's written notification to cure the technical deficiency. If the applicant fails to submit the missing material within the 14-day cure period, HUD will disqualify the application.

This 14-day cure period applies only to non-substantive deficiencies or errors. Any deficiency capable of cure will involve only items not necessary for HUD to assess the merits of an application against the factors specified in this NOFA.

VI. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 USC 4332). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

B. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. Specifically, the notice solicits participation in an effort to provide assistance to institutions of higher education to expand their role in addressing community development needs in their localities and does not impinge upon the relationships between the Federal government and State or local governments.

C. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice will likely have a beneficial impact on family formation, maintenance, and general well-being. The assistance to be provided by the funding under this NOFA is expected to help local residents to become self-sufficient by improving living conditions and standards. Accordingly, since the impact on the family is beneficial, no further review is considered necessary.

D. Documentation and Public Access Requirements: HUD Reform Act

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30

days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

E. Prohibition Against Advance Information on Funding Decisions

HUD's regulation implementing section 103 of the HUD Reform Act was published on May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to this funding competition. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her field Counsel, or Headquarters counsel for the program to which the question pertains.

F. Prohibition Against Lobbying of HUD Personnel

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). The final rule is codified at 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read part 86, particularly the examples contained in Appendix A of the regulation.

Any questions about the rule should be directed to the Office of Ethics, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–3000. Telephone: (202) 708–3815 TDD: (202) 708–1112. These are not toll-free numbers. Forms necessary for compliance with the rule may be obtained from the local HUD office.

G. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of Section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

Authority: Section 107 of Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*; section 801(c)(2) of the Housing and Community Development Act of 1990 (Pub. L. 102–550, approved October 28, 1992).

Dated: March 30, 1995.

Michael A. Stegman,

Assistant Secretary for Policy Development and Research

[FR Doc. 95–8548 Filed 4–6–95; 8:45 am]

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Friday
April 7, 1995

Part VI

Department of Housing and Urban Development

24 CFR Part 29

Nonjudicial Foreclosure of Single Family Mortgages; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary; Nonjudicial Foreclosure of Single Family Mortgages

24 CFR Part 29

[Docket No. R–95–1776; FR–3799–P–01]

RIN 2501–AB86

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: HUD proposes to implement recent legislation which authorizes the Secretary of Housing and Urban Development, as a matter of Federal law, to exercise a statutory nonjudicial power of sale with respect to any defaulted single family mortgage held by the Secretary under titles I or II of the National Housing Act or under section 312 of the Housing Act of 1964.

DATES: Comments due date: Comments on this proposed rule must be submitted on or before June 6, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Bruce S. Albright, Office of the General Counsel, Room 9258, Department of Housing and Urban Development, Washington, DC 20410, (202) 708–0303. A telecommunications device for the hearing impaired (TDD) is available at (202) 708–3259.

SUPPLEMENTARY INFORMATION:

Authority

HUD's Fiscal Year 1995 Appropriations Act (Pub. L. 103–327, approved September 28, 1994) incorporated by reference, through conference amendment 54 of H.R. 4624, the Single Family Mortgage Foreclosure Act of 1994 (the Act), which appeared in title VIII of S. 2281, as reported on July 13, 1994. This statute, codified at 12 U.S.C. 3751–3768, establishes a nonjudicial procedure which HUD may follow to foreclose, as a matter of Federal law, any defaulted single family mortgage HUD holds under titles I or II of the National Housing Act, 12 U.S.C. 1701 *et seq.*, or section 312 of the Housing Act of 1964, 42 U.S.C. 1452b. The procedure is similar to that used in those States whose laws authorize nonjudicial foreclosures. The new authority is patterned after the Multifamily Mortgage Foreclosure Act of 1981 (Multifamily Act), 12 U.S.C. 3701–3717, which was implemented in 1984.

The Department intends to publish a delegation of authority to delegate to the General Counsel of HUD the authority under the Act to appoint a foreclosure commissioner or commissioners, to fix the compensation of commissioners, and to promulgate implementing regulations.

Need for Nonjudicial Foreclosure

Various factors precipitated the need for this statute and its implementation. First, the multiplicity of State laws under which HUD forecloses defaulted mortgages presents a burden to the programs involved which can be detrimental to the properties and to the communities in which they are located. Second, long periods of time to complete foreclosures under certain State laws lead to deterioration in the condition of the properties involved. This delay necessitates substantial Federal management and holding expenditures, increases the risk of vandalism, fire loss, depreciation, damage and waste, which adversely affects the neighborhoods in which the properties are located. Third, these conditions seriously impair HUD's ability to protect the Federal financial interest in the affected properties and frustrates attainment of the objectives of the underlying program authorities. Fourth, the availability and the use of a uniform and more expeditious nonjudicial foreclosure procedure will help to alleviate these conditions. Fifth, providing HUD with a nonjudicial foreclosure procedure will reduce unnecessary litigation by removing judicial foreclosures from court calendars. Sixth, use of this new nonjudicial procedure will further the objectives of the HUD Reform Act and the National Affordable Housing Act by ensuring that the Department administers its programs in a businesslike and financially sound manner.

The procedures proposed by this rule would streamline and expedite the foreclosure process. However, foreclosure itself is a last step taken only after extensive efforts to bring a delinquent mortgage current have been unsuccessful. Before a foreclosure is commenced, the Department has already provided the delinquent mortgagor with notice and the opportunity to enter into workout agreements in order to provide alternatives to, and avoid, foreclosure. The Secretary has a dual responsibility—a responsibility to the insurance funds and a responsibility to the home ownership needs of persons assisted by the Department. In drafting this rule, the Department has taken into consideration that foreclosure will be commenced only after extensive attempts to correct the default. The Department believes that the rule balances these two responsibilities, and public comment is invited on this point.

Scope

The proposed rule applies to any mortgage that:

—Is security for a one- to four-family dwelling, was previously insured under title I or title II of the National Housing Act, and is held by HUD by reason of assignment or otherwise, or that HUD holds following acquisition and subsequent sale of the property pursuant to a purchase money mortgage agreement; or

—Is security for a one- to four-family dwelling on which HUD made a rehabilitation loan pursuant to section 312 of the Housing Act of 1964, as it existed before the repeal of that section by section 289 of the National Affordable Housing Act (except that when a one-to four-family dwelling is combined with non-residential space in a ''mixed use'' project, the mortgage is not covered by this Act and this part).

The nonjudicial foreclosure procedures proposed under this rule will be available for use by HUD in connection with any such mortgage, irrespective of the date of execution. The procedure is similar to the deed of trust foreclosure procedure used in approximately one-half of the States. To the extent that a mortgagor has legal or equitable defenses, the mortgagor would be free to seek injunctive relief in the courts.

Outline of Foreclosure Procedures

The procedures authorized by this statute are as follows. Upon determining that a mortgage should be foreclosed, HUD or its designee names a foreclosure commissioner to conduct the foreclosure and sale in accordance with the requirements of the statute. The foreclosure commissioner will have previously been found eligible by the Department to serve as a foreclosure commissioner for HUD's cases. The commissioner commences the foreclosure by serving a Notice of

Default and Foreclosure Sale. The contents of this notice and the manner in which it is to be served are set forth in the statute and the regulations.

If a substitute foreclosure commissioner is designated, foreclosure would continue unless the substitute commissioner finds that continuation would unfairly affect the interests of the mortgagor. If a sale is adjourned to another day, a new Notice of Default and Foreclosure Sale must be served.

After the service requirements are met, the commissioner or his designee conducts the foreclosure sale at the date and time specified in the Notice of Default and Foreclosure Sale and disposes of the sale proceeds as provided by the statute. No other proceeding to foreclose the mortgage can be continued or initiated during the pendency of a foreclosure under these regulations. The statute authorizes the commissioner to convey title to the purchaser and requires the commissioner to establish a record of the foreclosure and sale.

From the proceeds of the foreclosure sale, or from other available sources if funds are insufficient, the commissioner is reimbursed for reasonable costs of the foreclosure sale and is paid a fee for his or her services in an amount to be established by HUD.

Notice Requirements

The statute and regulations set forth extensive and thorough requirements for service of the Notice of Default and Foreclosure Sale on the current owner, all mortgagors of record and other interested parties. The Notice of Default and Foreclosure Sale must set forth information on the foreclosure commissioner, identification of the property covered by the mortgage, and specific information about the failure to pay or other default.

Mortgagor Protections

Since a foreclosure extinguishes property rights, the statute and the proposed rule contain numerous provisions to protect the interests of the mortgagor of the property subject to foreclosure sale, tenants and other interested parties. The foreclosure commissioner must be responsible, financially sound, and competent to conduct the foreclosure. The commissioner is specifically authorized to adjourn or cancel the sale if conditions are not conducive to a sale that is fair to the mortgagor. The mortgagor and other interested parties are notified in writing about the designation of the foreclosure commissioner and about the designation of any substitute commissioner. Even if not so provided in the mortgage instrument, under the Act and these regulations, the mortgagor has the right to have the mortgage reinstated one time by bringing the mortgage current or curing a nonmonetary default with respect only to foreclosures being carried out under this part. Subsequent reinstatements can be made only at the discretion of the Department.

Effect on State Law

The statute provides that its purpose is to create a uniform Federal foreclosure remedy for single family mortgages within its scope. The intent of the Secretary with respect to the enforcement of these regulations is that they will be governed by Federal law and will not be subject to conflicting or varying State laws unless otherwise expressly noted.

The statute and the regulations also provide that there will be no right of redemption, or right of possession based on a right of redemption, in the mortgagor or others subsequent to a foreclosure of a mortgage completed pursuant to this statute. If redemption periods provided under State law—up to 18 months or longer in some States—were applied to these mortgages, salability of the properties involved would be seriously impaired and their rehabilitation and improvement discouraged. Such a result would increase the Federal financial exposure and frustrate achievement of the program's objectives and the national housing goals. State redemption laws have previously been preempted in connection with the foreclosure of HUD-held title II mortgages under section 204(*l*) of the National Housing Act, 12 U.S.C. 1710(*l*), and with respect to section 312 mortgages under section 701 of the HUD Reform Act of 1989, 42 U.S.C. 1452c.

Scope of Final Rule

In conjunction with its efforts to streamline and reduce regulations, the Department is considering the option of issuing a much briefer final rule for Nonjudicial Foreclosure of Single Family Mortgages after considering comments on this proposed rule. The procedures that are in the statute would not be repeated in the final rule as they are in this proposed rule. The final rule would instead consist of provisions that address only those areas where the statute gives the Secretary discretion to act or for which clarification and additional detail are necessary. Nonjudicial foreclosures would be conducted with reference to the statute and the abbreviated final rule, or through the use of a guidebook with instructions for foreclosure commissioners which the Department would make available to the public. The Department specifically requests comment on this point.

Other Matters

Environmental impact

In accordance with 40 CFR 1508.4 of the CEQ regulations and 24 CFR 50.20 of the HUD regulations, the policies and actions proposed in this document are determined not to have the potential of having a significant impact on the quality of the human environment and therefore further environmental review under the National Environmental Policy Act is not necessary.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and, by approving it, certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule is limited to implementation of statutory authority for the nonjudicial foreclosure of HUD-held single family mortgages, and there are no unusual procedures that would need to be complied with by small entities.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this proposed rule would not have potential significant impact on family formation, maintenance, and general well-being, and thus is not subject to review under the Order. The proposed rule implements procedures for the nonjudicial foreclosure of HUD-held single family mortgages. These procedures would impact those families who would be required to vacate more quickly than under other procedures. However, this impact is expected to be small, and would be offset by the benefit to families to the extent that these procedures decrease the risk to single-family housing of vandalism, fire loss, depreciation, and damage and waste, and the attendant adverse effects on the neighborhoods in which the properties are located.

Executive Order 12512, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that although this proposed rule would have an effect on States or their political subdivisions, and the relationship between the Federal

government and the States, the provisions of this proposed rule do not have ''federalism implications'' within the meaning of the Order because the authorizing statute provides for the preemption of State law.

Semiannual Agenda of Regulations

This proposed rule was not listed in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632) under Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 29

Mortgages, Foreclosures.

Accordingly, title 24 CFR is proposed to be amended by adding a new part 29, to read as follows:

PART 29—NONJUDICIAL FORECLOSURE OF SINGLE FAMILY MORTGAGES

Subpart A—General

Subpart B—Procedures

Authority: 12 U.S.C. 1715b, 3751–3768; 42 U.S.C. 1452b, 3535(d).

Subpart A—General

§ 29.1 Purpose.

(a) The purpose of this part is to implement the Single Family Mortgage Foreclosure Act of 1994 (the Act), 12 U.S.C. 3751–3768. This Act creates a uniform Federal remedy for foreclosure of mortgages covering single family properties which are held by the Secretary of Housing and Urban Development pursuant to Title I of the National Housing Act, 12 U.S.C. 1702 *et seq.*, Title II of the National Housing Act, 12 U.S.C. 1707 *et seq.*, or Section 312 of the Housing Act of 1964, 42 U.S.C. 1452b (as it existed before repeal). The Secretary's powers under the Act to appoint a foreclosure commissioner or commissioners and substitutes therefor, to fix the compensation of commissioners, and to promulgate implementing regulations, have been delegated to the HUD General Counsel.

(b) The availability of uniform and more expeditious procedures, with no right of redemption in the mortgagor or others, for the foreclosure of these mortgages by the Department, will ameliorate the negative consequences of the disparate State laws under which mortgages covering one- to four-family residential properties are foreclosed on behalf of HUD. The long periods of time that are required under State law to complete foreclosure of such mortgages lead to deterioration in the condition of the properties involved, necessitate substantial Federal holding expenditures, increase the risk of vandalism, fire loss, depreciation, damage, and waste with respect to the properties, and adversely affect the neighborhoods in which the properties are located. These consequences seriously impair the ability of HUD to protect Federal financial interests in the properties and frustrate attaining the objectives of the underlying Federal program authority. Use of this nonjudicial foreclosure procedure will also reduce unnecessary litigation, which contributes to already overcrowded court calendars, by removing many foreclosures from the courts.

§ 29.3 Scope and applicability.

(a) *Scope.* Under this part, the Secretary may foreclose on any defaulted single family mortgage (as defined in § 29.5) encumbering real estate in any State regardless of when the mortgage was executed.

(b) *Applicability.* The Secretary may, at the Secretary's option, use other procedures to foreclose defaulted single family mortgages, including judicial foreclosure in State or Federal Court, and nonjudicial foreclosures under State law or any other Federal law. This part applies only to foreclosure procedures authorized by the Act and not to any other foreclosure procedures the Secretary may use.

§ 29.5 Definitions.

As used in this part—

Act means the Single Family Mortgage Foreclosure Act of 1994 (12 U.S.C. 3751 *et seq.*).

Bona fide purchaser means a purchaser for value in good faith and without notice of any adverse claim, and who acquires the security property free of any adverse claim.

County means a political subdivision of a State or Territory of the United States, created to aid in the administration of state law for the purpose of local self-government, and includes a parish or any other equivalent subdivision.

Mortgage means a deed of trust, mortgage, deed to secure debt, security agreement, or any other form of instrument under which any property (real or mixed real and personal), or any interest in property (including leaseholds, reversionary interests, and any other estates under applicable State law), is conveyed in trust, mortgaged, encumbered, pledged, or otherwise rendered subject to a lien for the purpose of securing the payment of money or the performance of an obligation.

Mortgage agreement means the note or debt instrument and the mortgage instrument, deed of trust instrument, trust deed, or any other similar instrument or instruments creating the security interest in the real estate for the repayment of the note or debt instrument, including any instrument incorporated by reference therein and any instrument or agreement amending or modifying any of the foregoing.

Mortgagor means the debtor, obligor, grantor, or trustor named in the mortgage agreement and, unless the context otherwise indicates, includes the current owner of record of the security property whether or not such owner is personally liable on the mortgage debt.

Owner means any person who has an ownership interest in the property and includes heirs, devisees, executors, administrators, and other personal representatives, and trustees of testamentary trusts if the owner of record is deceased.

Person includes any individual, group of individuals, association, partnership, corporation, or organization.

Record; recorded means to enter or entered in public land record systems established under State statutes for the purpose of imparting constructive notice to purchasers of real property for value and without actual knowledge, and includes ''register'' and ''registered'' in the instance of registered land.

Secretary means the Secretary of Housing and Urban Development, acting by and through any authorized designee exclusive of the foreclosure commissioner.

Security property means the property (real or mixed real and personal) or an interest in property (including leaseholds, life estates, reversionary

interests, and any other estates under applicable law), together with fixtures and other interests subject to the lien of the mortgage under applicable law.

Single family mortgage means a mortgage that covers property on which there is located a 1- to 4-family residence, and that:

(1) Is held by the Secretary pursuant to title I or title II of the National Housing Act (12 U.S.C. 1701 *et seq.*) ; or

(2) Secures a loan obligated by the Secretary under section 312 of the Housing Act of 1964 (42 U.S.C. 1452b), as it existed before the repeal of that section by section 289 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12839). A mortgage securing such a loan that covers property containing nonresidential space and a 1- to 4-family dwelling shall not be subject to this part.

State means:

(1) The several States;

(2) The District of Columbia;

(3) The Commonwealth of Puerto Rico;

(4) The United States Virgin Islands;

(5) Guam;

(6) American Samoa;

(7) The Northern Mariana Islands; and

(8) Indian tribes, meaning any Tribe, band, group or nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaskan Native Village of the United States that is considered an eligible recipient under Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or was considered an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221) before repeal of that Act. Eligible recipients under the Indian Self-Determination and Education Assistance Act are determined by the Bureau of Indian Affairs.

Subpart B—Procedures

§ 29.101 Designation of foreclosure commissioner.

(a) The Secretary may designate a person or persons to serve as a foreclosure commissioner for the purpose of foreclosing single family mortgages. A foreclosure commissioner designated pursuant to this part shall have a nonjudicial power of sale as provided in this part.

(b) The foreclosure commissioner, if a natural person, shall be a resident of the State in which the security property is located and, if not a natural person, the foreclosure commissioner must be duly authorized to transact business under laws of the State in which the security property is located. No person shall be designated as a foreclosure commissioner unless that person is determined by the Secretary to be responsible, financially sound, and competent to conduct a foreclosure. The method of selection and determination of the qualifications of the foreclosure commissioner shall be at the discretion of the Secretary, and the execution of a designation pursuant to this section shall be conclusive evidence that the commissioner selected has been determined to be qualified by the Secretary.

(c) The Secretary designates a foreclosure commissioner by executing a written designation stating the name and business or residential address of the commissioner, except that if a person is designated in his or her capacity as an official or employee of a government or corporate entity, such person may be designated by his or her unique title or position instead of by name. The designation shall be effective upon execution.

(d) A copy of the designation of the foreclosure commissioner shall be mailed with each copy of the Notice of Default and Foreclosure Sale served by mail in accordance with § 29.109.

(e) The Secretary may designate, with or without cause, a substitute foreclosure commissioner to replace a previously designated foreclosure commissioner, by the procedure contained in paragraph (c) of this section.

(1) Such substitution may be made at any time prior to the time of the foreclosure sale, and the foreclosure shall continue without prejudice, unless the substitute commissioner, in that commissioner's sole discretion, finds that continuation of the foreclosure sale will unfairly affect the interests of the mortgagor. Any such finding shall be in writing. If the substitute commissioner makes such a finding, the substitute commissioner shall cancel the foreclosure sale, or adjourn such sale in accordance with the provisions of § 29.115.

(2) If a substitute commissioner is designated, a copy of the written notice of such designation referred to in paragraph (c) of this section shall be served:

(i) By mail, as provided by § 29.109 (except that the minimum time periods between mailing and the date of the foreclosure sale shall not apply); or

(ii) In any other manner which, in the substitute foreclosure commissioner's sole discretion, is conducive to achieving timely notice of such substitution.

§ 29.103 Prerequisites to foreclosure.

(a) The Secretary may commence foreclosure of a single family mortgage under this part upon the breach of a covenant or condition in the mortgage agreement.

(b) No foreclosure under this part may be commenced unless any previously pending judicial or nonjudicial proceeding that has been separately instituted by the Secretary to foreclose the mortgage in a manner other than under this part has been withdrawn, dismissed, or otherwise terminated.

(c) The Secretary shall not institute any separate foreclosure proceeding during the pendency of foreclosure pursuant to this part.

(d) Nothing in this part shall preclude the Secretary from enforcing any right, other than foreclosure under applicable Federal or State law, including any right to obtain a monetary judgment, or foreclosing under this part if the Secretary has obtained or is seeking any other remedy available pursuant to Federal or State law, or under the mortgage agreement.

§ 29.105 Commencement of foreclosure.

If the Secretary determines that the prerequisites to foreclosure set forth in § 29.103 are satisfied, the Secretary may direct the foreclosure commissioner to commence foreclosure of the mortgage. Upon such request, the foreclosure commissioner shall commence foreclosure of the mortgage in accordance with § 29.107.

§ 29.107 Notice of default and foreclosure sale.

The commissioner shall commence the foreclosure by serving a Notice of Default and Foreclosure Sale. The Notice shall set forth the name, address and telephone number of the foreclosure commissioner and the date on which the Notice was issued, along with the following information:

(a) The current mortgagee (that is, the Secretary), the original mortgagee (if other than the Secretary), and the original mortgagor.

(b) The street address or a description of the location of the security property and the legal description of the security property as contained in the mortgage instrument.

(c) The date of the mortgage, the office in which the mortgage is recorded, and the liber and folio numbers or other appropriate description of the location of recordation of the mortgage.

(d) Identification of the failure to make payment, including the entire amount delinquent as of a date specified, a statement generally describing the other costs that must be

paid if the mortgage is to be reinstated, the due date of the earliest principal installment payment remaining wholly unpaid as of the date on which the notice is issued upon which the foreclosure is based, or a description of any other default or defaults upon which foreclosure is based, and the acceleration of the secured indebtedness.

(e) The date, time, and location of the foreclosure sale.

(f) A statement that the foreclosure is being conducted in accordance with the Act and this part.

(g) A description of the types of costs, if any, to be paid by the purchaser upon transfer of title.

(h) The bidding and payment requirements for the foreclosure sale, including the amount and method of deposit to be required at the foreclosure sale, and the time and method of payment of the balance of the foreclosure purchase price. The Notice shall state that all deposits and the balance of the purchase price shall be paid by certified or cashier's check. The Notice also shall state that no deposit will be required of the Secretary when the Secretary bids at the foreclosure sale.

(i) Any other appropriate terms of sale or information as the Secretary may determine.

§ 29.109 Service of Notice of Default and Foreclosure Sale.

The foreclosure commissioner shall serve the Notice of Default and Foreclosure Sale described in § 29.107 upon the following persons and in the following manner, and no additional notice shall be required to be served, notwithstanding any notice requirements of any State or local law:

(a) *Filing the notice.* The Notice of Default and Foreclosure Sale shall be filed not less than 21 days before the date of the foreclosure sale in the manner authorized for filing a notice of an action concerning real property according to the law of the State in which the security property is located, or if none, in the manner authorized by Section 3201 of title 28, United States Code.

(b) *Notice by mail.* (1) The notice of foreclosure sale shall be sent by certified or registered mail, postage prepaid, return receipt requested, to the following (except that multiple mailings are not required to be sent to any party with multiple capacities, e.g., an original mortgagor who is the security property owner and lives in one of the units):

(i) The current security property owner of record, as the record existed 45 days before the date originally set for the foreclosure sale, whether or not the notice describes a sale as adjourned as provided in this part. Notice under this part shall be mailed not less than 21 days before the date of the foreclosure sale and shall be mailed to the last known address of the current owner or, if none, to the address of the security property, or, at the discretion of the foreclosure commissioner, to any other address believed to be that of such current owner.

(ii) The original mortgagor and all subsequent mortgagors of record or other persons who appear on the basis of the record to be liable for part or all of the mortgage debt, as the record existed 45 days before the date originally set for the foreclosure sale, whether or not the notice describes a sale adjourned as provided in this part, except that the notice need not be mailed to any such mortgagors who have been released from all obligations under the mortgage. Notice under this section shall be mailed not less than 21 days before the date of the foreclosure sale and shall be mailed to the last known address of the mortgagors or, if none, to the address of the security property, or, at the discretion of the foreclosure commissioner, to any other address believed to be that of such mortgagors.

(iii) All dwelling units in the security property, whether or not the notice describes a sale adjourned as provided in this part. Notice under this section shall be mailed not less than 21 days before the date of the foreclosure sale. If the names of the occupants of the security property are not known to the Secretary, or if the security property has more than one dwelling, the notice shall be posted at the security property not less than 21 days before the foreclosure sale.

(iv) All persons holding liens of record upon the security property, as the record existed 45 days before the date originally set for the foreclosure sale, whether or not the notice describes a sale adjourned as provided in this part. Notice under this section shall be mailed not less than 21 days before the date of the foreclosure sale and shall be mailed to each such lienholder's address of record, or, at the discretion of the foreclosure commissioner, to any other address believed to be that of such lienholder.

(2) Notice by mail pursuant to this section shall be deemed duly given upon mailing, whether or not received by the addressee and whether or not a return receipt is received or the notice is returned. The date of the receipt for the postage paid for the certified or registered mail serves as proof of the date of mailing.

(3) The Notice of Default and Foreclosure Sale made pursuant to paragraph (b) of this section shall include a copy of the instrument by which the Secretary has designated him or her to act as commissioner.

(c) *Publication.* (1) A copy of the notice of default and foreclosure sale shall be published once a week during three successive calendar weeks before the date of the foreclosure sale. Such publication shall be in a newspaper or newspapers having general circulation in the county or counties in which the security property being sold is located. A legal newspaper that is accepted as a newspaper of legal record in the county or counties in which the security property being sold is located shall be considered a newspaper having general circulation for the purposes of paragraph (c)(1) of this section.

(2) If there is no newspaper of general circulation published at least weekly in the county or counties in which the security property being sold is located, copies of the Notice of Default and Foreclosure Sale shall be posted, not less than 21 days before the date of the foreclosure sale, at the courthouse of any county or counties in which the security property is located and at the place where the sale is to be held.

§ 29.111 Presale reinstatement.

(a) Except as provided in § 29.101(b), paragraph (b) of this section, and § 29.115, the foreclosure commissioner shall withdraw the security property from foreclosure and cancel the foreclosure sale only if:

(1) The Secretary directs the foreclosure commissioner to do so before or at the time of the sale; or

(2) The foreclosure commissioner finds, upon application of the mortgagor not less than three business days before the date of the sale, that the default or defaults upon which the foreclosure is based did not exist at the time of service of the Notice of Default and Foreclosure Sale; or

(3) In the case of a foreclosure involving a monetary default, there is tendered to the foreclosure commissioner before public auction is completed all amounts which would be due under the mortgage agreement if payments under the mortgage had not been accelerated, all costs of foreclosure incurred for which payment from the proceeds of foreclosure is provided in § 29.119, and the foreclosure commissioner finds that there are no nonmonetary defaults; provided, however, that the Secretary may refuse to cancel a foreclosure sale pursuant to

paragraph (a)(3) of this section if the current mortgagor or owner of record has, on one or more previous occasions, caused a foreclosure of the mortgage, commenced pursuant to this part or otherwise, to be canceled by curing a default.

(4) In the case of a foreclosure involving a nonmonetary default:

(i) The foreclosure commissioner, upon application of the mortgagor before the date of foreclosure sale, finds that all nonmonetary defaults are cured and that there are no monetary defaults; and

(ii) There is tendered to the foreclosure commissioner before public auction is completed all amounts due under the mortgage agreement (excluding amounts due only as a result of acceleration), including all amounts of expenditures secured by the mortgage and all incurred costs of foreclosure for which payment is provided in § 29.119.

(b) Before withdrawing the security property from foreclosure under paragraphs (a)(2), (a)(3), or (a)(4) of this section, the foreclosure commissioner shall notify the Secretary of the proposed withdrawal by telephone or other telecommunication device and shall provide the Secretary with a written statement of the reasons for the proposed withdrawal along with all documents submitted by the mortgagor in support of the proposed withdrawal. Upon receipt of this statement, the Secretary shall have ten (10) days in which to demonstrate why the security property should not be withdrawn from foreclosure, and if the Secretary makes this demonstration, the property shall not be withdrawn from foreclosure. The Secretary shall provide the mortgagor with a copy of any statement prepared by the Secretary in opposition to the proposed withdrawal at the same time the statement is submitted to the foreclosure commissioner. If the Secretary receives the foreclosure commissioner's written statement less than 10 days before the scheduled foreclosure sale, the sale shall automatically be postponed for 14 days. Under these circumstances, notice of the rescheduled sale, if any, shall be served as described in § 29.109.

(c) If the foreclosure commissioner cancels the foreclosure, the mortgage will continue in effect as though acceleration had not occurred.

(d) Cancellation of a foreclosure sale under this part shall have no effect on the commencement of a subsequent foreclosure proceeding.

(e) The foreclosure commissioner shall file a notice of cancellation in the same place and manner provided for filing the Notice of Default and Foreclosure Sale as provided in § 29.109.

§ 29.113 Conduct of sale.

(a) The foreclosure sale shall be conducted in a manner and at a time and place as identified in the Notice of Foreclosure and Sale and more fully described in this section. The sale will be scheduled for a date 30 or more days after the due date of the earliest unpaid installment as described in § 29.107 or the earliest occurrence of a nonmonetary default. The sale will be held at public auction and must be scheduled to begin at a time between the hours of 9:00 a.m. and 4:00 p.m. local time. The sale will be scheduled for a place where foreclosure real estate auctions are customarily held in the county or counties in which the property to be sold is located, or at a courthouse therein, or at or on the property to be sold. If the security property is situated in two counties, the sale may be held in any one of the counties in which any part of the security property is situated.

(b) The foreclosure commissioner shall conduct the foreclosure sale in a manner that is fair to both the mortgagor and the Secretary (see § 29.117) and consistent with the provisions of this part.

(c) The foreclosure commissioner shall attend the foreclosure sale in person or, if the commissioner is not a natural person, through a duly authorized employee. If more than one commissioner has been designated, at least one shall attend the sale.

(d) The foreclosure commissioner shall accept written one-price sealed bids from any party, including the Secretary, for entry by announcement at the sale so long as those bids conform to the requirements described in the Notice of Default and Foreclosure sale which are contained in § 29.107(h). The foreclosure commissioner will announce the name of each such bidder and the amount of the bid. The commissioner will accept oral bids from any party, including parties who submitted one-price sealed bids, if those oral bids conform to the requirements in the Notice of Default and Foreclosure Sale in § 29.107(h). Before the close of the sale the commissioner will announce the amount of the high bid and the name of the successful bidder.

(e) Notwithstanding the provisions of paragraph (d) of this section, neither the foreclosure commissioner nor any relative, related business entity, or employee shall be permitted to bid in any manner on the security property subject to the foreclosure sale, except that the foreclosure commissioner or an auctioneer may be directed by the Secretary to enter a bid on the Secretary's behalf. Relatives of the foreclosure commissioner who may not bid include parents, siblings, spouses and children. A related business entity that may not bid or whose employees may not bid is one whose relationship (at the time the foreclosure commissioner is designated and during the term of service as foreclosure commissioner) with the entity of the foreclosure commissioner is such that, directly or indirectly, one entity formulates, directs, or controls the other entity; or has the power to formulate, direct, or control the other entity; or has the responsibility and authority to prevent, or promptly to correct, the offensive conduct of the other entity.

(f) The commissioner may serve as an auctioneer, or the commissioner may, at the commissioner's discretion, employ an auctioneer to conduct the sale. If the commissioner employs an auctioneer to conduct the foreclosure sale, the auctioneer must be a licensed auctioneer, an officer of State or local government, or any other person who commonly conducts foreclosure sales in the area in which the security property is located. The commissioner will compensate any such auctioneer from the proceeds of the commission he or she collects under § 29.119(e).

(g) The foreclosure commissioner may require a bidder to make a deposit in an amount or percentage set by the foreclosure commissioner and stated in the Notice of Default and Foreclosure Sale as set forth in § 29.107(h) before the bid is accepted.

(h) A successful bidder at the foreclosure sale who fails to comply with the terms of the sale may be required to forfeit the cash deposit or, at the election of the foreclosure commissioner after consultation with the Secretary, shall be liable to the Secretary for any costs incurred as a result of such failure. If the successful bidder fails to comply with the terms of the sale a new notice will be sent and a new sale will be held consistent with the requirements of this part.

§ 29.115 Adjournment or cancellation of sale.

(a) The foreclosure commissioner may, before or at the time of the foreclosure sale, adjourn or cancel the foreclosure sale if the foreclosure commissioner determines, in the foreclosure commissioner's discretion, that:

(1) Circumstances are not conducive to a sale which is fair to the mortgagor and the Secretary; or

(2) Additional time is necessary to determine whether the security property should be withdrawn from foreclosure, as provided in § 29.111.

(b) The foreclosure commissioner may adjourn a foreclosure sale to a later hour the same day by announcing or posting, at the original place of sale, the new time and place of the foreclosure sale, which must be held between 9 a.m. and 4 p.m. at the original place of sale.

(c) Except as provided in paragraph (b) of this section, the foreclosure commissioner may adjourn a foreclosure sale for not less than 9 and not more than 31 days, in which case the foreclosure commissioner shall serve a Notice of Default and Foreclosure Sale revised to state that the foreclosure sale has been adjourned to a specified date between the hours of 9 a.m. and 4 p.m. The revised Notice also shall include any other information the foreclosure commissioner deems appropriate. Such Notice shall be served by publication and mailing as provided in § 29.109, except that publication may be made on any of three consecutive days prior to the revised date of foreclosure sale so long as the first publication is made at least seven days before the revised sale date, and mailing may be made at any time at least seven days before the date to which the foreclosure sale has been adjourned. The commissioner shall also, in the case of a sale adjourned to a later date, mail a copy of the revised Notice of Default and Foreclosure Sale to the Secretary at least seven days before the date to which the sale has been adjourned.

§ 29.117 Validity of sale.

Any foreclosure sale held in accordance with the Act and this part shall be conclusively presumed to have been conducted in a fair, legal, and reasonable manner. The sale price shall be conclusively presumed to be reasonable and equal to the fair market value of the property.

§ 29.119 Foreclosure costs.

The following foreclosure costs shall be paid from the sale proceeds, or from other available sources if sales proceeds are insufficient, before satisfaction of any other claim to such sale proceeds:

(a) Advertising costs and postage expenses incurred in giving notice pursuant to § 29.109 and § 29.115.

(b) Mileage by the most reasonable road distance for posting Notices under § 29.109(a)(2)(iii) and (b), and for the foreclosure commissioner's or auctioneer's attendance at the sale. The mileage shall be paid at a rate provided in 28 U.S.C. 1821.

(c) Reasonable and customary costs incurred for title and lien record searches.

(d) The necessary out-of-pocket costs incurred by the foreclosure commissioner for recording documents.

(e) A commission for the foreclosure commissioner (if the foreclosure commissioner is not an employee of the United States) for the conduct of the foreclosure in an amount to be determined by the Secretary. A commission may be allowed to the foreclosure commissioner notwithstanding termination of the sale or appointment of a substitute commissioner before the sale takes place.

§ 29.121 Disposition of sales proceeds.

(a) The proceeds of the foreclosure sale shall be used in the following order:

(1) To cover the costs of foreclosure listed in § 29.119.

(2) To pay valid tax liens or assessments on the security property as provided in the Notice of Default and Foreclosure Sale.

(3) To pay any liens recorded before the recording of the foreclosed mortgage which are required to be paid in conformity with the Notice of Default and Foreclosure Sale.

(4) To pay service charges and advances for taxes, assessments, and property insurance premiums which were made under the terms of the foreclosed mortgage.

(5) To pay the interest due under the mortgage debt.

(6) To pay the unpaid principal balance secured by the mortgage (including expenditures for the necessary protection, preservation, and repair of the security property as authorized under the mortgage agreement and interest thereon if provided in the mortgage agreement).

(7) To pay any late charges or fees.

(b) Any surplus proceeds from a foreclosure sale shall be applied, after payment of the items described in paragraph (a) of this section, in the order as follows:

(1) To pay any liens recorded after the foreclosed mortgage in the order of priority under the law of the State in which the security property is located.

(2) To pay the surplus to the mortgagor.

(c) If the person to whom surplus proceeds are to be paid cannot be located, or if the surplus available is insufficient to pay all claimants and the claimants cannot agree on the allocation of the surplus, or if any person claiming an interest in the mortgage proceeds disagrees with the foreclosure commissioner's proposed disposition of the disputed proceeds, the foreclosure commissioner may deposit the disputed funds with a legally authorized official or court. If a procedure for the deposit of disputed funds is not available, and the foreclosure commissioner files a bill of interpleader or is sued as a stakeholder to determine entitlement to such funds, the foreclosure commissioner's necessary costs in taking or defending such action shall be deductible from the disputed funds.

(d) The foreclosure commissioner will keep such records as will permit the Secretary to verify the costs claimed under § 29.119, and otherwise to audit the foreclosure commissioner's disposition of the sale proceeds.

§ 29.123 Transfer of title and possession.

(a) If the Secretary is the successful bidder, the foreclosure commissioner shall issue a deed to the Secretary upon receipt of the amount needed to pay the costs listed in § 29.121(a)(2) and (a)(3).

(b) If the Secretary is not the successful bidder, the foreclosure commissioner shall issue a deed to the purchaser or purchasers upon receipt of the entire purchase price in accordance with the terms of the sale as provided in the Notice of Default and Foreclosure Sale.

(c) The deed or deeds issued by the foreclosure commissioner shall be without warranty or covenants to the purchaser or purchasers. Notwithstanding any State law to the contrary, delivery of a deed by the foreclosure commissioner shall be a conveyance of the property and constitute passage of good and marketable title to the mortgaged property. No judicial proceedings shall be required ancillary or supplementary to the procedures provided under the Act and under this part to assure the validity of the conveyance or confirmation of such conveyance. The purchaser of property under the Act and this part shall be presumed to be a bona fide purchaser.

(d) A purchaser at a foreclosure sale held pursuant to the Act and this part shall be entitled to possession upon passage of title under paragraph (c) of this section, subject to any interest or interests not barred under § 29.129. Any person remaining in possession of the property after the passage of title shall be deemed a tenant at sufferance subject to eviction under applicable law.

(e) If a purchaser dies before execution and delivery of the deed conveying the property to the purchaser, the foreclosure commissioner shall execute and deliver the deed to a legal representative of the decedent purchaser's estate upon payment of the

purchase price in accordance with the terms of sale. Such delivery to the representative of the purchaser's estate shall have the same effect as if accomplished during the lifetime of the purchaser.

(f) When the foreclosure commissioner conveys the property to the Secretary, no tax shall be imposed or collected with respect to the foreclosure commissioner's deed, including any tax customarily imposed upon the deed instrument or upon the conveyance or transfer of title to the property.

(g) The register of deeds or other appropriate official in the county where the property is located shall, upon tendering of the customary recording fees, accept all instruments pertaining to the foreclosure which are submitted by the foreclosure commissioner for recordation. The instruments to be accepted shall include, but not be limited to, the foreclosure commissioner's deed. If the foreclosure commissioner elects to include the recitations required in § 29.127(a) in an affidavit or an addendum to the deed as provided in § 29.127(b), the affidavit or addendum shall be accepted for recordation. Failure to collect or pay a tax as described in paragraph (f) of this section shall not be grounds for refusing to record such instruments, for failing to recognize such recordation as imparting notice, or for denying the enforcement of such instruments and their provisions in any State or Federal Court.

(h) The Clerk of the Court or other appropriate official shall cancel all liens as requested by the foreclosure commissioner.

§ 29.125 Redemption rights.

(a) There shall be no right of redemption, or right of possession based upon a right of redemption, in the mortgagor or others subsequent to a foreclosure completed pursuant to this Act and this part. For purposes of this section only, a foreclosure shall be considered completed upon the date of the foreclosure sale.

(b) Section 204(l) of the National Housing Act, 42 U.S.C. 1710(*l*), and section 701 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 1452c, shall not apply to mortgages foreclosed under this Act and this part.

§ 29.127 Record of foreclosure and sale.

(a) The foreclosure commissioner shall include in the recitals of the deed to the purchaser the following items:

(1) The date, time, and place of the foreclosure sale.

(2) A statement that the foreclosed mortgage was held by the Secretary.

(3) The date of the foreclosed mortgage, the office in which the mortgage was recorded, and the liber and folio numbers or other appropriate description of the recordation of the mortgage.

(4) The details of the service of the Notice of Default and Foreclosure Sale under § 29.109, including the names and addresses of the persons to whom the Notice was mailed and the date on which the Notice was mailed, names of the newspaper in which the Notice was published and the dates of publication, and the date on which service by posting, if required, was accomplished.

(5) The date and place of filing the Notice of Default and Foreclosure Sale.

(6) A statement that the foreclosure was conducted in accordance with the provisions of the Act and this part and with the terms of the Notice of Default and Foreclosure Sale.

(7) The name of the successful bidder and the amount of the successful bid.

(b) The foreclosure commissioner may, in his or her discretion, make the recitations in paragraph (a) of this section in an affidavit or addendum to the deed, either of which is to be recorded with the deed as provided in the Act and this part.

(c) The items set forth in paragraph (a) of this section shall be prima facie evidence of the truth of such facts in any Federal or State court and evidence a conclusive presumption in favor of bona fide purchasers and encumbrancers for value without notice. Encumbrancers for value include liens placed by lenders who provide the purchaser with purchase money in exchange for a security interest in the newly-conveyed property.

§ 29.129 Effect of sale.

A sale made and conducted as prescribed in the Act and this part to a bona fide purchaser shall bar all claims upon, or with respect to, the property sold for the following persons:

(a) Any person to whom the Notice of Default and Foreclosure Sale was mailed as provided under the Act and in this part, and the heir, devisee, executor, administrator, successor or assignee claiming under any such person.

(b) Any person claiming any interest in the property subordinate to that of the mortgage if such person had actual knowledge of the foreclosure sale.

(c) Any person claiming any interest in the property whose assignment, mortgage, or other conveyance was not duly recorded or filed in the proper place for recording or filing, or whose judgment or decree was not duly docketed or filed in the proper place for docketing or filing, before the date on which the notice of the foreclosure sale was first served by publication, as required by § 29.109(c), and the executor, administrator, or assignee of such a person.

(d) Any person claiming an interest in the property under a statutory lien or encumbrance created subsequent to the recording or filing of the mortgage being foreclosed, and attaching to the title or interest of any person designated in any of paragraphs (a) through (d) of this section.

§ 29.131 Computation of time.

Periods of time provided for in this part shall be calculated in consecutive calendar days including the day or days on which the actions or events occur, or are to occur. Any such period of time includes the day on which an event occurs or is to occur.

§ 29.133 Deficiency judgment.

If the price at which the security property is sold at the foreclosure sale is less than the unpaid balance of the debt secured by such property after deducting the payments provided for in § 29.121, the Secretary may refer the matter to the Attorney General who may commence an action or actions against any and all debtors to recover the deficiency, the only limitation on such action being a prohibition against pursuit of a deficiency that is specifically set forth in the mortgage.

Dated: March 7, 1995.

Henry G. Cisneros,

Secretary.

[FR Doc. 95–8547 Filed 4–6–95; 8:45 am]

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Friday
April 7, 1995

Part VII

The President

Proclamation 6781—National Child Abuse Prevention Month

Federal Register
Vol. 60, No. 67
Friday, April 7, 1995

Presidential Documents

Title 3—

The President

Proclamation 6781 of April 4, 1995

National Child Abuse Prevention Month, 1995

By the President of the United States of America

A Proclamation

Childhood should be a special time. Every child should grow up in an atmosphere of love and respect. Children should have a chance to learn, to explore and develop, to look forward to becoming successful, happy, and loving adults. Yet tragically, for a growing number of children in the United States, childhood is an ordeal of violence, pain, and broken promises—a time to endure, not one to cherish.

Child abuse and neglect in America are on the rise. Nationwide, nearly 3 million children are reported abused and neglected each year, and more than 1,200 die from the effects. Although public concern about violence against our Nation's youth is extremely high, many Americans don't know what role they can play in protecting them. For that reason, each April, communities across the country join together to raise public awareness, to call for an end to child abuse, and to let everyone know what they can do to help.

This year, National Child Abuse Prevention Month focuses on the simple truth, ''The more you help, the less they hurt.'' The goal is to teach all Americans how they can help end the cycle of abuse and neglect that tears at the very fabric of our families, our communities, and our country. Because the effects of child abuse are felt by whole communities, the search for solutions must be a community-wide effort—and every citizen must get involved.

Child abuse prevention efforts succeed because of partnerships among social service agencies, schools, religious organizations, law enforcement agencies, and the business community. I encourage you to get involved. Volunteer on a crisis hotline for parents who are under stress, or help start a parents' support group. Perhaps you could find space in your community to establish a ''drop-in center'' where parents can get information and support. You could urge your religious or neighborhood group to sponsor a home visitor program for new parents. Or you might help your local school and youth organizations arrange for speakers and events about preventing violence against children.

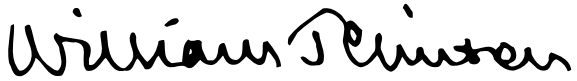
These are just some of the steps we can take to help protect our children and to strengthen our families. If we don't change things, our children—more of them each day—will lose their chance at life. And our Nation will lose the tremendous potential that every young life holds.

America's children are products of the world we have made for them. Their well-being is a reflection of our commitment, maturity, and wisdom. If we nurture our children and fill their lives with genuine caring and respect, we will see our love realized in a world of enduring hope and promise.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the month of April 1995 as ''National Child Abuse Prevention Month.'' I call upon all Americans

during this month and throughout the year to help keep our children safe from harm.

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



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