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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

RIN 3206–AG43

Absence and Leave; Sick Leave for Adoption

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations to permit employees to use sick leave for purposes related to adoption of a child.

EFFECTIVE DATE: June 21, 1995.

FOR FURTHER INFORMATION CONTACT:
Sharon Herzberg, (202) 606–2858.

SUPPLEMENTARY INFORMATION: On December 2, 1994, the Office of Personnel Management (OPM) published interim regulations (59 FR 62272) implementing section 629(b) of Public Law 103–329, the Treasury, Postal Service and General Government Appropriations Act for fiscal year 1995, September 30, 1994. Section 629(b) amended 5 U.S.C. 6307 to permit employees to use sick leave for purposes related to the adoption of a child. Section 629(b) also directed OPM to prescribe regulations to allow an employee to substitute sick leave retroactively for all or any portion of annual leave used by an employee for adoption-related purposes between September 30, 1991, and September 30, 1994.

The 60-day comment period ended on January 31, 1995. OPM received comments from six individuals and two organizations that supported adoptive families. Following is a summary of the comments.

Use of Sick Leave for Bonding With the Child

All commenters supported the use of sick leave for adoption-related purposes. One commenter applauded OPM's philosophy of not attempting to specify all of the circumstances in which the use of sick leave for adoption-related activities would be appropriate and opposed any greater specificity in the final rule. However, many other commenters were concerned about the limitations on using sick leave for bonding with the adopted child. The commenters believed that adoptive parents should be provided the same maternity benefits as those accorded birth parents.

Three commenters noted that it is important to the health and well-being of an adoptive child to allow adoptive parents a period of absence from work after the child arrives in the home to assist the adopted child in acclimating to new surroundings and adjusting to new family members. The commenters believe this is particularly important when the adopted child is not a newborn, has not previously bonded with an adult, and is going through a period of tremendous confusion and upheaval.

One commenter stated that by permitting sick leave to be used only for periods during which an adoptive parent is ordered or required by the adoption agency or by a court to be absent from work to care for the adopted child sends a message to adoptive parents and their children that they are different and should be accorded disparate treatment. An organization stated that adoption agencies are turning away from requiring an adoptive parent to be home to care for a newly adopted child, recognizing that this imposes a hardship on the family and restricts the pool of eligible families for children waiting for adoption. However, the organization further stated that although adoption agencies recognize that it may be impossible to require new adoptive parents to stay home, they encourage them to do so.

Some of the commenters believe adoptive mothers are treated in a discriminatory manner because they are not entitled to maternity leave as are biological mothers. One commenter stated that it is routine practice for the birth mother to be granted weeks or months of ''maternity'' sick leave without requiring strict medical justification. The commenter noted that requiring an adoptive parent to justify each court, agency, or social-worker visit imposes a stricter standard. One commenter suggested that OPM should recognize the reality of maternity leave for biological mothers—i.e., while sick leave would appear to be granted for the welfare of the mother, it is in fact used for the welfare of the child. Another commenter believed the absence of a provision to afford sick leave to birth fathers, and by extension to adoptive fathers, for maternity/bonding purposes is discriminatory and should be corrected.

Contrary to the belief of most of the commenters, Federal employees, including birth mothers, do not have an automatic entitlement to ''maternity leave.'' Sick leave is granted to a birth mother only for the period of incapacitation as a result of physical or mental illness, injury, pregnancy, childbirth, or medical examinations or treatments. Agencies may grant sick leave only when supported by evidence that is administratively acceptable. When determined necessary, an agency may require medical certification. The birth mother must use annual leave and/or leave without pay for absences from work beyond the period of incapacitation—e.g., for care of the newborn, bonding with the child, and other childcare responsibilities.

The birth father is allowed up to 13 days of sick leave each leave year to provide care for a family member under OPM's final sick leave regulations published in **Federal Register** on December 2, 1994 (59 FR 62266). OPM's regulations are consistent with the Federal Employees Family Friendly Leave Act (Public Law 103–388, October 22, 1994). The birth father may use sick leave to care for the birth mother during pregnancy and recovery from childbirth. This may include accompanying the birth mother to doctor's appointments, attending to the birth mother in the hospital or other health care facility, or caring for the birth mother during the period of incapacitation. Again, the agency may grant sick leave only when supported by evidence that is administratively acceptable, including medical certification when required.

Adoptive parents may request sick leave for adoption-related purposes including, but not limited to,

appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and for any periods during which an adoptive parent is ordered or required by the adoption agency or by a court to be absent from work to care for the adopted child. Agencies may require employees to provide evidence that is administratively acceptable to the agency in support of a request for sick leave for adoption-related purposes.

There is no provision in law or regulation to permit the use of sick leave by birth parents or adoptive parents who voluntarily choose to be absent from work to bond with a birth or adopted child. In addition, we believe granting sick leave to an adoptive mother for bonding purposes for a period of the time equal to that received by a birth mother for incapacitation as a result of childbirth would discriminate against adoptive fathers. The adoptive mother would receive a greater entitlement to use sick leave for bonding purposes than would an adoptive father. We believe the administration of the sick leave program in no way discriminates against either birth or adoptive parents. The Equal Employment Opportunity Commission found OPM's interim regulations on sick leave for adoption to be ''consistent with Federal equal employment opportunity law and policy.''

Another commenter declared that OPM's interim rule is inconsistent with the intent of the Family and Medical Leave Act of 1993 (FMLA). The commenter believes the FMLA intends for adoption and childbirth to be treated in the same manner and that employees should receive the same amount of leave for these purposes.

The FMLA provides an employee with a total of up to 12 workweeks of *unpaid* leave during any 12-month period for the birth of a son or daughter; the adoption/foster care of a son or daughter; or the serious health condition of the employee or his or her spouse, son, daughter, or parent. By law, an employee may elect to substitute paid leave for unpaid leave under the FMLA, but such substitution must be consistent with current laws and regulations. OPM believes the regulations are consistent with the FMLA in that employees are entitled to 12 weeks of unpaid leave for either the birth or adoption of a child. If the employee chooses to substitute paid sick leave for unpaid leave under the FMLA, he or she may do so, but only in those situations where the use of sick leave would otherwise be permitted by law or regulation.

A commenter maintained that since the law (5 U.S.C. 6307) permits agencies to advance a maximum of 30 days of sick leave for purposes relating to the adoption of a child, Congress intended adoptive parents to have entitlement to 6 weeks (30 days) of sick leave for adoption and bonding. However, the legislative history of the 1-year experimental program created by Public Law 101–509 to test the feasibility of granting sick leave for adoption-related purposes does not support the contention that Congress intended an entitlement to sick leave for bonding purposes. Congress did recognize the time-consuming aspects of adoption and wished to make sick leave available for adoption-related purposes. Representative Frank Wolf, sponsor of the program, spoke of eliminating ''an impediment to adoption faced by Federal workers—the fact that current Federal leave policies require adoptive parents to take annual leave, their vacation time, when arranging an adoption. This measure would simply put adoptive parents in the Federal work force on an equal footing with biological parents, who are currently allowed to take sick leave for prenatal doctor visits.'' (See Congressional Record, Extension of Remarks, May 24, 1990, page E1757.) There is no indication that Congress intended to entitle adoptive parents to more paid leave than is available to birth parents.

We recognize the importance of and need for bonding time for both birth and adoptive parents and their new children. However, we continue to believe annual leave and leave without pay are the appropriate means to secure time with the newborn or newly-adopted child. In addition, agencies have the authority to advance annual leave to employees. The new entitlement to use sick leave to fulfill the legal and administrative requirements for adoption will allow an adoptive parent to conserve his or her annual leave and ensure the availability of annual leave for the period of bonding with the child. In addition, the FMLA provides 12 weeks of leave without pay for childbirth or adoption and can be used alone or in conjunction with annual and sick leave, where appropriate, to provide adequate time off for both birth and adoptive parents. OPM believes no change is necessary in the interim regulations.

Retroactive Substitution of Sick Leave for Annual Leave

As required by section 629(b) of Public Law 103–329, OPM's interim regulations permit an employee to substitute sick leave retroactively for all or any portion of any annual leave used by the employee for adoption-related purposes between September 30, 1991, and September 30, 1994. One commenter believed permitting an employee to substitute sick leave retroactively for annual leave used for purposes of adoption unfairly penalized birth fathers because birth fathers cannot substitute sick leave retroactively for annual leave used for the birth of a child.

The Federal Employees Family Friendly Leave Act and OPM's final sick leave regulations permit most Federal employees to use a total of up to 104 hours (13 days) of sick leave each leave year to give care or otherwise attend to a family member or to make arrangements for or attend the funeral of a family member. There are no provisions in law or regulation permitting the retroactive substitution of sick leave for annual leave used for these purposes. In contrast, the retroactive substitution of sick leave for annual leave taken for adoption-related purposes is an entitlement under section 629(b) of Public Law 103–329.

Another commenter suggested that when the substitution of sick leave for annual leave results in an annual leave balance that exceeds the maximum annual leave ceiling allowed for carryover into the next leave year, OPM should allow an employee 3 years to use the excess annual leave. OPM addressed this issue in the ''Supplementary Information'' accompanying the interim regulations. The agency and employee should be aware of an employee's obligation to schedule and use excess annual leave before the end of the year. Forfeited annual leave may not be restored unless the employee meets the conditions specified in 5 U.S.C. 6304(d). We caution employees to apply for the substitution of sick leave for annual leave used for adoption-related purposes early enough in the leave year to allow sufficient time to schedule and use the credited annual leave before the end of the leave year. We believe no change is necessary in the regulations.

The same commenter recommended that OPM indicate what is a ''reasonable'' period of time for an agency to comply with the employee's request for substitution. The commenter suggested a period of 6 weeks. The amount of time needed to comply with an employee's request for retroactive substitution will vary depending on the number of applications received and the quality of the documentation/evidence submitted that specifies the period(s) and amount(s) of annual leave that were used. OPM extended the time period by 1 year, to September 30, 1996, for an

employee to submit a written application to have his or her leave accounts adjusted. We believe this will make it possible for all affected employees to benefit from this provision. Therefore, OPM has not revised the regulation in this regard.

Miscellaneous Leave Administration Amendments

On December 2, 1994, OPM issued final sick leave regulations to permit most Federal employees to use a total of up to 104 hours of sick leave each leave year to provide care for a family member or to make arrangements for or attend the funeral of a family member. An employee may use up to 40 hours of his or her accrued sick leave for these purposes without regard to the amount of leave remaining in his or her sick leave account. An employee may use up to 64 additional hours of sick leave if he or she maintains a balance of at least 80 hours in his or her sick leave account.

OPM received many telephone inquiries concerning whether agencies may advance sick leave for the purpose of satisfying the 80-hour sick leave balance requirement. Although this matter was addressed briefly in the ''Supplementary Information'' accompanying the final regulations, we are using this opportunity to further clarify the regulation at 5 CFR 630.401(c).

The 40 hours of sick leave that may be used for family care or bereavement purposes may be advanced. Agencies may not advance sick leave so that an employee may meet the requirement to maintain a balance of 80 hours of sick leave in his or her account or to use additional sick leave for these purposes. The intent of the statutory 80-hour minimum sick leave balance requirement is that an employee should retain at least 80 hours of accrued sick leave in his or her account for use in the event of the employee's own incapacitation for duty—i.e., without the necessity of requesting advanced leave or shared leave. To advance an additional amount of sick leave (beyond the 40 hours every employee is entitled to use for family care or bereavement purposes) would circumvent the intent of the law. Therefore, we are amending section 630.401(c) to state that leave may not be advanced for the purpose of meeting the requirement to retain a minimum sick leave balance or using additional sick leave for family care or bereavement purposes.

OPM is also using this opportunity to make a technical correction in 5 CFR 630.201, Definitions. In the interim regulations to incorporate certain incentive awards and pay and leave administration rules contained in the provisionally retained Federal Personnel Manual material published in the **Federal Register** on December 28, 1994 (59 FR 66629), the numbering of paragraphs (7) through (9) of 5 CFR 630.201(b) was incorrect. The numbering of paragraphs (7) through (9) has been corrected as follows: (7) *Medical certificate;* (8) *Uncommon tour of duty*; and (9) *United States.*

Regulatory FlexibilityAct

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal employees and agencies.

List of Subjects in 5 CFR Part 630

Government employees.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending part 630 of title 5 of the Code of Federal Regulations as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; § 630.301 also issued under Public Law 103–356 (108 Stat. 3410); § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6403(d)(3), Public Law 103–337 (108 Stat. 2663); subpart D also issued under Public Law 103–329 (108 Stat. 2423); § 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, June 16, 1965, 3 CFR 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332 and Public Laws 100–566 (102 Stat. 2834) and 103–103 (107 Stat. 1022); subpart J also issued under 5 U.S.C. 6362 and Public Laws 100–566 and 103–103; subpart K also issued under Public Law 102–25 (105 Stat. 92); and subpart L also issued under 5 U.S.C. 6387 and Public Laws 103–3 (107 Stat. 23).

Subpart D—Sick Leave

§ 630.201 [Amended]

2. Section 630.201 is amended by redesignating the first paragraph (b)(8) as paragraph (b)(9), paragraph (b)(7) as new paragraph (b)(8), and the existing second paragraph (b)(8) as paragraph (b)(7).

3. In § 630.401, paragraph (c) is revised to read as follows:

§ 630.401 Grant of sick leave.

* * * * *

(c) To be granted any sick leave for the purposes described in paragraphs (a)(3) or (4) of this section during any leave year in an amount exceeding a total of 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours in the employee's scheduled tour of duty each week), the employee concerned shall retain in his or her sick leave account a balance of at least 80 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, an amount equal to twice the average number of hours in the employee's scheduled tour of duty each week). No sick leave may be advanced under 5 U.S.C. 6307(d) for the purpose of meeting the requirement to retain a minimum sick leave balance or for using additional sick leave for the purposes described in paragraphs (a)(3) and (4) of this section when such use would otherwise cause the employee's sick leave balance to fall below the minimum required.

* * * * *

Subpart I—Voluntary Leave Transfer Program

§ 630.907 [Amended]

3. In § 630.907 paragraph (c) introductory text, remove the words ''of chapter I''; in paragraph (d)(2), remove the second occurrence of the word ''by'' and add in its place the word ''to''.

Subpart J—Voluntary Leave Bank Program

§ 630.1101 [Amended]

4. In § 630.1011 paragraph (b)(2), remove the word ''affect'' and add in its place the word ''effect''.

5. In addition to the amendments set forth above, in 5 CFR part 630, subparts I and J, remove the words ''or work'' in the following places:

§§ 630.905, 630.907, 630.1007, 630.1008 [Amended]

(a) Section 630.905 (b) and (c);

(b) Section 630.907(a)(1), (a)(2), and (d)(1);

(c) Section 630.1007 (b) and (c); and

(d) Section 630.1008(a)(1), (a)(2), and (d)(1).

[FR Doc. 95–12411 Filed 5–19–95; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Rural Housing and Community Development Service

Rural Business and Cooperative Development Service

Rural Utilities Service

Consolidated Farm Service Agency

7 CFR Part 1980

RIN 0575–AB15

Rural Housing Loans

AGENCIES: Rural Housing and Community Development Service, Rural Business and Cooperative Development Service, Rural Utilities Service, and Consolidated Farm Service Agency; USDA.

ACTION: Final rule.

SUMMARY: The Rural Housing and Community Development Service (RHCDS) amends its Guaranteed Rural Housing Loans regulation. This action is taken to address issues which arose during the implementation phase of the program. The intended effect of this action is to make the program more acceptable to lenders and the secondary market for mortgage loans, to remove RHCDS internal administrative procedures from the **Federal Register**, and to make minor adjustments and corrections as a result of the Agency's experience in implementing the program.

EFFECTIVE DATE: June 21, 1995.

FOR FURTHER INFORMATION CONTACT: Michael S. Feinberg, Senior Loan Specialist, Rural Housing and Community Development Service, USDA, Room 5334–S, South Agriculture Building, 14th and Independence SW., Washington, DC 20250, telephone (202) 720–1474.

SUPPLEMENTARY INFORMATION:

Classification

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

Paperwork Reduction Act

The information collection and recordkeeping requirements contained in this regulation have been previously approved by the Office of Management and Budget (OMB), except for § 1980.351, which will not become effective until approved by OMB, in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). The assigned OMB control number is 0575–0078. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer of USDA, Washington, D.C. 20503. Please send a copy of your comments to Jack Holston, Agency Clearance Officer, USDA, RECD, Ag Box 0743, Washington, DC 20250. (OMB# 0575–0078)

Environmental Impact Statement

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

Intergovernmental Consultation

For the reason set forth in the final rule related Notice to 7 CFR part 3015, subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order (EO) 12372 which requires intergovernmental consultation with State and local officials.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. In accordance with this rule: (1) all state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with the regulations of the agency at 7 CFR part 1900 subpart B or those regulations published by the Department of Agriculture to implement the provisions of the National Appeals Division as mandated by the Department of Agriculture Reorganization Act of 1994, whichever is applicable, must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under 10.410, Very Low to Moderate Income Housing Loans.

Discussion

On September 3, 1993, Farmers Home Administration (FmHA) published a proposed rule with request for comments for the Guaranteed Rural Housing (GRH) program. We received forty-two comments. Comments were from Agency employees or employee groups, lenders, secondary market sources, and various interest groups.

The Federal Crop Insurance Reform and Department of Agriculture Act of 1994, Public Law No. 103–354, signed into law on October 13, 1994, resulted in the restructuring of the Department of Agriculture's Rural Housing programs, formerly carried out by FmHA, which are now assigned to RHCDS. This change is reflected in this regulation.

The Agency discussed the need to make the program more compatible with existing mortgage lending programs. Many of the comments addressed this issue. Some of the respondents felt that the Agency should make the program more like conventional loans. Others advocated the use of other Federal mortgage programs as a guide. We tried to keep the better features of both conventional and Government programs to make the Guaranteed Rural Housing Program as easy for lenders to use as possible. RHCDS believes the easier it is for lenders to participate, the more borrowers can be served with the program.

This regulation omits the detailed internal agency administrative instruction used by the field offices to administer the program. In the past, RHCDS program regulations and FmHA Instructions have been the same. Agency policy is to publish any regulation which confers a benefit or imposes an obligation on the public. It is also agency policy to publish any regulation which contains information necessary for members of the public to understand their responsibilities. The Agency does not intend to publish a regulation that omits or evades issues which are subject to public comment or would be of interest to the public. Any substantive changes in the regulation will continue to be published in the **Federal Register**. Each RHCDS field office has a copy of the FmHA Instruction and a copy is available upon written request to RHCDS.

Some respondents, mostly RHCDS employees, focused on the lack of detailed administrative instructions. The Agency continues to publish its FmHA Instruction, discussed above, which contains information on carrying out administrative details.

In previous publications of this regulation, RHCDS incorporated the forms used in the program into the **Federal Register**. RHCDS no longer publishes the forms. We incorporated the substantive materials from the forms into the regulation.

We discuss other significant changes below in general order of appearance in

the regulation, not based on order of importance.

RHCDS added several new definitions based on the comments. New definitions include: Agency, Co-applicant, Net proceeds, and Qualifying income.

One respondent suggested a section for abbreviations and acronyms which we added. The preamble for the Proposed Rule erroneously stated that the definition for ''Existing Dwelling'' was deleted. The definition for ''Existing Dwelling'' provides that an existing dwelling is one ''which has been occupied for one year as a primary residence.'' Several respondents suggested that RHCDS revise the standard. They proposed that an existing dwelling is one that has been completed for more than 12 months as evidenced by a certificate of occupancy. RHCDS agrees and adopts this change.

Several respondents pointed out that the program does not provide for dwellings under construction before the lender receives an application for a guaranteed housing loan. This includes speculative dwellings as well as dwellings built by builders not familiar with the RHCDS program. This results in a burden on builders and home-buyers who would have to wait until the dwelling is more than 12 months old before receiving a loan. RHCDS addresses this in its direct program by limiting the amount of the loan to 90 percent of the appraised value. Based on the comments, we incorporated this same provision into the Guaranteed Rural Housing program.

One respondent indicated a need for clarification of ''first time homebuyer.'' The authorizing legislation provides for granting preference to first time homebuyers. If there are two requests for commitments ready for approval but there is a shortage of funds, RHCDS gives preference to the first time homebuyer over another applicant.

One respondent noted that the Proposed Rule omitted a provision that allowed sale of the loan directly to Fannie Mae and Freddie Mac. This has been corrected.

One respondent encouraged RHCDS to improve the accessibility of housing counseling in rural areas. RHCDS has solicited interested parties for implementation of a demonstration counseling program (see **Federal Register** Vol. 59, No. 31, page 7240 dated February 15, 1994). Loan applicants will be required to attend and complete the housing counseling if it is available in the area.

Several respondents indicated that the various provisions for lender reviews were confusing. RHCDS removed the review requirements that were duplicative.

RHCDS had revised the section on loan purposes in the Proposed Rule. Several respondents requested restoration of certain specific items such as storm cellars, energy saving measures, etc. RHCDS did not intend to exclude storm cellars, energy saving measures, etc. as long as they are part of the dwelling acquisition. This has been clarified.

Several respondents complained about the prohibition on refinancing in section 1980.311(a). They argued refinancing could assist some homeowners in retaining their dwellings. Some respondents suggested guaranteed loans could help in the graduation of direct loans. The authorizing legislation limits the program to assistance for housing acquisition only. There is no authority for refinancing. In addition, the demand for guaranteed housing dollars exceeds available funds.

RHCDS proposed a prohibition on dwellings with in-ground swimming pools. Several respondents argued that some areas of the country have existing housing stock that is modest in cost even though there is a pool. The respondents commented that the value of the dwelling is often not significantly affected by the pool. They argued exclusion of pools would preclude financing many otherwise eligible dwellings. RHCDS continues to believe that it is not appropriate to finance dwellings with in-ground pools. No change is made.

RHCDS has had a long standing policy of financing in areas only where the streets and roads are maintained by a public entity. We proposed to permit financing where the streets and roads are maintained by a Homeowner Association in projects which have been approved or accepted by HUD, VA, Fannie Mae, or Freddie Mac. One respondent observed that the issue of project acceptance is better placed in a different paragraph. RHCDS agrees and we revised and restructured this portion of the regulation.

We received several comments on the proposal to replace the provision that limits the site to one acre. RHCDS proposed that the value of the site cannot exceed 30 percent of the total value of the property. One respondent felt the proposed change was not as clear as the 1 acre rule. Some respondents believed the 30 percent rule may cause problems in high cost areas. One respondent indicated that the one acre rule is easier to explain and understand. Another respondent suggested the 30 percent rule is an unnecessary regulatory burden. Most of the comments, however, favored the proposal. Many people felt that the one acre rule was overly restrictive in many areas of the country. RHCDS believes the issue of high cost areas is adequately addressed by the provision that the 30% limitation does not apply when the site cannot be subdivided into two or more sites. The intent of the rule is to assure financing is limited to rural residences and to avoid financing income producing properties. Other lenders use a similar provision.

RHCDS required completion of all development work before issuance of the guarantee. Several respondents observed that RHCDS has no provision for issuance of the guarantee when there is a delay in completion of required development work due to inclement weather. This requires lenders to delay closing until completion of the development work and places undue burden on both the purchaser and the seller. The respondents suggested RHCDS adopt a provision allowing the use of escrow accounts in situations where necessary repair work is delayed due to weather. RHCDS agrees that this would reduce the regulatory burden for its customers.

Many respondents expressed interest in section 1980.317 which implements Executive Order 11246. Respondents took particular interest in the equal opportunity and nondiscrimination inspection and reporting requirements. A number of the respondents argued that these requirements should not apply to guaranteed loans in as much as there is no direct federal financing involved. Some respondents argued that since construction draws are not allowed, RHCDS is not a party in the construction process. While RHCDS is not directly involved in the construction financing, there likely would be no construction contract without the RHCDS guarantee. Executive Order 11246 applies when there is a construction contract of more than $10,000 between the borrower and the builder.

Several comments addressed flood zones. RHCDS has long had a policy of not financing dwellings located within a flood plain unless it could be demonstrated that there was no alternative. This policy is derived from Executive Order 11988, Flood Plain Management. Practical alternatives are addressed through the environmental review process. In addition, the Agency requires that the first floor elevation to be above the 100 year flood line. These are not changes to RHCDS policy or to the GRH program. This revision simply incorporates the language from other

Agency regulations into this regulation for consistency.

RHCDS had proposed to amend section 1980.324(b) on late charges to make the maximum fee a lender could charge for late payments an unpublished administrative provision. One respondent indicated that the maximum late charge should be available for public comment. This section is revised to provide that the late charge cannot exceed the late charge as prescribed by either HUD or by Fannie Mae. This will allow both HUD and conventional lenders to participate in the program making it available to as many borrowers as possible.

RHCDS proposed to limit the age of the appraisal to not more than 3 months from the date of submission to RHCDS. Several respondents felt this did not allow enough time in some circumstances and proposed a 6 month time frame. RHCDS agrees and the change is adopted.

RHCDS had proposed to implement an environmental checklist intended to help the Agency determine the need for a site visit for environmental reasons. The checklist was to be similar to HUD Form 54891, ''Appraiser/Review Appraiser Checklist.'' Of the seven comments on this subject, only two were favorable. Two respondents advised that HUD no longer uses the form in most circumstances (See 58 Fed. Reg. 41328–41339, August 3, 1993). One respondent reported that they had difficulty locating appraisers who were familiar with the form. Another respondent had little problem locating several appraisers familiar with it. One of the respondents represented an organization of professional real estate appraisers. This respondent indicated the proposed form would require appraisers to respond to questions which they were not trained or qualified to identify. RHCDS has determined it will not adopt the use of the HUD form at this time. The Agency plans to review this issue further for possible future implementation.

RHCDS proposed discontinuing the use of replacement cost in appraisals of dwellings which are more than a year old. One respondent felt that the appraisers should provide the depreciated value of the dwelling and the value of the site for determining insurance and site values. RHCDS believes that these are loan underwriting issues which should be left to the lender. The revisions are adopted as originally proposed.

Several comments were received regarding RHCDS appraisal reviews. Since the performance of the appraisal review is an internal matter, RHCDS is removing the language from the **Federal Register** regarding appraisal reviews.

Section 1980.340(c) provides that the ''Lender and borrower are responsible for seeing that loan purposes are accomplished and loan funds are properly utilized.'' One respondent felt that the Agency is holding the borrower responsible for matters that require a high degree of technical expertise. RHCDS disagrees. The Government does not perform these functions on behalf of the borrower or the lender. Lenders and borrowers must take the necessary actions to protect their interest.

One respondent took exception with RHCDS's inspection requirements for new and existing dwellings. The respondent indicated that it was not typical to obtain inspections beyond that done by or recommended by the appraiser. The respondent also complained that RHCDS did not provide guidance on minimum qualifications a qualified inspector must meet. Some respondents suggested that only a final inspection need be obtained for new dwellings along with a certification that the dwelling was built according to the plans and specifications and that the appraiser address the inspection issue for existing dwellings. RHCDS continues to believe it is important to have the dwelling inspected. In many instances, the inspection can be performed by the appraiser. The Agency expects that lenders will use the same standards that any reasonable person would use to obtain an inspection of their own dwelling. The regulation is clarified on this point.

Several respondents expressed interest in the requirements for existing dwellings. Section 1980.341(b) made reference to the general requirements of the Agency's Guide 2 to subpart A of part 1924. The respondents indicated a need for clearer guidance. RHCDS agrees and we have revised this section to incorporate the HUD guidelines for existing properties. Many residential appraisers and inspectors are familiar with the HUD guidelines and this will make it easier for lenders to use the program.

Section 1980.345 provides the eligibility requirements an applicant must meet at the time of ''loan approval.'' Program eligibility is limited to moderate income households. One respondent questioned whether loan approval referred to approval by the lender or RHCDS. This is pertinent because an applicant that exceeds the moderate income limits is not eligible for the program. The point in time at which income is determined could result in different decisions. Another respondent suggested using loan closing as a point of reference instead of loan approval. RHCDS believes this would cause undue burden to borrowers, sellers, and lenders by rendering ineligible loans in which considerable processing time and expense has been incurred. It is important to note the distinction between RHCDS approval and lender approval. The lender approves the loan. RHCDS approves issuance of a loan guarantee. The regulation is revised to bring out this distinction and approval will clearly reference issuance of the commitment for a loan guarantee.

One respondent suggested that RHCDS adopt the income limits used in the Fannie Mae Community Home Buyers Program. The respondent complained that it is burdensome to work with income limits that vary by family size. Fannie Mae limits are simpler to work with, however, many families otherwise eligible would be excluded since the current method provides higher limits for larger family sizes. This provision remains unchanged.

One respondent recommended that RHCDS change the ratio term ''Monthly Obligation to Income (MOTI)'' to ''Total Debt Ratio.'' ''Total Debt'' is the terminology used in the industry. RHCDS agrees.

The proposal to consider the cost of job related expenses in the total debt ratio generated nine comments. Three respondents opposed the addition of this provision. One clearly favored including child care as an expense. There were two suggestions for clarification and one recommendation for further study of the issue. RHCDS had proposed this revision in order to make its program more consistent with other Federal program. It has been learned that other agencies are reviewing this requirement. Based on its experience with this program to date, RHCDS has not had cause to believe its current handling of job related expenses has led to losses that otherwise would not have occurred. The Agency has opted for further study of the issue.

Several respondents suggested adding two percent to the qualifying ratios for dwellings that meet the 1992 Model Energy Code (CABO 92 MEC). After careful consideration, the Agency is not adopting this change. The reason is that the Agency's thermal standards which were already in place meet or exceed the Model Energy Code. Adoption of the Model Code standards will not enhance the repayment ability of an RHCDS borrower.

Three respondents suggested the Agency provide guidance on the consideration of contingent liabilities.

Contingent liabilities include debts from a previous marriage and debts assigned to the former spouse in a divorce decree. The lack of guidance is burdensome and inefficient for borrowers and lenders. RHCDS added this guidance.

Another respondent expressed concern about the difference between eligible income and qualifying income. Authorizing legislation limits program eligibility to those borrowers with a moderate income. In making this determination, RHCDS looks at income that many lenders typically would not rely on for repayment ability. We clarified the difference between ''eligible'' and ''qualifying'' income. RHCDS uses ''eligible'' income to determine the borrower's eligibility for the program. Eligibility is based on current income. The lender uses ''qualifying'' income in loan underwriting. ''Qualifying'' income provides the basis for repayment ability. For example, income from a part time job the applicant has held for less than 6 months is eligible income. Unless the applicant has a history of similar income, it may not be dependable enough to consider for repayment ability.

RHCDS had proposed allowing the lender to waive the qualifying ratios when there are compensating factors. One respondent suggested that this approach could be workable but would require considerable RHCDS training and oversight. Another respondent suggested the Agency have the lender request an Agency determination for the waiver. Another respondent suggested that ''waiver'' of the ratios implies that lenders may not have to consider income adequacy. RHCDS agrees with all of these comments. We made revisions so the lender may request RHCDS concurrence in allowing a higher ratio.

Several respondents discussed loan underwriting standards for credit history. Two respondents disagreed with the RHCDS standard which provides that any debt written off by the creditor within the last 36 months is adverse credit. They argued that sometimes a debt is written off by the creditor but the borrower continues to pay. The respondents stated this is not adverse credit. RHCDS considers any credit history blemish to be adverse credit. There are, however, circumstances in which the borrower can reasonably explain adverse credit. When adverse credit is beyond the applicant's control, the lender may consider this in making a final determination.

Several respondents alluded to a 36-month ''waiting period'' in the case of a bankruptcy. There is no ''waiting period'' in the regulations. In fact, RHCDS regulations do not directly address bankruptcy as being adverse credit. There is a provision that bankruptcy older than 36 months should not be considered in evaluating credit history.

One respondent commented on the eligibility issue of home ownership. An applicant that already owns an adequate dwelling is not eligible. Sometimes a family moves from one area to another and they are unable to sell their former residence. The respondent suggested a provision that the applicant could meet the ownership requirement as long as he or she does not own a dwelling in the local commuting area. We have revised the regulation to incorporate the clarification requested.

Another respondent suggested a revision on the provision for other credit. The issue is whether the qualification for another Federal or state program would preclude eligibility for the program or not. We have revised the regulation to incorporate the clarification requested.

Several respondents suggested changing the determination of annual income to include a 24 month history instead of a 12 month history and including straight line depreciation in determining income. Annual and adjusted income, by law, have the same meanings given by section 3(b)(4) and 3(b)(5) of the United States Housing Act of 1937. The regulation already provides for the consideration of depreciation as allowed by the Internal Revenue Service.

One respondent pointed out that income from the employment of minors is not included in annual income but the regulation calls for its use in determining repayment ability. The respondent suggested elimination of the provision for counting a minor's income. Although the minor cannot be a party to the note, the lender may consider this additional household income as a possible compensating factor.

RHCDS had proposed to reserve the authority to issue commitments subject to the availability of funds. RHCDS recognizes the loan making process can range from several weeks to several months. RHCDS receives no notification of a pending application until the Lender submits a request for a loan guarantee. Since RHCDS's funding authority is based on annual appropriations, there could be loans in process which the Agency cannot fund. RHCDS received eight comments on the proposal to issue commitments subject to funding. Seven of these opposed the proposal. Several respondents argued that the proposal would represent an unacceptable risk to the secondary market and to lenders. One respondent stated that commitments without funding would weaken the validity of the conditional commitment. Most of the respondents suggested an alternative method such as the creation of a register for loan applications. This would enable the Agency to track the application pipeline and assure lenders of the availability of funds. Section 1980.351 implements a funding reservation system.

Section 1980.353(c) clarifies that the loan must be underwritten by the lender before it is submitted to RHCDS. Previous language called for lender submission of a feasibility analysis. This change in terminology was made based on comments received both from RHCDS employees and lenders.

One respondent suggested that the request for a conditional commitment should include copies of the income verifications and the purchase agreement or construction contract. We added these to the list of required documentation.

Several respondents made suggestions regarding requirements for verification of the borrower's income. One suggestion was to clarify that the verification must be valid at that time of issuance of the Conditional Commitment. Several respondents suggested that RHCDS permit the use of an authorization for release of information instead of the borrower signing the verification form directly. This would allow the lender to increase their efficiency. Another suggestion encourages the use of secondary means of income verification. For example, many lenders obtain a copy of the 3 most recent paycheck stubs for employed borrowers to compare with the information in the employer verification. These suggestions have been adopted.

There were four comments on lender submission of a copy of the loan docket. Each of the respondents asked for an explanation of what a ''loan docket'' consists of. Two of the respondents suggested that RHCDS should already have copies of the information it needs and that the requirement may be redundant. One respondent suggested that RHCDS should ask only for items which are necessary to determine that the closing conditions were met. RHCDS agrees and so revised the regulation.

Two respondents asked that the provision regarding additional loans be removed or revised. One respondent stated the prohibition prevents the lender from making a home

improvement loan but leaves other lenders free to make the same loan. RHCDS agrees with the respondents and deleted this provision.

Two comments addressed assumptions and transfers. One respondent was concerned that since transfers were permitted but not required, a lender might unfairly place a borrower in jeopardy by refusing to permit a transfer. The other respondent felt transfers should be allowed at market value or for the outstanding debt, whichever is less. The same respondent proposed release of liability for the transferor. The Housing Act of 1949, as amended, prohibits the release of liability. For this reason, RHCDS determined that the loan transfers cannot be for less than outstanding debt. Sale of the dwelling without assumption of the loan is not prohibited. RHCDS wanted to permit the lender the flexibility to use the transfer as a servicing tool if the lender determined that was the best course of action. No change is made to this section.

One respondent noted there is nothing in the regulation addressing an unapproved transfer. A provision has been added to clarify this.

One respondent challenged RHCDS because moratoria are not included. The respondent referenced section 505 of the Housing Act of 1949, as amended. RHCDS notes that the Act authorizes the use of this servicing tool but does not require it. RHCDS encourages lenders to ''make every effort to assist borrowers who are cooperative and willing to make a good faith effort * * *.'' The lender is authorized to make temporary revisions to the repayment schedule.

There were two comments on protective advances. One respondent suggested that the $500 threshold was too low. The other respondent argued that prior approval may not be appropriate since protective advances are by definition of an emergency nature. The respondent suggested that RHCDS encourage lenders to obtain prior approval to assure the expense is included in the loss claim. This protects RHCDS while providing flexibility to the lender.

One respondent suggested that RHCDS approval of a plan to continue with a delinquent borrower may result in delays. These delays could forestall successful implementation of the plan. RHCDS agrees with the comment and section 1980.374(d)(1) is so revised. However, the Agency may reject any plan that does not protect the Government's interest.

One respondent indicated that it was almost always cost effective to accept a Deed-in-lieu rather than foreclose. The respondent suggested that RHCDS permit the lender discretion to accept a Deed-in-Lieu of foreclosure without prior approval. RHCDS agrees and this change is adopted.

Several comments were received on the revised loss payment provisions. Three respondents indicated that the time frame for filing the loss claim was not long enough. Two respondents suggested 45 working days is more consistent with industry practice. RHCDS finds a 45-working day time frame is awkward to work with and allows 9 weeks or longer for the lender to process the claim. The other respondent indicated that Fannie Mae allows its servicers 30 calendar days to file claims for private mortgage insurance. RHCDS believes that 30 calendar days is reasonable time to file a claim and this revision is adopted.

There were two favorable comments on the proposal to allow a 6 month period for the lender to liquidate acquired property. One respondent indicated that the 6 month period was not long enough and might encourage a ''fire'' sale to liquidate the property. The respondent suggested a 12 month period with a minimum established upset sale price. Another respondent questioned the need for a plan for disposition of the property. The respondent indicated that the preparation of the plan is a burden for both the lender and RHCDS without financial benefit. The purpose of the plan is to protect the Agency against the possibility of a ''fire'' sale. The respondent stated that the regulation is very general as to the content of the plan and contains no financial guidance with respect to how much RHCDS will allow for various cost items. The respondent also complained that there is no indication whether RHCDS will accept aggregate costs in excess of the percentage formula allowance currently used. The same respondent felt it is not clear when the plan is to be filed. The intent of the Agency is to protect itself from unreasonable losses. RHCDS does not impose specific cost allowances for various liquidation expenses. The Agency looks to see whether the costs claimed by the lender are legitimate, necessary, and reasonable for the area. There are no allowances for aggregate costs over the percentage formula. Examples and details will be available through the lender handbook.

Two comments related to the date of the RHCDS interest assistance payment. The language was adjusted to clarify when the interest assistance payment would be made. A proposal to provide for the payment on the first of the month instead of the fifteenth was not adopted.

One respondent suggested that interest assistance should be made available as a loss mitigation strategy. We believe the commenter intended this as a loan servicing tool to grant interest assistance to borrowers who experience decreases in income. Interest assistance funds are subject to appropriations. This means that interest assistance can be made available only for loans guaranteed from funds with an interest assistance appropriation. This comment is not implemented.

Four comments dealt with Mortgage Credit Certificates and funded buy-down accounts. Two respondents suggested the value of a Mortgage Credit Certificate should be subtracted from the borrowers obligations rather than added to income. The respondents mentioned this is consistent with the method used by ''the general lending community.'' They argued this would remove a source of confusion for borrowers and lenders. RHCDS acknowledges that some conventional lenders have adopted this approach. However, the method proposed by RHCDS is consistent with other Federal mortgage lending agencies. The income tax credit increases disposable income. The tax credit does not reduce the borrower's liabilities. No change is made on Mortgage Credit Certificates. However, after consideration, RHCDS determined that funded buy-down accounts would be implemented; however, RHCDS concurrence would be required similar to that concurrence required for higher ratios.

We received two comments on appeals. Both respondents suggested a revision to the language so borrowers and lenders could appeal separately. One respondent expressed concern that the lender is not likely to join the borrower in an appeal. RHCDS's position is that the loans are the lender's loans. There is no point in the borrower appealing a decision without the lender's willingness to make the loan after the appeal. It is not necessary that the lender and borrower each fully participate in the appeal process. Only that both parties join in requesting the appeal. One respondent implied that the appeal process should allow the applicant/borrower to appeal lender decisions. This is not consistent with the Agency's position.

List of Subjects in 7 CFR Part 1980

Home improvement, Loan programs—Housing and community development, Mortgage insurance, Mortgages, Rural areas.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

1. The authority citation for part 1980 continues to read as follows:

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

2. Subpart D of part 1980 is revised to read as follows:

Subpart D—Rural Housing Loans

Sec.

1980.301 Introduction.
1980.302 Definitions and abbreviations.
1980.303–1980.307 [Reserved]
1980.308 Full faith and credit.
1980.309 Lender participation in guaranteed RH loans.
1980.310 Loan purposes.
1980.311 Loan limitations and special provisions.
1980.312 Rural area designation.
1980.313 Site and building requirements.
1980.314 Loans on leasehold interests.
1980.315 Escrow accounts for exterior development
1980.316 Environmental requirements.
1980.317 Equal opportunity and nondiscrimination requirements in use, occupancy, rental, or sale of housing.
1980.318 Flood and mudslide hazard area precautions.
1980.319 Other Federal, State, and local requirements.
1980.320 Interest rate.
1980.321 Terms of loan repayment.
1980.322 Loan guarantee limits.
1980.323 Guarantee fee.
1980.324 Charges and fees by Lender.
1980.325 Transactions which will not be guaranteed.
1980.326–1980.329 [Reserved]
1980.330 Applicant equity requirements.
1980.331 Collateral.
1980.332 [Reserved]
1980.333 Promissory notes and security instruments.
1980.334 Appraisal of property serving as collateral.
1980.335–1980.339 [Reserved]
1980.340 Acquisition, construction, and development.
1980.341 Inspections of construction and compliance reviews.
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1980.345 Applicant eligibility requirements for a guaranteed loan.
1980.346 Other eligibility criteria.
1980.347 Annual income.
1980.348 Adjusted annual income.
1980.349–1980.350 [Reserved]
1980.351 Requests for reservation of funds.
1980.352 [Reserved]
1980.353 Filing and processing applications.
1980.354 [Reserved]
1980.355 Review of requirements.
1980.356–1980.359 [Reserved]
1980.360 Conditions precedent to issuance of the loan note guarantee.
1980.361 Issuance of loan note guarantee.
1980.362 [Reserved]
1980.363 Review of loan closing.
1980.364–1980.365 [Reserved]
1980.366 Transfer and assumption.
1980.367 Unauthorized sale or transfer of the property.
1980.368–1980.369 [Reserved]
1980.370 Loan servicing.
1980.371 Defaults by the borrower.
1980.372 Protective advances.
1980.373 [Reserved]
1980.374 Liquidation.
1980.375 Reinstatement of the borrower's account.
1980.376 Loss payments.
1980.377 Future recovery.
1980.378–1980.389 [Reserved]
1980.390 Interest assistance.
1980.391 Equity sharing.
1980.392 Mortgage Credit Certificates (MCCs) and Funded Buydown Accounts.
1980.393–1980.396 [Reserved]
1980.397 Exception authority.
1980.398 Unauthorized assistance and other deficiencies.
1980.399 Appeals.
1980.400 [Reserved]

Subpart D—Rural Housing Loans

§ 1980.301 Introduction.

(a) *Policy.* This subpart contains regulations for single family Rural Housing (RH) loan guarantees by the Rural Housing and Community Development Service (RHCDS) and applies to lenders, borrowers, and other parties involved in making, guaranteeing, servicing, holding or liquidating such loans. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to RHCDS employees, members of their families, known close relatives, or business or close personal associates is subject to the provisions of subpart D of part 1900. Applicants for this assistance are required to identify any known relationship or association with an RHCDS employee.

(b) *Program objective.* The basic objective of the guaranteed RH loan program is to assist eligible households in obtaining adequate but modest, decent, safe, and sanitary dwellings and related facilities for their own use in rural areas by guaranteeing sound RH loans which otherwise would not be made without a guarantee. Guarantees issued under this subpart are limited to loans to applicants with incomes that do not exceed income limits as provided in exhibit C of FmHA Instruction 1980–D (available in any RHCDS office).

(c) [Reserved]

(d) *Nondiscrimination.* Loan guarantees and services provided under this subpart are subject to various civil rights statutes. Assistance shall not be denied to any person or applicant based on race, sex, national origin, color, familial status, religion, age, or physical or mental disability (the applicant must possess the capacity to enter into a legal contract for services). The Consumer Protection Act provides that the applicant may not be denied assistance based on receipt of income from public assistance or because the applicant has, in good faith, exercised any right provided under the Act.

§ 1980.302 Definitions and abbreviations.

(a) The following definitions are applicable to RH loans:

Agency: Rural Housing and Community Development Service (RHCDS).

Applicant. The party applying to a Lender for a loan.

Approval official. An RHCDS employee with delegated loan approval authority under subpart A of part 1901 consistent with the amount and type of loan considered.

Borrower. Collectively, all parties who applied for and received a specific guaranteed loan from an eligible Lender.

Coapplicant. An adult member of the household who joins the applicant in applying to a lender for a loan.

Conditional commitment. RHCDS's notice to the Lender that the material it has submitted is approved subject to the completion of all conditions and requirements set forth in the notice.

Development standard. The current edition of any of the model building, plumbing, mechanical, and electrical codes listed in exhibit E to subpart A of part 1924 applicable to single family residential construction or other similar codes adopted by RHCDS for use in the state.

Disabled person. A person who is unable to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment expected to result in death or which has lasted or is expected to last for a continuous period of not less than 12 months. The disability is expected to be of long or indefinite duration; substantially impede the person's ability to live independently; and is of such a nature that the person's ability to live independently could be improved by more suitable housing conditions. In the case of an individual who has attained the age of 55 and is blind, disability is defined as inability by reason of such blindness to engage in substantially gainful activity requiring skills or abilities comparable to those of any gainful activity in which the individual has previously engaged with some regularity over a substantial period of time. Receipt of veteran's benefits for disability, whether service-oriented or otherwise, does not automatically establish disability. A disabled person also includes a person with a developmental disability. A developmental disability means a severe, chronic disability of a person which:

(1) Is attributable to a mental or physical impairment or a combination of mental and physical impairments;

(2) Is manifested before the person attains age 22;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitations in one or more of the following areas of major life activity:

(i) Self-care,

(ii) Receptive and expressive language,

(iii) Learning,

(iv) Mobility,

(v) Self-direction,

(vi) Capacity for independent living, and

(vii) Economic self-sufficiency; and

(5) Reflects the person's need for a combination and sequence of special care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

Displaced homemaker. An individual who is an adult; has not worked full-time full-year (2,080 hours) in the labor force for a number of years but has during such years worked primarily without remuneration to care for the home and family; and is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

Elderly family. An elderly family consists of one of the following:

(1) A person who is the head, spouse, or sole member of a household and who is 62 years of age or older, or who is disabled and is the applicant/borrower or the coapplicant/coborrower; or

(2) Two or more unrelated elderly (age 62 or older), disabled persons who are living together, at least one of whom is the applicant/borrower or coapplicant/coborrower; or

(3) In the case of a family where a deceased borrower/coborrower or spouse was at least 62 years old or disabled, the surviving household members shall continue to be classified as an ''elderly family'' for the purpose of determining adjusted income even though the surviving members may not meet the definition of elderly family on their own, provided:

(i) They occupied the dwelling with the deceased family member at the time of his/her death; and

(ii) If one of the surviving members is the spouse of the deceased family member, the surviving family shall be classified as an elderly family only until the remarriage of the surviving spouse; and

(iii) At the time of death, the dwelling of the deceased family member was financed under title V of the Housing Act of 1949, as amended.

Eligible lender. A Lender meeting the criteria outlined in § 1980.309 who has requested and received RHCDS approval for participation in the program.

Existing dwelling. A dwelling which has been completed for more than 1 year as evidenced by an occupancy permit or a similar document.

Extended family. A family unit comprised of adult relatives who live together with the other members of the household, for reasons of physical dependency, economics, and/or social custom, who, under other circumstances, could maintain separate households. A typical example is parents living with their adult children.

Federal National Mortgage Association (Fannie Mae) rate. The rate authorized in exhibit B of FmHA Instruction 440.1 (available in any RHCDS office).

Finance Office. The office which maintains RHCDS's financial records.

First-time homebuyer. Any individual who (and whose spouse) has had no present ownership in a principal residence during the 3 year period ending on the date of purchase of the property acquired with a guaranteed loan under this subpart. A first-time homebuyer includes displaced homemakers and single parents even though they might have owned, or resided in, a dwelling with a spouse. This definition is used to determine RHCDS processing priority in accordance with § 1980.353.

Guaranteed loan. A loan made, held, and serviced by a Lender for which RHCDS has entered into an agreement with the Lender in accordance with this subpart.

Household or family. The applicant, coapplicant, and all other persons who will make the applicant's dwelling their primary residence for all or part of the next 12 months. The temporary absence of a child from the home due to placement in foster care shall not be taken into account in considering family composition and size. Foster children placed in the borrower's home and live-in aides shall not be counted as members of the household.

Interest assistance. Loan assistance payments made by RHCDS to the Lender on behalf of the borrower.

Lender. The organization making, holding, and/or servicing the loan which is guaranteed under the provisions of this subpart. The Lender is also the party requesting the guarantee. The Lender includes an entity purchasing an RHCDS guaranteed loan. A purchasing Lender acquires all the privileges, duties, and responsibilities of the originating Lender. The Lender is primarily responsible for originating, underwriting, servicing, and, where necessary, liquidating the loan and disposing of the property in a manner consistent with maximizing the Government's interest.

Lender agreement. The signed master agreement between RHCDS and the Lender setting forth the Lender's loan responsibilities for loan processing and servicing guaranteed RH loans.

Lender record change. The Lender's notice to RHCDS of a change of Lender or a change of servicer.

Liquidation. Liquidation of the loan occurs when the Lender acquires title to the security, a third party buys the property at the foreclosure sale, or the borrower sells the property to a third party in order to avoid or cure a default situation with the prior approval of the Lender and RHCDS. In states providing a redemption period, the Lender does not typically acquire title until after expiration of the redemption period.

Liquidation expense. The Lender's cost of liquidation including those costs that do not qualify as a protective advance.

Loan note guarantee. The signed commitment issued by RHCDS setting forth the terms and conditions of the guarantee.

Manufactured home. A structure built to the Federal Manufactured Home Construction and Safety Standards and RHCDS thermal requirements.

Master interest assistance agreement. The agreement among RHCDS, the borrower, and the Lender which provides the basis for payment of interest assistance and shared equity.

Minor. A person under 18 years of age. Neither the applicant, coapplicant, or spouse may be counted as a minor. Foster children placed in the borrower's home are not counted as minors for the purpose of determination of annual or adjusted income.

Net family assets. Include:

(1) The value of equity in real property, savings, individual retirement accounts (IRA), demand deposits, and the market value of stocks, bonds, and other forms of capital investments, but exclude:

(i) Interests in Indian Trust land,

(ii) The value of the dwelling and a minimum adequate site,

(iii) Cash on hand which will be used to reduce the amount of the loan,

(iv) The value of necessary items of personal property such as furniture and automobiles and the debts against them,

(v) The assets that are a part of the business, trade, or farming operation in the case of any member of the household who is actively engaged in such operation, and

(vi) The value of a trust fund that has been established and the trust is not

revocable by, or under the control of, any member of the household, so long as the funds continue to be held in trust.

(2) The value of any business or household assets disposed of by a member of the household for less than fair market value (including disposition in trust, but not in a foreclosure or bankruptcy sale) during the 2 years preceding the date of application, in excess of the consideration received therefore. In the case of a disposition as part of a separation or divorce settlement, the disposition shall not be considered to be less than fair market value if the household member receives important consideration not measurable in dollar terms.

Net proceeds. The proceeds remaining from the property after it is sold or its net value as determined in accordance with this subpart. The determination of net proceeds depends upon whether the property is sold or acquired by the Lender. Net proceeds may be determined using the appraised value and subtracting authorized deductions when the Lender acquires the property.

Protective advance. Advances made by the Lender when the borrower is in liquidation or otherwise in default to protect or preserve the security from loss or destruction.

Qualifying income. The amount of the applicant's income which the lender determines is adequate and dependable enough to consider for repayment ability. This figure may be different from the adjusted income which is used for RHCDS program eligibility. Qualifying income is typically less than adjusted income unless the applicant has income from the sources listed in § 1980.347(e).

Rural area. An area meeting the requirements of § 1980.312. Rural areas are designated on maps available in the RHCDS office servicing that area.

Single parent. An individual who is unmarried or legally separated from a spouse and has custody or joint custody of one or more minor children or is pregnant.

State Director. Director of RHCDS programs within a state office area.

Veteran. A veteran is a person who has been discharged or released from the active forces of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard under conditions other than dishonorable discharge including ''clemency discharges'' and who served on active duty in such forces:

(1) From April 6, 1917, through March 31, 1921;

(2) From December 7, 1941, through December 31, 1946;

(3) From June 27, 1950, through January 31, 1955; or

(4) For more than 180 days, any part of which occurred after January 31, 1955, but on or before May 7, 1975.

(b) The following abbreviations are applicable to this subpart:

Fannie Mae—Federal National Mortgage Association.

FCS—Farm Credit Service.

FHA—Federal Housing Administration.

Freddie Mac—Federal Home Loan Mortgage Corporation.

Ginnie Mae—Government National Mortgage Association.

HUD—Department of Housing and Urban Development.

IRS—Internal Revenue Service.

MCCs—Mortgage Credit Certificates.

PITI—Principal, Interest, Taxes, and Insurance.

RHCDS—Rural Housing and Community Development Service.

URAR—Uniform Residential Appraisal Report.

VA—Department of Veterans Affairs.

§§ 1980.303–1980.307 [Reserved]

§ 1980.308 Full faith and credit.

The loan note guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it becomes such Lender or which the Lender participates in or condones. Misrepresentation includes negligent misrepresentation. A note which provides for the payment of interest on interest shall not be guaranteed. Any guarantee or assignment of a guarantee attached to or relating to a note which provides for the payment of interest on interest is void. Notwithstanding the prohibition of interest on interest, interest may be capitalized in connection with reamortization over the remaining term with written concurrence of RHCDS. The loan note guarantee will be unenforceable to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which RHCDS acquires knowledge of the foregoing. Negligent servicing is defined as servicing that is inconsistent with this subpart and includes the failure to perform those services which a reasonably prudent Lender would perform in servicing its own loan portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act, but also not acting in a timely manner or acting contrary to the manner in which a reasonably prudent Lender would act up to the time of loan maturity or until a final loss is paid. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those authorized in this subpart. When the Lender conducts liquidation in an expeditious manner, in accordance with the provisions of § 1980.374, the loan note guarantee shall cover interest until the claim is paid within the limit of the guarantee.

§ 1980.309 Lender participation in guaranteed RH loans.

(a) *Qualification.* The following Lenders are eligible to participate in the RHCDS guaranteed RH loan program upon presentation of evidence of said approval and execution of the RHCDS Lender Agreement.

(1) Any state housing agency;

(2) Any Lender approved by HUD as a supervised or nonsupervised mortgagee for submission of one to four family housing applications for Federal Housing Mortgage Insurance or as an issuer of Ginnie Mae mortgage backed securities;

(3) Any Lender approved as a supervised or nonsupervised mortgagee for the VA;

(4) Any Lender approved by Fannie Mae for participation in one to four family mortgage loans;

(5) Any Lender approved by Freddie Mac for participation in one to four family mortgage loans;

(6) An FCS institution with direct lending authority; and

(7) Any Lender participating in other RHCDS, Rural Business and Cooperative Development Service, Rural Utilities Service, and/or Consolidated Farm Service Agency guaranteed loan programs.

(b) *Lender approval.* A Lender listed in paragraph (a) of this section must request a determination of eligibility in order to participate as an originating Lender in the program. Requests may be made to the state office serving the state jurisdiction or to the National office when multiple state jurisdictions are involved.

(1) The Lender must provide the following information to RHCDS:

(i) Evidence of approval, as appropriate, for the criteria under paragraph (a) of this section, which the Lender meets.

(ii) The Lender's Tax Identification Number.

(iii) The name of an official of the Lender who will serve as a contact for RHCDS regarding the Lender's guaranteed loans.

(iv) A list of names, titles, and responsibilities of the Lender's principal officers.

(v) An outline of the Lender's internal loan criteria for issues of credit history

and repayment ability and a copy of the Lender's quality control plan for monitoring production and servicing activities.

(vi) An executed certification regarding debarment, suspension, or other matters—primary covered transactions. The certification will be obtained using a form prescribed by RHCDS.

(2) The Lender must agree to:

(i) Obtain and keep itself informed of all program regulations and guidelines including all amendments and revisions of program requirements and policies.

(ii) Process and service RHCDS guaranteed loans in accordance with Agency regulations.

(iii) Permit RHCDS employees or its designated representatives to examine or audit all records and accounts related to any RHCDS loan guarantee.

(iv) Be responsible for the servicing of the loan, or if the loan is to be sold, sell only to an entity which meets the provisions of paragraph (a) of this section.

(v) Use forms which have been approved by FHA, Fannie Mae, Freddie Mac, or, for FCS Lenders, use the appropriate FCS forms.

(vi) Maintain its approval if qualification as an RHCDS Lender was based on approval by HUD, VA, Fannie Mae, or Freddie Mac including maintaining the minimum allowable net capital, acceptable levels of liquidity, and any required fidelity bonding and/or mortgage servicing errors and omissions policies required by HUD, VA, Fannie Mae, or Freddie Mac, as appropriate.

(vii) Operate its facilities in a prudent and business-like manner.

(viii) Assure that its staff is well trained and experienced in loan origination and/or loan servicing functions, as necessary, to assure the capability of performing all of the necessary origination and servicing functions.

(ix) Notify RHCDS in writing if the Lender:

(A) Ceases to meet any financial requirements of the entity under which the Lender qualified for RHCDS eligibility;

(B) Becomes insolvent;

(C) Has filed for bankruptcy protection, has been forced into involuntary bankruptcy, or has requested an assignment for the benefit of creditors;

(D) Has taken any action to cease operations or discontinue servicing or liquidating any or all of its portfolio of RHCDS guaranteed loans;

(E) Has any change in the Lender name, location, address, or corporate structure;

(F) Has become delinquent on any Federal debt or has been debarred, suspended, or sanctioned by any Federal agency or in accordance with any applicable state licensing or certification requirements.

(c) [Reserved]

(d) *Handling applications for Lender eligibility.* Upon determination of a Lender's eligibility to originate loans, RHCDS and the Lender will execute the RHCDS Lender Agreement. The Lender Agreement establishes the Lender's authorization for participation in the program as an originator, servicer, or holder of RHCDS single family mortgage loans. The Lender Agreement shall be in effect until terminated by either the Agency or the Lender in accordance with the terms of the Lender Agreement and this subpart.

(e) *Lender sale of guaranteed loans.* Loans guaranteed under this subpart may be sold only to entities which meet the qualifications in paragraphs (a) and (b) of this section or directly to Fannie Mae or Freddie Mac. Such entities are referred to as a Lender and are to be treated as a Lender for all purposes under this subpart. The selling Lender shall provide the original loan note guarantee to the purchasing Lender. The selling Lender is responsible for reporting the sale of any loan to RHCDS within 30 days using a reporting form provided by RHCDS. The purchasing Lender must execute a Lender Agreement or have a valid Lender Agreement on file with RHCDS. The purchasing Lender shall succeed to all rights, title, and interest of the Lender under the loan note guarantee. Any necessary or convenient assignments or other instruments relating to the loan and any other actions necessary or convenient to perfect or record such transaction are the responsibility of the purchasing Lender. The purchasing Lender assumes the obligations of, and will be bound by and will comply with, all covenants, agreements, terms, and conditions contained in any note, security instrument, loan note guarantee, and of any outstanding agreements in connection with such loan purchased. The purchasing Lender shall be subject to any defenses, claims, or setoffs that RHCDS would have against the Lender if the Lender had continued to hold the loan.

(f) *Lender responsibility.* The Lender will be responsible for the processing, servicing, and liquidation (if necessary) of the loan. The Lender may use agents, correspondents, branches, financial experts, or other institutions in carrying out its responsibilities. Lenders are fully responsible for their own actions and the actions of those acting on the Lender's behalf.

(1) *Processing.* The Lender must abide by limitations on loan purposes, loan limitations, interest rates, and terms set forth in this subpart. The Lender will obtain, complete, and submit to RHCDS the items required in § 1980.353(c). The Lender may utilize the services of a non-RHCDS approved lender for originating residential loans. The RHCDS approved lender is responsible for the loan underwriting and for obtaining the RHCDS conditional commitment. The agent may close the loan in its name provided the loan is immediately transferred to the approved lender to whom the guarantee will be issued.

(2) *Servicing.* Lenders are fully responsible for servicing and protecting the security for all guaranteed loans. When servicing is carried out by a third party, the Lender will inform RHCDS of the name and address of the servicer.

(3) *Liquidation.* The Lender will complete any liquidation of loans guaranteed under the provisions of the Lender Agreement. Loss claims will be submitted on the RHCDS Loss Report form. The loss report will be accompanied by supporting information to outline disposition of all security pledged to secure the loan. The Lender shall also effect collection of the debt from other assets of the borrower to the extent practicable.

(4) *Counseling.* Lenders are encouraged to offer or provide for home ownership counseling. Lenders may require first-time homebuyers to undergo such counseling if it is reasonably available in the local area. When home ownership counseling is provided or sponsored by RHCDS or another Federal agency in the local area, the Lender must require the borrower to successfully complete the course.

(g) *Monitoring a Lender's processing and servicing of loans.* If RHCDS determines that the Lender is not fulfilling the obligations of the Lender Agreement or that the Lender fails to maintain the required criteria, the Lender will be notified in writing of the deficiencies and allowed a maximum of 30 days to correct them. If the Lender fails to make the required corrections, RHCDS will proceed as provided in paragraph (h) of this section.

(1) *Loan processing review for new Lenders.* RHCDS may review loans developed by an eligible Lender to assure compliance with, and understanding of, Agency regulations.

(2) [Reserved]

(3) [Reserved]

(h) *Termination of Lender eligibility.* The Lender remains eligible as long as the Lender meets the criteria in

paragraph (a) of this section unless that Lender's status is revoked by RHCDS or by another Federal agency. RHCDS shall revoke the eligible Lender status of any Lender who fails to comply with requirements of paragraph (b) or (e) of this section. Status may also be revoked if the Lender violates the terms of the Lender Agreement, fails to properly service any guaranteed loan, or fails to adequately protect the interests of the Lender and the Government. If the Lender is determined to be no longer eligible, the Lender will continue to service any outstanding loans guaranteed under this subpart which are held by the Lender or RHCDS may require the Lender to transfer the servicing of the loan. In addition to revocation of eligible Lender status, the Lender may be debarred by RHCDS.

§ 1980.310 Loan purposes.

The purpose of a loan guaranteed under this subpart must be to acquire a completed dwelling and related facilities to be used by the applicant as a primary residence. The loan may be to purchase a new dwelling or an existing dwelling. The guaranteed loan may be for ''take out'' financing for a loan to construct a new dwelling or improve an existing dwelling when the construction financing is arranged in connection with the loan package. The loan may include funds for the purchase and installation of necessary appliances, energy saving measures, and storm cellars. Incidental expenses for tax monitoring services, architectural, appraisal, survey, environmental, and other technical services may be included. Subject to § 1980.311, eligible loan purposes also include:

(a) Necessary related facilities such as a garage, storage shed, walks, driveway, and water and/or sewage facilities including reasonable connection fees for utilities which the buyer is required to pay.

(b) Special design features or equipment necessary to accommodate a physically disabled member of the household.

(c) The cost of establishing an escrow account for real estate taxes and/or insurance premiums.

(d) Title clearance, title insurance, and loan closing; stock in a cooperative lending agency necessary to obtain the loan; and, for low-income applicants only, loan discount points to reduce the note interest rate from the rate authorized in § 1980.320 not exceeding the amount typical for the area.

(e) Provide funds for seller equity and/or essential repairs when an existing guaranteed loan is to be assumed simultaneously.

§ 1980.311 Loan limitations and special provisions.

(a) *Prohibited loan purposes.* Conditional commitments will not be issued if loan funds are to be used for:

(1) Payment of construction draws.

(2) The purchase of furniture or other personal property except for essential equipment and materials authorized in accordance with § 1980.310.

(3) Refinancing RHCDS debts, debts owed the Lender (other than construction/development, financing incurred in conjunction with the proposed loan), or debts on a manufactured home.

(4) Purchase or improvement of income-producing land, or buildings to be used principally for income-producing purposes, or buildings not essential for RH purposes, or to buy or build buildings which are largely or in part specifically designed to accommodate a business or income-producing enterprise.

(5) Payment of fees, charges, or commissions, such as finder's fees for packaging the applications or placement fees for the referral of a prospective applicant to RHCDS.

(6) Improving the entry of a homestead entryman or desert entryman prior to receipt of patent.

(7) Purchase a dwelling with an in-ground swimming pool.

(b) *Limitations.* The principal purpose of the loan, except for a subsequent loan to an existing borrower, must be to buy or build a dwelling. The loan may include additional funds in accordance with § 1980.310. The amount of the loan may not exceed the maximum dollar limitation of section 203(b)(2) of the National Housing Act (12 U.S.C. 1702).

(1) A loan for the acquisition of a newly constructed dwelling that meets the requirements of § 1980.341(b) of this subpart may be made for up to 100 percent of the appraised value or the cost of acquisition and any necessary development including those purposes in § 1980.310, whichever is less.

(2) A loan for the acquisition of an existing dwelling and development, if any, in conjunction with the acquisition of an existing dwelling may be made for up to 100 percent of the appraised value or the cost of acquisition and necessary development including those purposes in § 1980.310, whichever is less.

(3) A loan for the acquisition of a newly constructed dwelling (a dwelling that does not meet the definition for an existing dwelling) that does not meet the requirements of § 1980.341(b) is limited to 90 percent of the present market value.

(c) *Subdivisions.* Housing units may be financed in existing subdivisions approved by local, regional, state, or Federal government agencies before issuance of a conditional commitment. The subdivision must meet the requirements of § 1901.203. An existing subdivision is one in which the local government has accepted the subdivision plan, its principal developments and right-of-ways, the construction of streets, water and water/waste disposal systems, and utilities; is at a point which precludes any major changes; and provisions are in place for continuous maintenance of the streets and the water and water/waste disposal systems. A dwelling served by a homeowners association (HOA) may be accepted when the project has been approved or accepted by HUD, VA, Fannie Mae, or Freddie Mac.

§ 1980.312 Rural area designation.

A rural area is an area which is identified as rural by RHCDS in accordance with § 1944.10. Current county maps showing ineligible areas are available in RHCDS field offices.

§ 1980.313 Site and building requirements.

(a) *Rural area.* The property on which the loan is made must be located in a designated rural area as identified in § 1980.312. A nonfarm tract to be purchased or improved with loan funds must not be closely associated with farm service buildings.

(b) *Access.* The property must be contiguous to and have direct access from a street, road, or driveway. Streets and roads must be hard surface or all-weather surface.

(c) *Water and water/waste disposal system.* A nonfarm tract on which a loan is to be made must have an adequate water and water/waste disposal system and other related facilities. Water and water/waste disposal systems serving the site must be approved by a state or local government agency. When the site is served by a privately owned and centrally operated water and water/waste disposal system, the system must meet the design requirements of the State Department of Health or comparable reviewing and regulatory agency. Written verification must be obtained from the regulatory agency that the private water and water/waste system complies with the Safe Drinking Water Act (42 U.S.C. 300F *et seq.*), and the Clean Water Act (33 U.S.C. 1251 *et seq.*), respectively. A system owned and/or operated by a private party must have a binding agreement which allows interested third parties, such as the Lender, to enforce the obligation of the operator to provide satisfactory service at reasonable rates.

(d) [Reserved]

(e) *Modest house.* Dwellings financed must provide decent, safe, and sanitary housing and be modest in cost. A dwelling that can be purchased with a loan not exceeding the maximum dollar limitation of section 203(b)(2) of the National Housing Act (12 U.S.C. 1702) is considered modest. Generally, the value of the site must not exceed 30 percent of the total value of the property. When the value of the site is typical for the area, as evidenced by the appraisal, and the site cannot be subdivided into two or more sites, the 30 percent limitation may be exceeded.

(f) *Thermal standards.* Dwellings financed shall meet the standards outlined in exhibit D of subpart A of part 1924 except for an existing dwelling, if documentation is provided to establish that the actual cost of heating and cooling is not significantly greater than those costs for a dwelling that meets RHCDS's thermal standards. If the dwelling is excepted, only the perimeter of the house at the band beam and the heat ducts in unheated basements or crawlspace must be insulated.

(g) *Existing dwelling.* An existing dwelling financed must be cost effective to the applicant including reasonable costs of utilities and maintenance for the area. Loan guarantees may be made on an existing manufactured home when it meets the provisions of paragraph (i)(2)(i) of this section.

(h) *Repairs.* Any dwelling financed with an RHCDS guarantee must be structurally sound, functionally adequate, and placed in good repair prior to issuance of the Loan Note Guarantee except as provided in § 1980.315.

(i) *Manufactured homes.* New units that meet the requirements of exhibit J of subpart A of part 1924 and purchased through RHCDS approved dealer-contractors may be considered for a guaranteed loan under this subpart. The Lender may obtain a list of RHCDS approved models and dealer-contractors from any RHCDS office in the area served.

(1) Loans may be guaranteed for the following purposes when the security covers both the unit and the lot:

(i) A new unit and related site development work on a site owned or purchased by the applicant which meets the requirements and limitations of this section or a leasehold meeting the provisions of § 1980.314.

(ii) Transportation and set-up costs for a new unit.

(2) Loans may not be guaranteed for:

(i) An existing unit and site unless it is already financed with a Section 502 RH direct or guaranteed loan, is being sold from RHCDS inventory, or is being sold from the Lender's inventory provided the Lender acquired possession of the unit through a loan guaranteed under this subpart.

(ii) The purchase of a site without also financing the unit.

(iii) Existing debts owed by the applicant/borrower.

(iv) A unit without an affixed certification label indicating the unit was constructed in accordance with the Federal Manufactured Home Construction and Safety Standards.

(v) Alteration or remodeling of the unit when the initial loan is made.

(vi) Furniture, including movable articles of personal property such as drapes, beds, bedding, chairs, sofas, lamps, tables, televisions, radios, stereo sets, and similar items. Items such as wall-to-wall carpeting, refrigerators, ovens, ranges, clothes washers or dryers, heating or cooling equipment, or similar items may be financed.

(vii) Any unit not constructed to the RHCDS thermal standards as identified by an affixed label for the winter degree day zone where the unit will be located.

§ 1980.314 Loans on leasehold interests.

A loan may be guaranteed if made on a leasehold owned or being acquired by the applicant when the Lender determines that long-term leasing of homesites is a well established practice and such leaseholds are freely marketable in the area provided the Lender determines and certifies to RHCDS that:

(a) *Unable to obtain fee title.* The applicant is unable to obtain fee title to the property.

(b) *Unexpired term.* The lease has an unexpired term (term plus option to renew) of at least 40 years from the date of approval.

§ 1980.315 Escrow accounts for exterior development.

When proposed exterior development work cannot be completed because of weather and the work remaining to be done does not affect the livability of the dwelling, an escrow account *for exterior development only* may be established by the originating lender if the following conditions are met:

(a) A signed contract and bid schedule is in effect for the proposed exterior development work.

(b) The contract for development work must provide for completion within 120 days.

(c) The Lender agrees to obtain a final inspection report and advise RHCDS when the work has been completed.

(d) The escrow account must be funded in an amount sufficient to assure the completion of the remaining work. This figure should be 150 percent of the cost of completion but may be higher if the Lender determines a higher amount is needed.

§ 1980.316 Environmental requirements.

The requirements of subpart G of part 1940 apply to loan guarantees made under this subpart. Lenders and applicants must cooperate with RHCDS in the completion of these requirements. Lenders must become familiar with these requirements so that they can advise applicants and reduce the probability of unacceptable applications being submitted to RHCDS. RHCDS may require that Lenders and/or applicants obtain information for completing environmental assessments when necessary. The RHCDS approval official will utilize adequate, reliable information in completion of environmental review. Sources of information include, but are not limited to, the State Natural Resource Management Guide (available in any RHCDS office) and, as necessary, the technical expertise available within the Agency as well as other agencies and organizations to assist in the completion of the environmental review.

§ 1980.317 Equal opportunity and nondiscrimination requirements in use, occupancy, rental, or sale of housing.

(a) *Compliance.* Loans guaranteed under this subpart are subject to the provisions of various civil rights statutes. RHCDS and the Lender may not discriminate against any person in making guaranteed housing loans available, or impose different terms and conditions for the availability of these loans based on a person's race, color, familial status, religion, sex, age, physical or mental disability, or national origin, provided the applicant possesses the capacity to enter into a legal contract for services. These requirements will be discussed with the applicant, builder, developer, and other parties involved as early in the negotiations as possible.

(b) *Reporting.* If there is indication of noncompliance with these requirements, the matter will be reported by the borrower, Lender, or RHCDS personnel to the Administrator or the Director, Equal Opportunity Staff. Complaints and compliance will be handled by RHCDS in accordance with subpart E of part 1901.

(c) *Forms and requirements.* In accordance with Executive Order 11246, the following equal opportunity and nondiscrimination forms and requirements are applicable when the loan guarantee involves a construction

contract between the borrower and the contractor that is more than $10,000. The Lender is responsible for seeing that the requirements of paragraphs (c)(1) through (c)(5) of this section are met:

(1) *Equal Opportunity Agreement.* Before loan closing, each borrower whose loan involves a construction contract of more than $10,000 must execute the RHCDS Equal Opportunity Agreement or the equivalent HUD form.

(2) *Construction contract or subcontract in excess of $10,000.* If the contract or a subcontract exceeds $10,000:

(i) The contractor or subcontractor must submit the Agency Compliance Statement before or as a part of the bid or negotiation.

(ii) An Equal Opportunity Clause must be part of each contract and subcontract.

(iii) With notification of the contract award, the contractor must receive the Agency Notice to Contractors and Applicants signed by RHCDS, with an attached Equal Employment Opportunity poster. Posters in Spanish must be provided and displayed where a significant portion of the population is Spanish speaking.

(iv) Under Executive Order 11246 and Executive Order 11375, the contractor or subcontractor, subject to the requirements of paragraph (c)(5) of this section, is prohibited from discriminating because of race, color, religion, sex, or national origin to ensure equality of opportunity in all aspects of employment.

(3) *One hundred or more employees and construction contract or subcontract exceeds $10,000.* If the contractor or subcontractor has 100 or more employees and the contract or subcontract is for more than $10,000, in addition to the requirements of paragraph (c)(2) of this section, a report must be filed annually on or before March 31. Failure to file timely, complete, and accurate reports constitutes noncompliance with the Equal Opportunity Clause. Report forms are distributed by the Joint Reporting Committee and any questions on this form should be addressed by the contractor or subcontractor to the Joint Reporting Committee, 1800 G Street, NW., Washington, D.C. 20006.

(4) *Fifty or more employees and construction contract or subcontract exceeds $50,000.* If the contract or subcontract is more than $50,000 and the contractor or subcontractor has 50 or more employees, in addition to the requirements of paragraph (c)(2) of this section, each such contractor or subcontractor must be informed that the contractor or subcontractor must develop a written affirmative action compliance program for each of the contractor's or subcontractor's establishments and put it on file in each of the personnel offices within 120 days of the commencement of the contract or subcontract.

(5) [Reserved]

(6) *Employee complaints.* Any employee of or applicant for employment with such contractors or subcontractors may file a written complaint of discrimination with RHCDS.

(i) A written complaint of alleged discrimination must be signed by the complainant and should include the following information:

(A) The name and address (including telephone number, if any) of the complainant.

(B) The name and address of the person committing the alleged discrimination.

(C) A description of the acts considered to be discriminatory.

(D) Any other pertinent information that will assist in the investigation and resolution of the complaint.

(ii) Such complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by RHCDS for good cause shown by the complainant.

§ 1980.318 Flood or mudslide hazard area precautions.

RHCDS policy is to discourage lending in designated flood and mudslide hazard areas. Loan guarantees shall not be issued in designated flood/mudslide hazard areas unless there is no practical alternative.

(a) *Dwelling location.* Dwellings and building improvements located in special flood or mudslide hazard areas, as designated by the Federal Emergency Management Agency (FEMA) may be financed under this subpart only if:

(1) The community, as a result of such designation by FEMA as a special flood or mudslide prone area, has an approved flood plain area management plan.

(2) The dwelling location and construction plans and specifications for new buildings or improvements to existing buildings comply with an approved flood plain area management plan (see paragraph (a)(1) of this section).

(3) Potential environmental impacts and feasible alternatives have been fully considered by RHCDS in accordance with the requirements of subpart G of part 1940.

(4) The first floor elevation is above the 100 year flood zone elevation.

(b) *Flood insurance.* If the dwelling is located in a special flood or mudslide hazard area, flood insurance must be purchased by the borrower prior to loan closing and maintained thereafter. See subpart B of part 1806 (FmHA Instruction 426.2).

§ 1980.319 Other Federal, State, and local requirements.

In addition to the specific requirements of this subpart, on all proposals financed with an RHCDS guarantee, Lenders and/or applicants must coordinate with all appropriate Federal, state, and local agencies. Applicants and/or Lenders will be required to comply with any Federal, state, or local laws, regulatory commission rules, ordinances, and regulations which exist at the time the loan guarantee is issued which affect the dwelling including, but not limited to:

(a) Borrowing money and giving security therefore;

(b) Land use zoning;

(c) Health, safety, and sanitation standards; and

(d) Protection of the environment and consumer affairs.

§ 1980.320 Interest rate.

The interest rate must not exceed the established applicable usury rate. Loans guaranteed under this subpart must bear a fixed interest rate over the life of the loan. The rate shall be agreed upon by the borrower and the Lender and must not be more than the lender's published rate for VA first mortgage loans with no discount points or the current Fannie Mae rate as defined in § 1980.302(a), whichever is higher. The lender must document the rate and the date it was determined.

§ 1980.321 Terms of loan repayment.

(a) *Note.* Principal and interest shall be due and payable monthly.

(b) *Term.* The term for final maturity shall be not less than 30 years from the date of the note and not more than 30 years from the date of the first scheduled payment.

§ 1980.322 Loan guarantee limits.

The amount of the loan guarantee is 90 percent of the principal amount of the loan.

(a) The maximum loss payment under the guarantee of Single Family Housing loans is the lesser of:

(1) Any loss of an amount equal to 90 percent of the principal amount actually advanced to the borrower, or

(2) Any loss sustained by the Lender of an amount up to 35 percent of the principal amount actually advanced to the borrower, plus 85 percent of any additional loss sustained by the Lender of an amount up to the remaining 65

percent of the principal amount actually advanced to the borrower.

(b) Loss includes only:

(1) Principal and interest evidenced by the guaranteed loan note;

(2) Any loan subsidy due and owing; and

(3) Any principal and interest indebtedness on RHCDS approved protective advances for protection and preservation of security.

(c) Interest (including any subsidy) shall be covered by the loan note guarantee to the date of the final loss settlement when the Lender conducts liquidation in an expeditious manner in accordance with the provisions of § 1980.376.

§ 1980.323 Guarantee fee.

The Lender will pay a nonrefundable fee which may be passed on to the borrower. The amount of the fee is determined by multiplying the figure in exhibit K of FmHA Instruction 440.1 (available in any RHCDS office) times 90 percent of the principal amount of the loan.

§ 1980.324 Charges and fees by Lender.

(a) *Routine charges and fees.* The Lender may establish the charges and fees for the loan, provided they are the same as those charged other applicants for similar types of transactions.

(b) *Late payment charges.* Late payment charges will not be covered by the guarantee. Such charges may not be added to the principal and interest due under any guaranteed note. Late charges may be made only if:

(1) *Maximum amount.* The maximum amount does not exceed the percentage of the payment due as prescribed by HUD or Fannie Mae or Freddie Mac.

(2) *Routine.* They are routinely made by the Lender in similar types of loan transactions.

(3) *Payments received.* Payments have not been received within the customary time frame allowed by the Lender. The term ''payment received'' means that the payment in cash, check, money order, or similar medium has been received by the Lender at its main office, branch office, or other designated place of payment.

(4) *Calculating charges.* The Lender does not change the rate or method of calculating the late payment charges to increase charges while the loan note guarantee is in effect.

(5) *Interest-assisted loans.* The Lender will not penalize or charge any fee to the borrower when the only delinquency is a loan subsidy payment, which the Lender is entitled to but has not received.

§ 1980.325 Transactions which will not be guaranteed.

(a) *Lease payments.* Payments made on a lease will not be guaranteed.

(b) *Loans made by other Federal agencies.* Loans made by other Federal agencies will not be guaranteed. This does not preclude guarantees of loans made by an FCS institution with direct lending authority. This also does not preclude loans made by state or local government agencies assisted by a Federal agency.

§§ 1980.326–1980.329 [Reserved]

§ 1980.330 Applicant equity requirements.

A loan to purchase a new or existing dwelling may be made up to the appraised market value of the security.

§ 1980.331 Collateral.

(a) *General.* The entire loan must be secured by a first lien on the property being financed (second lien when the loan is for a subsequent loan to an existing borrower or there is a transfer and assumption of an existing loan) and the Lender will maintain this lien priority. The Lender is responsible for assurance that proper and adequate security interest is obtained, maintained in existence, and of record to protect the interests of the Lender and RHCDS.

(b) *Third party liens, suits pending, etc.* Among other things in obtaining the required security, it is necessary to ascertain that there are no adverse claims or liens against the property or the borrower, and that there are no suits pending or anticipated that would affect the property or the borrower.

(c) *All collateral must secure the entire loan.* The Lender will not take separate collateral, including but not limited to mortgage insurance, to secure that portion of the loss not covered by the guarantee.

§ 1980.332 [Reserved]

§ 1980.333 Promissory notes and security instruments.

(a) *Loan instruments.* The Lender may use its own forms for promissory notes, real estate mortgages, including deeds of trust and similar instruments, and security agreements provided there are no provisions that are in conflict or otherwise inconsistent with the provisions of § 1980.309(b)(2)(v). The Lender is responsible for determining that the security instruments are adequate and are properly maintained of record.

(b) *Interest assistance instruments.* When the loan guarantee is authorized from interest assisted funds, RHCDS will provide the Lender with the necessary forms and security instruments related to the interest assistance. The Lender will complete the Master Interest Assistance Agreement, assure that the closing agent properly records a junior mortgage or deed of trust which grants RHCDS a lien on the property in order to protect RHCDS's equity share subject only to the first mortgage or deed of trust to the Lender or other authorized prior lien, and forward the agreements and recorded instruments to RHCDS.

§ 1980.334 Appraisal of property serving as collateral.

An appraisal of all property serving as security for the proposed loan will be completed and submitted to RHCDS for review with the request for loan guarantee. The Lender may pass the cost of the appraisal on to the borrower. The appraisal must have been completed within 6 months of the date the request for a conditional commitment is submitted to RHCDS.

(a) *Qualified appraiser.* The Lender will use an appraiser that is properly licensed or certified, as appropriate, to make residential real estate appraisals in accordance with the criteria set forth by the Appraiser Qualification Board (AQB) of the Appraisal Foundation regardless of the amount of the loan. Appraisers may not discriminate against any person in making or performing appraisal services because of race, color, familial status, religion, sex, age, disability, or national origin.

(b) *Appraisal report.* Residential appraisals will be completed using the sales comparison (market) and cost approach to market value.

(1) *URAR.* The appraiser will use the most recent revision of the URAR.

(i) The ''Estimated Reproduction Cost-New of Improvements'' section of the form must be completed when the dwelling is less than 1 year old.

(ii) Not less than three comparable sales, which are not more than 12 months old, will be used unless the appraiser provides documentation that such comparables are not available in the area. Comparable sales should be located as close as possible to the subject dwelling. When the need arises to use a comparable sale that is a considerable distance from the subject, the appraiser must use his or her knowledge of the area and apply good judgment in selecting comparable sales that are the best indicators of value for the subject property.

(2) *Supporting documentation.* A narrative explanation supporting unusual adjustments must be attached to the appraisal.

(3) *Photographs.* The appraisal report must include photographs which clearly

provide front, rear, and street scene views of the subject property, and a front view for each comparable sale used in the completion of the appraisal.

(c) *RHCDS acceptance.* The Lender will be required to correct or complete any appraisal returned by RHCDS for corrective action.

§§ 1980.335–1980.339 [Reserved]

§ 1980.340 Acquisition, construction, and development.

(a) *Acquisition of property.* The Lender is responsible for seeing that the property to be acquired with loan funds is acquired as planned and that the required security interest is obtained.

(b) *New construction.* A new dwelling financed with a guaranteed loan must:

(1) Have been built in accordance with building plans and specifications that contain approved building code certifications (eligible certifiers are listed in § 1924.5(f)(1)(iii)).

(2) Conform to RHCDS thermal standards (exhibit D of subpart A of part 1924).

(i) The builder may certify conformance with RHCDS thermal standards contained in paragraph IV A of exhibit D of subpart A of part 1924.

(ii) A qualified, registered architect or a qualified, registered engineer must certify conformance with RHCDS thermal standards contained in paragraph IV C of exhibit D of subpart A of part 1924.

(c) *Development.* The Lender and borrower are responsible for seeing that the loan purposes are accomplished and loan funds are properly utilized. This includes, but is not limited to, seeing that:

(1) The applicable development standards are adhered to;

(2) Drawings and specifications are certified and complied with;

(3) Adequate water, electric, heating, waste disposal, and other necessary utilities and facilities are obtained;

(4) Equal opportunity and nondiscrimination requirements are met, (see § 1980.317); and

(5) A builder's warranty is issued when new construction, repair, or rehabilitation is involved, which provides for at least 1 year's warranty from the date of completion or acceptance of the work.

§ 1980.341 Inspections of construction and compliance reviews.

(a) *Qualified inspectors.* Inspections will be made during construction by a construction inspector deemed qualified and approved by the Lender. A qualified inspector is one that a reasonable person would hire to perform an inspection of his/her own dwelling.

(b) *Inspections.* Inspections shall be done by a party the Lender determines to be qualified, such as a HUD approved fee inspector. The sale agreement shall identify which party (i.e., purchaser or seller) is responsible to obtain and pay for required inspections and certifications. In connection with inspections involving construction contracts, equal opportunity and nondiscrimination compliance reviews must be made as required by § 1980.317.

(1) For existing dwellings, inspections must be made to determine that the dwelling:

(i) Meets the current requirements of HUD Handbooks 4150.1 and 4905.1 (available from the HUD Ordering Desk 1–800–767–7468).

(ii) Meets the thermal standards per § 1980.313(f).

(2) For a newly constructed dwelling, when construction is planned, the Lender must see that the following inspections are made in addition to any additional inspections the Lender deems appropriate:

(i) When footings and foundations are ready to be poured but prior to back-filling.

(ii) When shell is closed in but plumbing, electrical, and mechanical work are still exposed.

(iii) When construction is completed prior to occupancy.

(iv) Inspections under paragraphs (b)(2) (i) and (ii) of this section are not required when the builder supplies an insured 10 year warranty plan acceptable under the requirements of exhibit L of subpart A of part 1924.

(c) *Water and water/waste disposal.* The Lender will see that the water and water/waste disposal systems have been approved by a state or local government agency.

§§ 1980.342–1980.344 [Reserved]

§ 1980.345 Applicant eligibility requirements for a guaranteed loan.

Applicants who meet the requirements of this section are eligible for a loan guaranteed under this subpart. Applicants desiring loan assistance as provided in this subpart must file loan applications with a Lender that meets the requirements set forth in § 1980.309. The Lender may accept applications filed through its agents, correspondents, branches, or other institutions. The Lender must have at least one personal interview with the applicant to verify the information on the application and to obtain a complete picture of the applicant's financial situation.

(a) *Eligible income.* The applicant's adjusted annual income determined in accordance with § 1980.348 may not exceed the applicable income limit contained in exhibit C of FmHA Instruction 1980–D (available in any RHCDS office) at the time of issuance of the conditional commitment. Adjusted annual income is used to determine eligibility for the RHCDS loan guarantee.

(b) *Adequate and dependable income.* The applicant (and coapplicant, if applicable) has adequate and dependably available income. The applicant's history of income and the history of the typical annual income of others in the area with similar types of employment will be considered in determining whether the applicant's income is adequate and dependable.

(1) A farm or nonfarm business loss must be considered in determining repayment ability.

(2) A loss may not be used to offset other income in order to qualify for or increase the amount of RHCDS assistance.

(c) *Determining repayment ability.* In considering whether the applicant has adequate repayment ability, the Lender must calculate a total debt ratio. The applicant's total debt ratio is calculated by dividing the applicant's monthly obligations by gross monthly income.

(1) Monthly obligation consists of the principal, interest, taxes, and insurance (PITI) for the proposed loan (less any interest assistance under this program or any other assistance from a state or county sponsored program when such payments are made directly to the Lender on the applicant's behalf), homeowner and other assessments, and the applicant's long term obligations. Long term obligations include those obligations such as alimony, child support, and other obligations with a remaining repayment period of more than 6 months and other shorter term debts that are considered to have a significant impact on repayment ability.

(i) *Cosigned obligations.* Debts which have been cosigned by the applicant for another party must be considered unless the applicant provides evidence (usually canceled checks of the co-obligor or other third party) that it has not been necessary for the applicant to make any payments over the past 12 months.

(ii) *Liability on a previous mortgage.* When the applicant has disposed of a property through a sale, trade, or transfer without a release of liability, the debt must be considered unless the applicant provides evidence (usually canceled checks of the new owners) that the new owners have successfully made all payments over the past 12 months.

(2) Income, for the purpose of determining the total debt ratio,

includes the total qualifying income of the applicant, coapplicant, and any other member of the household who will be a party to the note.

(i) An applicant's qualifying income may be different than the ''adjusted annual income'' which is used to determine program eligibility. In considering qualifying income, the Lender must determine whether there is a historical basis to conclude that the income is likely to continue. Typically, income of less than 24 months duration should not be included in qualifying income. If the applicant is obligated to pay child care costs, the amount of any Federal tax credit for which the applicant is eligible may be added to the applicant's qualifying income.

(ii) In considering income that is not subject to Federal income tax, the amount of tax savings attributable to the nontaxable income may be added for use with the repayment ratios. Adjustments for other than the applicable tax rate are not authorized. The Lender must verify that the income is not subject to Federal income tax and that the income (and its nontax status) is likely to continue. The Lender must fully document and support any adjustment made.

(3) The applicant meets RHCDS requirements for repayment ability when the applicant's total debt ratio is less than or equal to 41 percent and the ratio of the proposed PITI to income does not exceed 29 percent.

(4) Applicants who do not meet the requirements of this section will be considered ineligible unless another adult in the household has adequate income and wishes to join in the application as a coapplicant. The combined incomes and debts then may be considered in determining repayment ability.

(5) If the applicant's total debt ratio and/or PITI ratio exceed the maximum authorized ratio, the Lender may request RHCDS concurrence in allowing a higher ratio based on compensating factors. Acceptable compensating factors include but are not limited to the applicant having a history over the previous 12 month period of devoting a similar percentage of income to housing expense to that of the proposed loan, or accumulating savings which, when added to the applicant's housing expense and shows a capacity to make payments on the proposed loan. A low total debt ratio, by itself, does not compensate for a high PITI.

(d) *Credit history.* The applicant must have a credit history which indicates a reasonable ability and willingness to meet obligations as they become due.

(1) Any or all of the following are indicators of an unacceptable credit history unless the cause of the problem was beyond the applicant's control and the criteria in paragraph (d)(3) of this section are met:

(i) Incidents of more than one debt payment being more than 30 days late if the incidents have occurred within the last 12 months. This includes more than one late payment on a single account.

(ii) Loss of security due to a foreclosure if the foreclosure has occurred within the last 36 months.

(iii) Outstanding tax liens or delinquent Government debts with no satisfactory arrangements for payments, no matter what their age as long as they are currently delinquent and/or due and payable.

(iv) A court-created or affirmed obligation (judgment) caused by non-payment that is currently outstanding or has been outstanding within the last 12 months.

(v) Two or more rent payments paid 30 days or more past due within the last 3 years.

(vi) Accounts which have been converted to collections within the last 12 months (utility bills, hospital bills, etc.).

(vii) Collection accounts outstanding, with no satisfactory arrangements for payments, no matter what their age as long as they are currently delinquent and/or due and payable.

(viii) Any debts written off within the last 36 months.

(2) The following will not indicate an unacceptable credit history:

(i) ''No history'' of credit transactions by the applicant.

(ii) A bankruptcy in which applicant was discharged more than 36 months before application.

(iii) A satisfied judgment or foreclosure with no loss of security which was completed more than 12 months before the date of application.

(3) The Lender may consider mitigating circumstances to establish the borrower's intent for good credit when the applicant provides documentation that:

(i) The circumstances were of a temporary nature, were beyond the applicant's control, and have been removed (e.g., loss of job; delay or reduction in government benefits or other loss of income; increased expenses due to illness, death, etc.); or

(ii) The adverse action or delinquency was the result of a refusal to make full payment because of defective goods or services or as a result of some other justifiable dispute relating to the goods or services purchased or contracted for.

(e) *Previous RHCDS loan.* RHCDS shall determine whether the applicant has had a previous RHCDS debt which was settled, or is subject to settlement, or whether RHCDS otherwise suffered a loss on a loan to the applicant. If RHCDS suffered any loss related to a previous loan, a loan guarantee shall not be issued unless RHCDS determines the RHCDS loss was beyond the applicant's control, and any identifiable reasons for the loss no longer exist.

(f) *Other Federal debts.* The loan approval official will check HUD's Credit Alert Interactive Voice Response System (CAIVRS) to determine if the applicant is delinquent on a Federal debt. The Lender will clearly document both its CAIVRS identifying number and the borrower and coborrower's CAIVRS access code near the signature line on the mortgage application form. No decision to deny credit can be based solely on the results of the CAIVRS inquiry. If CAIVRS identifies a delinquent Federal debt, the Lender will immediately suspend processing of the application. The applicant will be notified that processing has been suspended and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides the Lender with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued. An outstanding judgment obtained by the United States in a Federal court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive a loan guarantee until the judgment is paid in full or otherwise satisfied. RHCDS loan guarantee funds may not be used to satisfy the judgment. If the judgment remains unsatisfied or if the applicant is delinquent on a Federal debt and is unable to resolve the delinquency, the Lender will reject the applicant.

§ 1980.346 Other eligibility criteria.

The applicant must:

(a) Be a person who does not own a dwelling in the local commuting area or owns a dwelling which is not structurally sound, functionally adequate;

(b) Be without sufficient resources to provide the necessary housing and be unable to secure the necessary conventional credit without an RHCDS guarantee upon terms and conditions which the applicant could reasonably be expected to fulfill.

(c) Be a natural person (individual) who resides as a citizen in any of the 50

States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marianas, Federated States of Micronesia, and the Republics of the Marshall Islands and Palau, or a noncitizen who resides in one of the foregoing areas after being legally admitted to the U.S. for permanent residence or on indefinite parole.

(d) Possess legal capacity to incur the loan obligation and have reached the legal age of majority in the state or have had the disability of minority removed by court action.

(e) Have the potential ability to personally occupy the home on a permanent basis. Because of the probability of their moving after graduation, full-time students will not be granted loans unless:

(1) The applicant intends to make the home his or her permanent residence and there are reasonable prospects that employment will be available in the area after graduation, and

(2) An adult member of the household will be available to make inspections if the home is being constructed.

§ 1980.347 Annual income.

Annual income determinations will be thoroughly documented in the Lender's casefile. Historical data based on the past 12 months or previous fiscal year may be used if a determination cannot logically be made. Annual income to be considered includes:

(a) Current verified income, either part-time or full-time, received by any applicant/borrower and all adult members of the household, including any coapplicant/coborrower.

(b) If any other adult member of the household is not presently employed but there is a recent history of such employment, that person's income will be considered unless the applicant/borrower and the person involved sign a statement that the person is not presently employed and does not intend to resume employment in the foreseeable future, or if interest assistance is involved, during the term of the Interest Assistance Agreement.

(c) Income from such sources as seasonal type work of less than 12 months duration, commissions, overtime, bonuses, and unemployment compensation must be computed as the estimated annual amount of such income for the upcoming 12 months. Consideration should be given to whether the income is dependable based on verification by the employer and the applicant's history of such income over the previous 24 months.

(d) The following *are* included in annual income:

(1) The gross amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips, bonuses, and other compensation for personal services of all adult members of the household.

(2) The *net* income from operation of a farm, business, or profession. Consider the following:

(i) Expenditures for business or farm expansion and payments of principal on capital indebtedness shall not be used as deductions in determining income. A deduction is allowed in the manner prescribed by IRS regulations only for interest paid in amortizing capital indebtedness.

(ii) Farm and nonfarm business losses are considered ''zero'' in determining annual income.

(iii) A deduction, based on straight line depreciation, is allowed in the manner prescribed by IRS regulations for the exhaustion, wear and tear, and obsolescence of depreciable property used in the operation of a trade, farm, or business by a member of the household. The deduction must be based on an itemized schedule showing the amount of straight line depreciation that could be claimed for Federal income tax purposes.

(iv) Any withdrawal of cash or assets from the operation of a farm, business, or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by a member of the household.

(v) A deduction for verified business expenses, such as for lodging, meals, or fuel, for overnight business trips made by salaried employees, such as long-distance truck drivers, who must meet these expenses without reimbursement.

(3) Interest, dividends, and other net income of any kind from real or personal property, including:

(i) The share received by adult members of the household from income distributed from a trust fund.

(ii) Any withdrawal of cash or assets from an investment except to the extent the withdrawal is reimbursement of cash or assets invested by a member of the household.

(iii) Where the household has net family assets, as defined in § 1980.302(a), in excess of $5,000, the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate.

(4) The full amount of periodic payments received from social security (including social security received by adults on behalf of minors or by minors intended for their own support), annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts.

(5) Payments in lieu of earnings; such as unemployment, disability and worker's compensation, and severance pay.

(6) Public assistance except as indicated in paragraph (e)(2) of this section.

(7) Periodic allowances, such as:

(i) Alimony and/or child support awarded in a divorce decree or separation agreement, unless the payments are not received and a reasonable effort has been made to collect them through the official entity responsible for enforcing such payments and they are not received as ordered; or

(ii) Recurring monetary gifts or contributions from someone who is not a member of the household.

(8) Any amount of educational grants or scholarships or VA benefits available for subsistence after deducting expenses for tuition, fees, books, and equipment.

(9) All regular pay, special pay (except for persons exposed to hostile fire), and allowances of a member of the armed forces who is the applicant/borrower or coapplicant/coborrower, whether or not that family member lives in the unit.

(10) The income of an applicant's spouse, unless the spouse has been living apart from the applicant for at least 3 months (for reasons other than military or work assignment), or court proceedings for divorce or legal separation have been commenced.

(e) The following are not included in annual income but may be considered in determining repayment ability:

(1) Income from employment of minors (including foster children) under 18 years of age. The applicant and spouse are not considered minors.

(2) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977.

(3) Payments received for the care of foster children.

(4) Casual, sporadic, or irregular cash gifts.

(5) Lump-sum additions to family assets such as inheritances; capital gains; insurance payments from health, accident, hazard, or worker's compensation policies; and settlements for personal or property losses (except as provided in paragraph (d)(5) of this section).

(6) Amounts which are granted specifically for, or in reimbursement of, the cost of medical expenses.

(7) Amounts of education scholarships paid directly to the student or to the educational institution and

amounts paid by the Government to a veteran for use in meeting the costs of tuition, fees, books, and equipment. Any amounts of such scholarships or veteran's payments, which are not used for the aforementioned purposes and are available for subsistence, are considered to be income. Student loans are not considered income.

(8) The hazardous duty pay to a service person applicant/borrower or spouse away from home and exposed to hostile fire.

(9) Any funds that a Federal statute specifies must not be used as the basis for denying or reducing Federal financial assistance or benefits. (Listed in exhibit F of FmHA Instruction 1980–D, available in any RHCDS office.)

(f) Income of live-in aides who are not relatives of the applicant or members of the household will not be counted in calculating annual income and will not be considered in determination of repayment ability.

§ 1980.348 Adjusted annual income.

Adjusted annual income is annual income as determined in § 1980.347 less the following:

(a) A deduction of $480 for each member of the family residing in the household, other than the applicant, spouse, or coapplicant, who is:

(1) Under 18 years of age;

(2) Eighteen years of age or older and is disabled as defined in § 1980.302(a); or

(3) A full-time student aged 18 or older.

(b) A deduction of $400 for any elderly family as defined in § 1980.302(a).

(c) A deduction for the care of minors 12 years of age or under, to the extent necessary to enable a member of the applicant/borrower's family to be gainfully employed or to further his or her education. The deduction will be based only on monies reasonably anticipated to be paid for care services and, if caused by employment, must not exceed the amount of income received from such employment. Payments for these services may not be made to persons whom the applicant/borrower is entitled to claim as dependents for income tax purposes. Full justification for such deduction must be recorded in detail in the loan docket.

(d) A deduction of the amount by which the aggregate of the following expenses of the household exceeds 3 percent of gross annual income:

(1) Medical expenses for any elderly family (as defined in § 1980.302(a)). This includes medical expenses for any household member the applicant/borrower anticipates incurring over the ensuing 12 months and which are not covered by insurance (e.g., dental expenses, prescription medicines, medical insurance premiums, eyeglasses, hearing aids and batteries, home nursing care, monthly payments on accumulated major medical bills, and full-time nursing or institutional care which cannot be provided in the home for a member of the household); and

(2) Reasonable attendant care and auxiliary apparatus expenses for each disabled member of any household to the extent necessary to enable any member of such household (including such disabled member) to be employed.

§§ 1980.349—1980.350 [Reserved]

§ 1980.351 Requests for reservation of funds.

Upon receipt of a viable loan application and prior to loan underwriting, the Lender may request a reservation of loan guarantee funds for the loan application. The request should be made as follows:

(a) The Lender must have a complete application on file that clearly indicates the borrower has sufficient qualifying income and an adequate credit history.

(b) The reservation shall be valid for 60 days. The Lender must submit a request for a loan guarantee on or before the expiration date of the reservation. *Substitutions of borrowers or dwellings are not authorized.*

(c) Reservations may be granted only when adequate funding authority is available. Reservations are subject to the availability of funds. Reservations will not exceed 90 percent of the funds available during that quarter.

(d) [Reserved]

(e) All reservations will expire at the end of 60 days or no later than the pooling date published in subpart L of part 1940 whichever occurs first.

(f) [Reserved]

§ 1980.352 [Reserved]

§ 1980.353 Filing and processing applications.

(a) *Loan priorities.* Complete applications will be considered by RHCDS in the order received from Lenders authorized to participate in the program except as provided in paragraph (b) of this section.

(b) *Preference.* Preference is considered when there is a shortage of funds and there is more than one request for a conditional commitment or reservation of funds ready for approval. Applications for guarantees on loans to first-time homebuyers or veterans, their spouses, or children of deceased servicemen who died during one of the periods described in the definition of ''Veteran'' in § 1980.302(a) will be given preference by RHCDS. Displaced homemakers and single parents are first-time homebuyers even though they previously owned or resided in a dwelling with a spouse.

(c) *Applications.* If, upon completion of the loan underwriting process of an application, the Lender concludes that the application can be considered for an RHCDS guarantee, the Lender will provide written documentation addressing each of the loan eligibility requirements of this subpart and the basis for the conclusion in the applicant's file. The Lender will submit a request for the guarantee using a Form FmHA 1980–21, ''Request for Single Family Housing Loan Guarantee.'' The form should contain or be supplemented with all of the following information:

(1) Name, address, telephone number, social security number, age, citizenship status of the applicant, and number of persons in the household.

(2) Amount of loan request and proposed use of loan funds.

(3) Name, address, contact person, and telephone number of the proposed Lender.

(4) Anticipated loan rates and terms, the date and amount of the Fannie Mae or VA rate used to determine the interest rate, and the Lender's certification that the proposed rate is in compliance with § 1980.320.

(5) Statement from the Lender that it will not make the loan as requested by the applicant without the proposed guarantee and that the applicant has been advised in writing that the applicant is subject to criminal action if he or she knowingly and willfully gives false information to obtain a federally guaranteed loan.

(6) If the applicant is not a United States citizen, evidence of being legally admitted for permanent residence or indefinite parole.

(7) The applicant's sex, race, and veteran status and whether applicant is a first-time homebuyer.

(8) An appraisal report including information about the dwelling location with respect to neighborhood and community services and facilities, business and industrial enterprises, and streets or roads serving the housing.

(9) Credit report obtained by the Lender.

(10) An equal opportunity agreement supplied by RHCDS for construction contracts costing more than $10,000.

(11) Evidence of compliance with the Privacy Act of 1974.

(12) Lender's loan underwriting (repayment ability, creditworthiness, and security value).

(13) A certification from the borrower regarding debarment, suspension, ineligibility, and voluntary exclusion from Federal programs using a form supplied by RHCDS.

(14) A statement signed by the borrower acknowledging that the borrower understands that RHCDS approval of the guarantee is required and is subject to the availability of funds.

(15) A copy of a valid verification of income for each adult member of the household.

(16) A copy of the purchase agreement or bid for construction contract.

(d) [Reserved]

(e) *Verifying information provided.* Written documentation from third parties is the preferred method of verifying information. Verifications must pass directly from the source of information to the Lender and shall not pass through the hands of a third party or applicant.

(1) *Income verification.* Employment verifications and other income verifications obtained in accordance with this paragraph are valid for 120 days (180 days for proposed new construction). Income verifications must be valid at the time the conditional commitment is issued.

(i) An RHCDS approved form or the equivalent HUD/FHA/VA or Fannie Mae form will be used to verify employment income of the loan applicant except when the applicant is self-employed. The form will be signed by the applicant or borrower or accompanied by an authorization for a release of information form signed by the applicant or borrower and sent directly to the employer by the Lender. The Lender should also obtain copies of the three most recent paycheck stubs. The information in the employer verification should be compared to the information in the paycheck stubs for consistency.

(ii) Income information that cannot be obtained by use of this form will be obtained in writing from third parties to the extent possible.

(iii) Alimony and/or child support payments will be verified by obtaining a copy of the divorce decree or other legal document indicating the amount of the payments. When the applicant states that less than the amount awarded is received, the Lender will request documentation from the official entity through which payments are received or other third party able to provide the verification when payment is not made through an official entity indicating the amounts and dates of payments to the applicant during the previous 12 months.

(iv) When it is not feasible to verify income in paragraph (e)(1)(iii) of this section through third parties, the Lender is authorized to accept an affidavit from the applicant stating the effort made to collect the amount awarded and the amounts and dates of payments received during the previous 12 months.

(v) Applicants and borrowers deriving their income from a farming or business enterprise will provide current documentation of the income and expenses of the operation. In addition, historic information from the previous fiscal year must be presented.

(vi) Social Security, pension, and disability income may be verified by obtaining a copy of the most recent award or benefit letter prepared and signed by the authorizing agency. This verification will be considered valid only for 1 year from the date of the award or benefit letter.

(2) *Verification of disability.* An RHCDS supplied form will be used to verify disability in cases where State Review Board or Social Security records are not available. Receipt of veteran's benefits for disability, whether service-oriented or otherwise, does not automatically establish disability.

(3) *Verification of alien status.* Aliens are required to present documentation of their status. Section 1944.9 outlines the acceptable forms of documentation.

(4) *Verification of credit history and current debt.* The Lender shall determine all liabilities of all parties responsible for repayment of the proposed loan. Credit reporting information must pass directly between the Lender and the credit reporting agency or source.

(i) Mortgage credit reports shall be used to determine creditworthiness unless the applicant resides in a remote rural area and conclusive or sufficient information would not be available. Information relative to judgments, garnishments, foreclosures, and bankruptcies must be obtained when a credit report is not obtained.

(ii) The credit report must be the most recent revision of the Residential Mortgage Credit Report form and meet the standards prescribed by Fannie Mae, Freddie Mac, HUD, VA, or RHCDS.

§ 1980.354 [Reserved]

§ 1980.355 Review of requirements.

Upon the Lender's review of the conditional commitment, the Lender may determine whether to accept the conditions outlined in it.

(a) *Accepting conditions.* Immediately after reviewing the conditions and requirements in the conditional commitment and the options listed on the back of the form, the Lender may proceed with loan closing. If the conditions cannot be met, the Lender and borrower may propose alternate conditions to RHCDS.

(b) *Canceling commitment.* If the Lender indicates in the acceptance or rejection of conditions that it desires to obtain a loan note guarantee and subsequently decides prior to loan closing that it no longer wants a loan note guarantee, the Lender should immediately advise the RHCDS approval official.

§§ 1980.356—1980.359 [Reserved]

§ 1980.360 Conditions precedent to issuance of the loan note guarantee.

(a) *Lender certification.* The Lender must certify to RHCDS that:

(1) No major changes have been made in the Lender's loan conditions and requirements since the issuance of the conditional commitment, except those approved in writing by RHCDS. In the event the interest rate has not been fixed at the time the conditional commitment is issued, and the interest rate increases between the time of issuance of the conditional commitment and loan closing, the Lender should note the change when submitting the package to RHCDS for loan guarantee. If either or both of the underwriting ratios are exceeded as a result of the interest rate increase, the Lender should list the compensating factors that demonstrate that sufficient repayment ability still exists.

(2) All planned property acquisition has been completed and:

(i) All development has been completed; or

(ii) An escrow account has been established in accordance with § 1980.315.

(3) Required insurance coverage is in effect and an escrow account has been established for the payment of taxes and insurance.

(4) Truth-in-lending requirements have been met.

(5) All equal employment opportunity and nondiscrimination requirements have been met.

(6) The loan has been properly closed by a party skilled and experienced in conducting loan closings and the required security instruments, including any required shared equity instruments, have been obtained and recorded in the appropriate office in a timely and accurate manner.

(7) The borrower has a marketable (clean and defensible) title to the property then owned by the borrower,

subject to the instrument securing the loan to be guaranteed, and any other exceptions approved in writing by RHCDS.

(8) Lien priorities are consistent with the requirements of the conditional commitment.

(9) The loan proceeds have been disbursed for purposes and in amounts consistent with the conditional commitment.

(10) There has been no adverse change in the borrower's situation since the conditional commitment was issued by RHCDS.

(11) All other requirements of the conditional commitment have been met.

(b) *Inspections.* The Lender will certify to RHCDS that inspections in accordance with § 1980.341 have been completed.

(c) *Lender agreement.* There must be a valid lender agreement on file.

(d) *Lender file.* The Lender will maintain a file for each guaranteed RH loan containing originals or copies, as appropriate, of all documents pertaining to that loan.

§ 1980.361 Issuance of loan note guarantee.

(a) When the Lender has certified that all requirements have been met, delivered a completed Loan Closing Report, and paid the guarantee fee, the RHCDS approval official will concurrently execute the loan note guarantee. The original will be provided to the Lender and be attached to the note.

(b) [Reserved]

(c) [Reserved]

§ 1980.362 [Reserved]

§ 1980.363 Review of loan closing.

The Lender must provide RHCDS with documentation that all of the closing conditions have been met within 10 days of issuance of the loan note guarantee. The Lender is responsible for deficiencies regardless of whether RHCDS discovers them in the loan closing review and/or notifies the Lender at that time. RHCDS reviews do not constitute any waiver of fraud, misrepresentation, or failure of judgment by the Lender.

§§ 1980.364–1980.365 [Reserved]

§ 1980.366 Transfer and assumption.

(a) *General.* Lenders may, but are not required to, permit a transfer to an eligible applicant. A transfer and assumption must be approved by RHCDS in writing. Transfers without assumption are not authorized. Transfers and assumptions under this subpart are subject to the RHCDS guarantee fee.

(b) *Eligible transferee.* An eligible transferee is one who meets the eligibility requirements of this subpart and includes situations involving transfers of housing in an area that has ceased to be rural. Loans made and guaranteed under this subpart prior to March 29, 1989, may be transferred to an applicant meeting all eligibility requirements of this subpart except the applicant's adjusted annual income may exceed the maximum income for the area by not more than 10 percent.

(c) *Determinations by the Lender.* Before the transfer and assumption can be approved with the guarantee remaining in force, the Lender must determine that all of the following conditions can be met:

(1) The transferee is an eligible applicant.

(2) The transferee will assume the total remaining debt and acquire all of the property securing the guaranteed loan balance.

(3) The transfer and assumption would not be made without the continuation of the loan guarantee.

(4) The market value of the security being acquired by the transferee is at least equal to the secured indebtedness against it.

(5) The priority of the existing lien securing the guaranteed loan will be maintained or improved.

(6) Proper hazard insurance will be obtained.

(7) The transfer and assumption can be properly closed and the conveyance instruments will be filed, registered, or recorded, as appropriate.

(8) The transferor acknowledges continued liability for the debt in writing.

(d) *Changes in the promissory note or security instrument.* If the assumption will result in changes in the repayment schedule or the interest rate, the changes must be approved by the present debtors since they will remain liable for the debt. Any changes in rates and terms must not exceed rates and terms allowed for new loans under this subpart and cannot exceed the interest rate on the initial loan. The debt must not exceed the amount remaining due on the original loan. The term of the loan may cover a period of up to 30 years from the date of transfer and assumption. The Lender's request for approval to RHCDS will be accompanied by:

(1) An explanation of the reasons for the proposed change in the rates and terms.

(2) A statement that the Lender's determinations required by paragraph (c) of this section can be made.

(e) *Release of liability.* The Lender may not release the transferor of liability.

(f) *Forms and case numbers.* The assumption may be made on the Lender's assumption agreement form. The assumption agreement must contain the RHCDS case numbers of the transferor and the transferee.

(g) *Lender's application to RHCDS.* The Lender must submit the items outlined in § 1980.353(e) of this subpart to RHCDS, in addition to items required in this section.

(h) *Notations and notices.* The Lender must notify RHCDS whether the loan and security can be properly assumed and transferred. The Lender shall assure that the conveyance instruments are properly filed, registered, or recorded, as appropriate. Upon completion of the transfer and assumption, the Lender must provide RHCDS a copy of the transfer and assumption agreement. The Lender may present the loan note guarantee to RHCDS if it desires RHCDS to note the transfer and assumption on the loan note guarantee. If a new note is obtained, it will also be attached to the loan note guarantee.

(i) *Interest assistance.* The original borrower's Master Interest Assistance Agreement may be transferred to an eligible transferee. Equity sharing, if any, owed by the transferor must be determined and collected at the time the loan is assumed and title to the property is transferred. See § 1980.391.

(j) *Closing the transfer and assumption.* As soon as the Lender has obtained RHCDS approval, the Lender may proceed with closing the transaction. The closing must include, but need not be limited to, the proper execution and delivery of the conveyance and assumption documents, compliance with any legal requirements, and actions necessary to perfect the transfer and the required lien priority.

(k) *Loan note guarantee.* The existing loan note guarantee will continue to be in effect. RHCDS will note the transfer and assumption on the original loan note guarantee by completing the Assumption Agreement block by inserting the name of the assuming party.

(l) *Material furnished to RHCDS after closing.* Immediately after closing, the Lender must furnish to RHCDS:

(1) A conformed copy of the executed assumption agreement.

(2) A statement showing:

(i) Any changes made in the provisions of the promissory note or security instruments.

(ii) That all conditions and requirements of paragraph (b) of this section have been met.

(iii) That the required insertions have been made per paragraph (h) of this section.

(m) *Notification of Lender.* The RHCDS approval official will review the proposed transfer and assumption and notify the Lender of the decision in writing. The request for transfer and assumption will be treated as an application for guaranteed loan assistance and will be handled in accordance with § 1980.353. The Lender may proceed with the transfer and assumption upon obtaining RHCDS approval.

§ 1980.367 Unauthorized sale or transfer of the property.

RHCDS consent is required to continue with the RHCDS guarantee in the event of a sale or transfer of the property in accordance with § 1980.366. If the property is transferred without RHCDS consent, the Lender must take one of the following actions:

(a) Obtain RHCDS consent if the conditions of § 1980.366 can be met;

(b) Satisfy the RHCDS guarantee and continue with the loan without the loan note guarantee; or

(c) Notify the borrower and the transferee of the default and service the loan in accordance with § 1980.371.

§§ 1980.368–1980.369 [Reserved]

§ 1980.370 Loan servicing.

RHCDS encourages Lenders to provide borrowers with the maximum opportunity to become successful homeowners. Lenders should provide sufficient servicing and counseling to meet the objectives of the loan. Loan servicing should be approached as a preventive action rather than a curative action. Prompt followup by the Lender on delinquent payments and early recognition and solution of problems are keys to resolving many delinquent loan cases. The Lender shall perform those services which a reasonable and prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed.

(a) *Normal loan servicing.* The Lender is responsible for servicing the loan under the Lender Agreement and this subpart even if the Lender has engaged a third party to service the loan on its behalf. Normal servicing includes:

(1) Receiving all payments as they fall due and proper application of payments to principal and interest and escrow accounts for taxes (including special assessments) and insurance.

(2) Establishment and maintenance of an escrow account to pay real estate taxes and assessments and required hazard and flood insurance on the security. All escrow accounts must be fully insured by the Federal Deposit Insurance Corporation (FDIC). The Lender is responsible for maintaining escrow funds in a reasonable and prudent manner and for assuring that real estate taxes and assessments and required hazard and flood insurance are paid in a timely manner even if it requires advancing the Lender's own funds. The monthly payment may be adjusted when it is not adequate to meet established charges of the escrow account for the coming year. Escrow funds may be used only for the purpose for which they were collected.

(3) Obtaining compliance with the covenants, loan agreement (if any), security instruments, and any supplemental agreements and notifying the borrower in writing of any violations.

(b) *Other servicing requirements.* Other servicing requirements include taking actions to offset the effects of liens, probate proceedings, and other legal actions. The Lender's responsibility includes assuring that:

(1) Insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuild or otherwise acquire needed replacement collateral.

(2) The borrower complies with laws and ordinances applicable to the loan and the collateral.

(3) The borrower is not released of liability for the loan except as provided in Agency regulations.

(c) *Servicing options.* The Lender should make every effort to assist borrowers who are cooperative and willing to make a good faith effort to cure the delinquency. The Lender should consider the borrower's financial condition in attempting to work out repayment agreements. The Lender may revise the payment schedule of the loan on a temporary basis with the written concurrence of the borrower. Changes in the loan repayment such as reamortization of the unpaid balance within the remaining term of the loan may be done with prior written RHCDS concurrence. Reamortization shall not change the amount of the loan guarantee.

(d) *Lender reporting to RHCDS.* Reports on Lender servicing case loads and performance are required as follows:

(1) *Monthly report.* The Lender must prepare and submit a report in a manner prescribed by RHCDS identifying each borrower with a loan that is more than 30 days delinquent.

(2) *Annual report.* The Lender will submit an annual report indicating the status of each borrower account as of December 31 using the format prescribed by RHCDS.

(e) [Reserved]

§ 1980.371 Defaults by the borrower.

Default occurs when the borrower fails to perform under any covenant of the mortgage or Deed of Trust and the failure continues for 30 days. The Lender will negotiate in good faith in an attempt to resolve any problem. The borrower must be given a reasonable opportunity to bring the account current before any foreclosure proceedings are started.

(a) The Lender must make a reasonable attempt to contact the borrower if the payment is not received by the 20th day after it is due.

(b) The Lender must make a reasonable attempt to arrange and hold an interview with the borrower for the purpose of resolving the delinquent account before the loan becomes 60 days delinquent. Reasonable effort consists of not less than one letter sent to the borrower at the property address via certified mail or similar method which the borrower refuses to accept or fails to respond.

(c) If the Lender is unable to make contact with the borrower, the Lender must determine whether the property has been abandoned and the value of the security is in jeopardy before the account becomes two payments delinquent.

(d) When the loan becomes three payments delinquent, the Lender must report borrower delinquencies to credit repositories and make a decision with regard to liquidation of the account. The Lender may proceed with liquidation of the account unless there are extenuating circumstances.

§ 1980.372 Protective advances.

Protective advances must constitute an indebtedness of the borrower to the Lender and be secured by the security instrument. Protective advances are advances made for expenses of an emergency nature necessary to preserve or protect the physical security. Attorney fees are not a protective advance. The Lender will not make protective advances in lieu of an additional loan. In order to assure that a protective advance over $500 will be included in the loss payment, Lenders are encouraged to obtain prior RHCDS approval.

§ 1980.373 [Reserved]

§ 1980.374 Liquidation.

If the Lender concludes the liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the borrower cannot or will not cure or eliminate within a reasonable period of time, the Lender will notify RHCDS of the decision to liquidate. Initiation of foreclosure begins with the first public action required by law such as filing a complaint or petition, recording a notice of default, or publication of a notice of sale. Foreclosure must be initiated within 90 days of the date the decision to liquidate is made unless the foreclosure has been delayed by law. When there is a legal delay (such as bankruptcy), foreclosure must be started within 60 days after it becomes possible to do so.

(a) *Expeditious liquidation.* Once the decision to liquidate has been made, the Lender must proceed in an expeditious manner. Lenders must exercise due diligence in completing the foreclosure process. Lenders are expected to complete foreclosure within the time frames that are reasonable for the state in which the property is located.

(b) *Maximum collection.* The Lender is expected to make the maximum collection possible on the indebtedness. The Lender will consider the possibility of recovery of any deficiency apart from the acquisition or sale of collateral. The Lender will submit a recommendation on such recovery considering the borrower's assets and ability to pay, prospects of future recovery, the costs of pursuing such recovery, recommendation for obtaining a judgment, and the collectability of a judgment in view of the borrower's assets.

(c) *Allowable liquidation costs.* Certain reasonable liquidation costs (costs similar to those charged for like services in the area) will be allowed during the liquidation process. No in-house expenses of the Lender will be allowed including, but not limited to, employee salaries, staff lawyers, travel, and overhead. Liquidation costs are deducted from the gross sales proceeds of the collateral when the Lender has conducted the liquidation.

(d) *Servicing plan.* The Lender must submit a servicing plan to RHCDS when the account is 90 days delinquent and a method other than foreclosure is recommended to resolve delinquency. RHCDS encourages Lenders and delinquent borrowers to explore an acceptable alternative to foreclosure to reduce loss and expenses of foreclosure. Although prior approval is not required in all cases, the Agency may reject a plan that does not protect the Government's interest.

(1) *Continuation with the borrower.* The Lender may continue with the borrower when a clear and realistic plan to eliminate the delinquency is presented. The Lender must fully document the borrower's prospects of success and make this information available to RHCDS upon request.

(2) *Voluntary liquidation.* RHCDS may accept the Lender's plan to use voluntary liquidation when the plan clearly addresses the responsibilities of the parties, the Lender maintains oversight of the progress of the sale, the property is listed for sale at a price in line with its market value (if there is not already a bona fide purchaser for the dwelling), and the expected cost to the Government is the same as or less than the cost of foreclosure.

(3) *Deed-in-lieu of foreclosure.* The Lender may take a deed-in-lieu of foreclosure from the borrower when it will not result in a cost to the Government in excess of that expected for foreclosure.

(4) *Other methods.* RHCDS may accept a proposal submitted by the Lender that is not specifically addressed in but is consistent with the provisions of this subpart if the Lender fully documents how the proposal will result in a savings to the Government.

(e) *Handling shared equity.* Interest assistance payments made under § 1980.390 of this subpart will not be subject to shared equity if the loan is liquidated in accordance with the Lender Agreement unless:

(1) The property is sold at or prior to foreclosure for an amount exceeding the Lender's unpaid balance and costs of foreclosure, or

(2) A junior lienholder takes over the Lender's loan.

§ 1980.375 Reinstatement of the borrower's account.

The Lender may reinstate an account when all delinquent payments and any funds that were advanced to pay authorized expenses are paid or as required under state law. When the Lender wishes to consider other offers by the borrower to bring the account current, the Lender must obtain RHCDS concurrence.

§ 1980.376 Loss payments.

Settlement of the guarantee will be processed in accordance with this section.

(a) *Loss payment.* Loss payments will be made within 60 days of the Lender's properly filed claim. The Lender must submit its loss claim within 30 calendar days of loan liquidation. The claim may include interest on the unpaid principal accrued to final loss settlement. RHCDS will pay interest within the limits of the guarantee to the date the claim is paid when the Lender promptly and properly files the claim.

(1) *Determination of loss payment.* To calculate the loss payment, first determine the unpaid debt by adding the unpaid principal and interest on the loan and the unpaid balance for principal and interest on authorized protective advances. The net proceeds from the property will be first applied to the unpaid debt. Any other proceeds recovered by the Lender from other sources shall also be applied to the total unpaid debt. Determination of net proceeds will be different depending on which of the following circumstances are involved.

(i) If, at liquidation, title to the property is conveyed to a bona fide third-party purchaser, then final loss payment will be based on the net sales proceeds received for the property.

(ii) If, at liquidation, title to the property is conveyed to the Lender, then the Lender must prepare and submit a property disposition plan to RHCDS for RHCDS concurrence. The plan will address the Lender's proposed method for sale of the property, the estimated value and minimum sale price, itemized estimated costs of the sale, and any other information that could impact the amount of loss on the loan. The Lender is allowed up to 6 months from the date the property is acquired to sell the property. Upon the Lender's written request, RHCDS will authorize one extension not to exceed 30 days to close the sale of a purchase offer accepted near the end of the 6-month period. Net proceeds will be based on the net proceeds received for the property when the sale is conducted in accordance with the plan as approved by RHCDS. If no sale offer is accepted within the 6-month period, then the RHCDS approval official will obtain and use a liquidation value appraisal of the property. When an appraisal is obtained, the amount of the net proceeds from the security is then determined by subtracting a cost factor, which is found in exhibit D of FmHA Instruction 1980–D (available in any RHCDS office), from the current market value.

(iii) If a deficiency judgment is obtained, the Lender must enforce the judgment against the borrower before loss settlement if the current situation provides a reasonable prospect of recovery. A loss payment will be made when the Lender holds a deficiency judgment but there are not current

prospects of collection, even if there may be in the future.

(2) *Payment procedure.* RHCDS will pay losses on the loan according to the terms of the loan note guarantee unless RHCDS has determined there is cause for reduction of the loss amount. See § 1980.377 for future recovery by the Lender.

(i) If there is no dispute between RHCDS and the Lender regarding the amount of the loss and the Lender's eligibility for payment of loss, RHCDS will pay the loss within the limits of the guarantee.

(ii) If RHCDS and the Lender do not agree on the amount of the loss, or RHCDS has determined that part of the loss is not payable to the Lender under the terms of the loan note guarantee, RHCDS will pay the undisputed portion. The disputed portion of the claim will be treated as an adverse decision and the Lender may appeal.

(iii) When RHCDS has cause to believe that Lender fraud or other lender actions negating the guarantee exist, no loss payment may be made unless the situation is resolved.

(3) The RHCDS approval official will conduct an audit of the account and review the loan in its entirety to determine why the loan failed and whether any reason exists for reducing or denying the loss claim. This information will be documented in the RHCDS casefile.

(4) If a Lender's loss claim is denied or reduced, the RHCDS approval official will notify the Lender of all of the reasons for the action within 10 days of the decision and the Lender may appeal in accordance with § 1980.399 and subpart B of part 1900.

(5) The RHCDS approval official is authorized to approve loss payments in amounts of up to 50 percent of his/her delegated loan approval authority in accordance with exhibit D of FmHA Instruction 1901–A (available in any RHCDS office).

(b) *Denial or reduction of loss claims.* The RHCDS approval official will fully document any loss claim which is denied or reduced including an analysis of how the amount of the reduction was determined. A connection must be made between the Lender's action or failure to act and the loss amount on the loan. The amount of loss occasioned by such action will be established. This information will be made available to the Lender upon request. A Lender's loss claim may be denied or reduced by RHCDS when:

(1) The Lender has committed fraud. (Denial of claim.)

(2) The Lender claims items not authorized under RHCDS regulations. (Reduced by amount of unauthorized claim.)

(3) The Lender violated usury laws. (Reduction for amount of loss caused by the violation.)

(4) The Lender failed to obtain required security or maintain the security position. (Reduction for loss attributed to failure.)

(5) Loan funds were used for unauthorized purposes. (Reduction by unauthorized amount.)

(6) The Lender was negligent in loan servicing. Negligent servicing is a failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes a failure to act, a failure to act in a timely manner, or acting in a manner contrary to that in which a reasonably prudent Lender would act. (Reduction for loss amount attributable to Lender negligence.) Examples of negligent servicing include:

(i) A failure to contact the borrower in a timely manner when the borrower's account goes into default.

(ii) A failure to pay real estate taxes or hazard insurance when due.

(iii) A failure to notify RHCDS within required time limits when the borrower defaults on the loan.

(iv) A failure to request loan subsidy when the borrower was eligible for loan subsidy and loan subsidy was available (subsidized loans only).

(v) A failure to protect security during the liquidation phase.

(7) The Lender delayed filing the loss claim. (Reduction in claim for interest accrued because the claim was not filed.)

§ 1980.377 Future recovery.

The proceeds of any amounts recovered shall be shared in proportion to the amount of loss borne between RHCDS and the Lender. Although the Lender's actual loss may be different than the amount on which loss settlement was based, the proportion of recovery sharing must be based on the loss percentage upon which the loss payment calculation was based.

§§ 1980.378–1980.389 [Reserved]

§ 1980.390 Interest assistance.

In order to assist low-income borrowers in the repayment of the loan, RHCDS is authorized to provide interest assistance payments subject to the availability of funds. Regardless of what date a borrower's loan payment is due each month, interest assistance payments will be made by RHCDS directly to the Lender on or before the 15th day of the month in which the borrower's payment is due.

(a) *Policy.* It is the policy of RHCDS to grant interest assistance on guaranteed loans to low-income borrowers to assist them in obtaining and retaining decent, safe, and sanitary dwellings and related facilities as long as the borrower remains eligible for payments when funds are available for interest assistance. Interest assistance must be established for the borrower at the time the loan guarantee is authorized.

(b) *Processing interest assistance agreements.* The Lender will process the interest assistance agreement and submit it to RHCDS for approval.

(1) RHCDS will reimburse the Lender in the amounts authorized in exhibit D of FmHA Instruction 1980–D (available in any RHCDS office) for the cost of processing the agreement. The fee will be paid upon receipt of a valid agreement which has been coded as requiring a processing fee payment. The processing fee is payable when:

(i) A new agreement is made with the borrower except at the time of loan closing.

(ii) The borrower had an agreement for the previous year and a new agreement is made for the current year.

(iii) The borrower is eligible for but not presently on interest assistance and enters into a new interest assistance agreement.

(iv) The borrower has a change in circumstances which requires a revision to the current agreement. When the change in circumstances results in an agreement with less than 90 days remaining, the agreement for the subsequent year will be prepared at the same time. This action is considered one agreement.

(2) A processing fee will not be paid when the revision to an existing agreement is required due to an error on the part of the Lender or the borrower.

(c) *Amount of interest assistance.* (1) The amount of interest assistance granted will be the difference between the monthly installment due on the promissory note eligible for interest assistance and the amount the borrower would pay if the note were amortized at the rate corresponding to the borrower's income range as outlined in the master interest assistance agreement.

(2) The basis for the amount of interest assistance for each loan is determined by the amount of interest assistance authorized to the Agency as shown in exhibit D of FmHA Instruction 1980–D (available in any RHCDS office) and the note interest rate.

(3) A borrower receiving a loan in a high cost area will be granted an additional 1 percent interest assistance in order to assist the borrower up to the

maximum rate in exhibit D of FmHA Instruction 1980–D (available in any RHCDS office).

(i) The Administrator may designate an area as a high cost area for interest assistance purposes. Such designation may be granted when the State Director makes a written request for it and provides documentation that low-income borrowers in the area could not afford to purchase a dwelling under the interest assistance table in exhibit D of FmHA Instruction 1980–D (available in any RHCDS office). The area must also be designated by HUD as a high cost area. The amount of additional interest assistance for high cost areas is 1 percent; however, in no case will more interest assistance be granted than the amount necessary to reach the lowest floor rate in exhibit D of FmHA Instruction 1980–D (available in any RHCDS office).

(ii) The change in a designation to (or from) a high cost area will not affect existing loans. An individual's loan eligibility for high cost designation is determined at the time of issuance of the conditional commitment for loan guarantee.

(d) *Shared equity.* Prior to loan closing, the Lender will advise the applicant that interest assistance is subject to equity sharing.

(e) *Eligibility.* To be eligible for interest assistance, a borrower must personally occupy the dwelling and must meet the following additional requirements:

(1) *Initial loans.* Interest assistance may be granted at the time the loan note guarantee is issued, or an assumption is processed in accordance with § 1980.366, when:

(i) The borrower's adjusted income at the time of loan guarantee approval did not exceed the applicable low-income limit, the loan guarantee was funded from interest assisted guaranteed loan funds, and a master interest assistance agreement was completed at closing if the borrower is ever to receive interest assistance.

(ii) The borrower's net family assets do not exceed the maximum allowable amount as per exhibit D of FmHA Instruction 1980–D (available in any RHCDS office) unless an exception is authorized. The calculation of net family assets will exclude the value of the dwelling and a minimum adequate dwelling site, cash on hand which will be used to reduce the amount of the loan, and household goods and personal automobiles and the debts against them. The Lender may request an exception at the time the initial application is submitted to RHCDS for a loan guarantee. For the purpose of determining whether an exception is justified, consideration will be given to the nature of the assets upon which a borrower is currently dependent for a livelihood or which could be used to reduce or eliminate the need for interest assistance.

(iii) The loan was approved as a subsidized guaranteed loan on or after April 17, 1991.

(iv) The amount of interest assistance will be $20 or more per month in accordance with the provisions of paragraph (c)(1) of this section. Interest assistance in amounts of less than $20 per month will not be granted.

(2) *Existing loans.* Interest assistance may be granted at any time after loan closing if:

(i) The requirements of paragraphs (e)(1)(i), (e)(1)(iii), and (e)(1)(iv) of this section are met.

(ii) The borrower's adjusted annual income does not exceed the low-income limit.

(iii) The borrower requests interest assistance through the Lender or the Lender determines that interest assistance is needed to enable the borrower to repay the loan.

(iv) The Lender processes the interest assistance agreement and submits it to RHCDS for approval.

(f) *Processing interest assistance.* The Lender will process interest assistance agreements in accordance with this section. The interest assistance agreement will be executed by the Lender and borrower and forwarded to RHCDS for approval.

(1) *Amount of interest assistance.* The amount of interest assistance for which a borrower is eligible will be determined by use of the interest assistance agreement as outlined in paragraph (c) of this section.

(i) *Determination of income.* The Lender is responsible for determining the borrower's annual and adjusted annual income as outlined in §§ 1980.347 and 1980.348 of this subpart. Income of all persons occupying the dwelling will be verified in accordance with § 1980.347 of this subpart.

(ii) *Effective period.* Annual interest assistance agreements will be for a 12-month period.

(2) *Interest assistance agreements.* The master interest assistance agreement will be executed for each qualifying loan at loan closing provided funds are available for interest assistance at the time the guarantee is issued. This agreement establishes the conditions and maximum amounts of interest assistance for the life of the loan. Each year, an annual interest assistance agreement will be used to determine the amount of interest assistance for the coming 12 months.

(i) The Lender will determine the borrower's adjusted annual income, document the calculations, and complete the interest assistance agreement form.

(ii) The borrower will review the interest assistance agreement form and sign the form signifying that all information is correct as shown.

(iii) If the information contained on the interest assistance agreement appears correct, RHCDS will approve the agreement and make monthly payments to the Lender on behalf of the borrower.

(iv) When the borrower's income is within the low-income limits but the provisions of paragraphs (e)(1)(ii) or (e)(1)(iv) of this section preclude granting interest assistance, the master interest assistance agreement must be executed if the borrower desires to be considered for interest assistance at a later date due to a change in circumstances.

(g) *Interest assistance modification.* A change in the borrower's circumstances after the effective date of the Annual Interest Assistance Agreement will be handled as follows:

(1) *RHCDS required modifications before expiration.* The borrower is responsible for reporting any increases in income exceeding $100 per month to the Lender. The Lender is not responsible for monitoring the borrower's income. The Lender must process a revised interest assistance agreement when a reported increase in the borrower's income results in the need for less interest assistance in accordance with paragraph (c) of this section.

(2) *Additional interest assistance before expiration.* The borrower may request and the Lender may process a modification of the interest assistance agreement and submit the modified agreement to RHCDS when:

(i) The borrower's adjusted annual income decreases by more than $100 per month;

(ii) The interest assistance calculation per paragraph (c) of this section indicates that the borrower is eligible for an additional $20 interest assistance per month; and

(iii) There are interest assistance funds available if the amount needed by the borrower exceeds the initial floor rate established at the time the loan was closed per paragraph (c) of this section.

(3) *Other changes in the borrower's circumstances.* When one coborrower has left the dwelling, interest assistance based on the remaining coborrower's income may be extended if:

(i) The remaining coborrower is occupying the dwelling, owns a legal interest in the property, and is liable for the debt;

(ii) The remaining coborrower certifies as to who lives in the house;

(iii) Separation is not due only to work assignment or military orders; and

(iv) The remaining coborrower is informed and agrees that should the coborrower begin to live in the dwelling, that coborrower's income will then be counted toward annual income and interest assistance may be reduced or canceled.

(4) *Effect of modification.* An interest assistance agreement modified as per paragraph (g)(1), (g)(2), or (g)(3) of this section is valid for the remainder of the agreement period.

(5) *Correction of interest assistance agreement.* When an error by RHCDS or the Lender resulted in too little interest assistance being granted, a corrected agreement will be prepared effective the date of the error if the error results in granting $20 or more per month less interest assistance than the borrower was eligible to receive. The Lender must return any overpayment made by the borrower unless an agreement is reached to apply the funds to the loan as an extra payment.

(h) *Eligibility review.* Borrowers receiving interest assistance will be reviewed annually within 30 to 60 days prior to the anniversary date of the loan. All existing agreements must be reviewed and processed for the upcoming 12 months during the review period. Interest assistance will not be renewed if the amount that the borrower qualifies for is less than $20 per month.

(1) The Lender will obtain written verification of the income of each borrower and all adult members of the borrower's household and conduct the review.

(i) *Borrower responsibility.* The borrower will:

(A) Report the income of each adult member of the household to the Lender;

(B) Assure that each household member has provided sufficient information on that person's income for the Lender to conduct the review; and

(C) Cooperate in the Lender's efforts to verify income.

(ii) [Reserved]

(2) *Processing interest assistance renewals not reviewed during the review period.* The Lender may process interest assistance renewals not completed during the review period as follows:

(i) The amount of interest assistance will be based on the borrower's current annual income.

(ii) The effective date will be:

(A) The expiration period of the previous interest assistance agreement if the RHCDS approval official determines failure to renew was the fault of RHCDS or the Lender.

(B) The next payment due date following approval in all other cases.

(3) *Interest assistance form.* Interest assistance payments will not be made after the expiration date unless RHCDS receives and approves a new interest assistance agreement form.

(i) *Cancellation of interest assistance.* (1) An existing interest assistance agreement will be canceled under the following circumstances:

(i) When the borrower has never occupied the dwelling, the interest assistance will be canceled as of the date of issuance of the guarantee. The Lender will refund all interest assistance payments to RHCDS.

(ii) The cancellation will be effective on the date on which the earliest action occurs which causes the cancellation or the date the Lender became aware of the situation if the date cannot be determined when:

(A) The borrower ceases to occupy, sells, or conveys title to the dwelling.

(B) The borrower has received improper interest assistance and a corrected agreement will not be submitted.

(C) The borrower has had an increase in income and is no longer eligible for interest assistance.

(D) The security is acquired by the Lender.

(E) The Lender formally declares the loan to be in default and accelerates the loan.

(2) [Reserved]

(j) *Overpayment.* When the Lender becomes aware of circumstances that have resulted in an overpayment of interest assistance for any reason, except as provided in paragraph (k) of this section, the following actions will be taken:

(1) The Lender will immediately notify RHCDS.

(2) The borrower will be notified and the interest assistance agreement will be corrected.

(3) A repayment agreement acceptable to RHCDS will be reached.

(k) *Unauthorized use of loan funds.* When RHCDS becomes aware that the Lender allowed loan funds to be used for unauthorized purposes, interest assistance paid on said amounts will be promptly repaid by the Lender. The Lender may work out a repayment agreement with the borrower but is expected to make every effort to minimize the adverse impact on the borrower's repayment ability.

(l) *Appeals.* All applicants/borrowers and Lenders may appeal adverse determinations in accordance with § 1980.399 when RHCDS denies, reduces, cancels, or refuses to renew interest assistance.

(m) *Reinstatement of interest assistance.* The RHCDS approval official may authorize reinstatement of the borrower's interest assistance if it was canceled because the loan was accelerated and if the acceleration was withdrawn with RHCDS approval.

§ 1980.391 Equity sharing.

The policy of RHCDS is to collect all or a portion of interest assistance granted on a guaranteed RH loan when any of the events described in paragraph (a) of this section occur, if any equity exists in the security.

(a) *Determining the amount of shared equity.* The RHCDS approval official will calculate shared equity when a borrower's account is settled by payment-in-full (including refinancing) of the outstanding indebtedness, the transfer of title, or when the borrower ceases to occupy the property. The calculation of shared equity when the account is in liquidation will be handled in accordance with § 1980.374(e).

(1) *How to calculate.* The amount of shared equity will be based on the amount of interest assistance granted on the loan, the appreciation in property value between the closing date of the loan and the date the account is satisfied or acquired by the Lender via liquidation action, the period of time the loan is outstanding, the amount of original equity the borrower has in the property, and the value of capital improvements to the property. Shared equity will be the lesser of the interest assistance granted or the amount of value appreciation available for shared equity. Value appreciation available for shared equity means the market value of the property less all debts secured by prior liens, sales expenses, any original borrower equity, principal reduction, and value added by any capital improvements.

(i) *Market value.* Market value of the property as of the date the loan is to be paid in full or the date the borrower ceases to occupy and will be documented by one of the following:

(A) A sales contract which reasonably represents the fair market value based on the Lender's and RHCDS approval official's knowledge of the property and the area.

(B) Lender's appraisal when the loan will be refinanced provided the appraisal reasonably represents the fair market value.

(C) If the items listed in either paragraph (a)(l)(i)(A) or (a)(1)(i)(B) of this section are not available, another

current appraisal, if readily available, when the appraiser meets the qualifications of § 1980.334.

(D) When the account is being paid off from insurance proceeds, the most recent appraisal available if the Lender or RHCDS can document that it represents an accurate indication of the value at the time the dwelling was damaged or destroyed. If not, the best information available will be used to determine the market value. The RHCDS approval official will interview the borrower to determine the extent of improvements, if any, and the general condition of the property at the time of loss. The amount of the insurance payment is generally a good indication of value; however, tax records or comparable sales will be considered.

(E) RHCDS appraisal, with prior approval of the State Director.

(ii) *Prior liens.* Prior liens refers to the amount of liens that are prior to the Lender's liens and include, but may not be limited to, prior mortgages, and real estate taxes and assessments levied against the property.

(iii) *Sale/refinancing expenses.* Sale/refinancing expenses include, but are not limited to, expenses commonly associated with the sale or refinancing of real estate that are not reimbursed, such as sales commissions, advertising costs, recording fees, pro rata taxes, points based on the current interest rate, appraisal fees, transfer tax, deed preparation fee, loan origination fee, etc. In refinancing situations, only those expenses necessary to finance the amount of the current RHCDS debt are allowed. Shared equity may be calculated using estimated expenses if actual expenses cannot be obtained and the RHCDS approval official is satisfied with the estimated amount and the prorating of the expenses are accurate for this transaction.

(iv) *Original borrower equity.* Original equity consists of a contribution by the borrower that reduces the amount of the loan below the market value. The contribution may be in the form of cash and/or value of the lot if the home was constructed on the borrower's property.

(v) *Capital improvements.* Capital improvements will be considered to the extent that they do not exceed market value contribution as indicated by a sales comparison analysis. Generally, the value added by improvements will be the difference in market value at the time of sale and market value without capital improvements. Cost of the improvement will not be considered, only contribution to value. Maintenance cost and replacement of short-lived depreciable items are normal expenses associated with home ownership and are not considered capital improvements.

(2) *Other considerations.* (i) *Overpayments of interest assistance.* When RHCDS has overpaid interest assistance and the overpaid amounts remain uncollected at the time shared equity is calculated, the overpaid amount will be added to shared equity.

(ii) *Multiple loans.* When a borrower has more than one loan and elects to pay only some of the loans, shared equity will not be calculated unless the remaining loan is not subject to shared equity. Shared equity will be calculated when the account is paid in full taking into consideration all of the interest assistance granted on the account.

(b) *Miscellaneous provisions—(1) Changes in terms.* Shared equity will not be calculated when an account is reamortized.

(2) *Junior liens.* Junior liens are not considered in the shared equity calculation. In the event a junior lienholder forecloses, the RHCDS approval official will calculate shared equity before providing the lienholder with a pay-off figure, which is in addition to any amounts still due the Lender on the loan in the same manner as paragraph (a) of this section.

(c) *Affordable housing proposals.* Shared equity under an affordable housing innovation (such as limited equity or a state or county sponsored shared equity) will be calculated in accordance with this subpart unless prior written approval is obtained from RHCDS. Proposals that deviate from this subpart must be reviewed and approved in the National office prior to issuance of the loan note guarantee.

§1980.392 Mortgage Credit Certificates (MCCs) and Funded Buydown Accounts.

(a) *MCCs.* MCCs are authorized under the Tax Reform Act of 1986 and allow the borrower to receive a Federal tax credit for a percentage of their mortgage interest payment. They may be used by RHCDS guaranteed RH borrowers to improve their repayment ability for the loan. MCCs impact on the borrower's tax liability. MCCs may be used with interest assisted loans when the amount of the tax credit is based on the amount of interest actually paid by the borrower. MCCs are subject to shared equity of a portion of any ''gain'' realized on the property when sold within 10 years after purchase. If the loan is also an RHCDS interest assisted loan, RHCDS shall receive priority for shared equity repayment. Income taxes are complex issues; RHCDS employees and Lenders are not expected to be able to identify all issues impacting the borrower's taxes. Lenders should encourage borrowers to consult with a tax advisor.

(1) When the Lender is participating in an MCC program the amount of the tax credit is considered as an additional resource available for repayment of the loan when the credit is taken on a monthly basis from withholding.

(2) The Lender will submit a copy of the MCC and a copy of the applicant's Form IRS W–4, ''Employee's Withholding Allowance Certificate,'' along with the other materials for the loan guarantee request. The amount of tax credit is limited to the applicant's maximum tax liability.

(i) The MCC must show the rate of credit allowed.

(ii) The Form IRS W–4 must reflect that the borrower is taking the tax credit on a monthly basis.

(iii) The Lender will certify that the borrower has completed and processed all of the necessary documents to obtain the tax credit in accordance with this section.

(b) *Funded buydown accounts.* A funded buydown account is a prepaid arrangement between a builder or a seller and a Lender that is designed to improve applicant's repayment ability. Funded buydown accounts are permitted when the Lender obtains prior RHCDS concurrence. RHCDS will consider buydown accounts when there are compensating factors which indicate the borrower's ability to meet the expected increases in loan payment. The seller, Lender or other third party must place funds in an escrow account with monthly releases scheduled directly to the Lender to reduce the borrower's monthly payment during the early years of the loan. The maximum reduction which may be considered is 2 percent below the note rate, even though the actual buydown may be for more. Reductions in buydown assistance may not result in an increase in the interest rate paid by the borrower of more than 1 percent per year. The borrower shall not be required to repay escrowed buydown funds. Funds must be escrowed with a state or federally supervised Lender. Funded buydown accounts must be fully funded for the buydown period. Buydown periods must be at least 12 months for each 1 percent of the buydown.

§§ 1980.393–1980.396 [Reserved]

§ 1980.397 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable

law if the Administrator determines that application of the requirement, or provision, or failure to take action in the case of an omission would adversely affect the Government's financial interest. The Administrator will exercise this authority upon request of the State Director with the recommendation of the Assistant Administrator for Housing. Requests for exception must be made in writing accompanied by the borrower's casefile in cases involving specific borrowers and supported with documentation to explain the adverse effect, propose alternative courses of action, and to show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 1980.398 Unauthorized assistance and other deficiencies.

(a) *Unauthorized assistance.* Unauthorized assistance includes, but is not limited to, issuance of a loan note guarantee when the borrower was not eligible for the loan or the borrower was eligible but the loan was not made for authorized purposes. Unauthorized assistance in the form of interest assistance is discussed in § 1980.390.

(b) *Initial determination of unauthorized assistance.* The reasons for unauthorized assistance being received by the Lender may include:

(1) Submission of false or inaccurate information by the Lender;

(2) Submission of false or inaccurate information by the borrower;

(3) Error by RHCDS personnel; or

(4) Error by the Lender.

(c) [Reserved]

(d) [Reserved]

(e) *Categories of unauthorized assistance.*

(1) *Minor deficiency.* A minor deficiency is one that does not change the eligibility of the borrower, the eligibility of the property, or amount of the loan. Such incidents will be brought to the Lender's attention in writing. Examples of minor deficiencies include improperly completed builder certifications, use of an outdated credit report, or use of an outdated income verification. Minor deficiencies also include those significant deficiencies when the Lender is willing and able to correct the problem such as obtaining flood insurance for a dwelling located in a flood hazard area and assuring the escrow amount is sufficient.

(2) *Significant deficiency.* A significant deficiency is one that creates a significant risk of loss to the Government, or involves acceptance of a borrower or property not permitted by Agency regulations. Such cases may result in probation or withdrawal of the Lender's approval for program participation. Examples of significant deficiencies include gross miscalculation of income, acceptance of property that is severely deficient of the required standards, missing builder certifications, and construction changes that materially affect value without proper change orders.

(3) *Fraud or misrepresentation.* A deficiency that involves an action by the Lender to misrepresent either the financial capacity of the borrower or the condition of the property being financed may, in addition to any criminal and civil penalties, result in a withdrawal of RHCDS approval, or debarment. Examples of this type of deficiency include falsified Verifications of Employment, false certifications, reporting a delinquent loan as being current, and omitting conditions relating to the health and safety of a property.

(f) *Borrower noncompliance.* When the borrower receives unauthorized assistance due to an error or oversight, the Lender may continue with the guaranteed loan. More serious violations will be viewed on a case-by-case basis by the National office.

(g) *RHCDS error oversight.* When the borrower receives unauthorized assistance solely due to an error or oversight by RHCDS, the Lender may continue with the guaranteed loan.

§ 1980.399 Appeals.

The borrower and the Lender respectively can appeal an RHCDS administrative decision that directly and adversely impacts them. Decisions made by the Lender are not covered by this paragraph even if RHCDS concurrence is required before the Lender can proceed. Appeals will be conducted in accordance with the rules of the National Appeals Division, USDA.

(a) *Appealable decisions.* (1) The borrower and the Lender must jointly execute the written request for an alleged adverse decision made by RHCDS. The Lender need not be an active participant in the appeal process.

(2) The Lender only may appeal cases where RHCDS has denied or reduced the amount of a loss payment to the Lender.

(b) *Nonappealable decisions.* (1) The Lender's decision as to whether to make a loan is not subject to appeal.

(2) The Lender's decision to deny servicing relief is not subject to appeal.

(3) The Lender's decision to accelerate the account is not subject to appeal.

§ 1980.400 [Reserved]

Dated: March 22, 1995.

Michael V. Dunn,

Acting Under Secretary for Rural Economic and Community Development.

[FR Doc. 95–11943 Filed 5–19–95; 8:45 am]

BILLING CODE 3410–07–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–193–AD; Amendment 39–9231; AD 95–10–14]

Airworthiness Directives; Airbus Model A300, A310, and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A300, A310, and A300–600 series airplanes, that requires repetitive mechanical and electrical inspections to detect chafing of electrical wiring; and repair or replacement of discrepant parts, and repositioning the looms. This amendment is prompted by reports of wire chafing in the forward avionic compartment. The actions specified by this AD are intended to prevent such chafing, which may lead to a short in the electrical circuits at the 104VU panel; this condition could result in unwanted depressurization, loss of wing de-icing, and loss of in-flight engine restart capability.

DATES: Effective June 21, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 21, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A300, A310, and A300–600 series airplanes was published in the **Federal Register** on January 4, 1995 (60 FR 384). That action proposed to require repetitive mechanical and electrical inspections to detect discrepancies; and repair or replacement of discrepant parts, and repositioning the looms.

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

Two commenters support the proposed rule.

One commenter requests that the proposal be revised to include removal of the avionics bay ladder as an optional terminating action for the repetitive inspections. The commenter states that removing the avionics bay ladder will prevent future chafing. The commenter states that it has removed the avionics bay ladder in accordance with the Airplane Maintenance Manual and will request an alternative method of compliance. The FAA does not concur with the commenter's request to revise the final rule. The FAA does not consider it appropriate to include various provisions in an AD applicable to a single operator's unique configuration of an affected airplane. Paragraph (b) of this AD provides for the approval of an alternative method of compliance to address these types of unique configurations.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

The FAA estimates that 69 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,140, or $60 per airplane, per inspection cycle.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–10–14 Airbus Industrie: Amendment 39–9231. Docket 94–NM–193–AD.

Applicability: All Model A300, A310, and A300–600 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent unwanted depressurization, loss of wing de-icing, and loss of in-flight engine restart capability, accomplish the following:

(a) Within 600 flight hours or 6 months after the effective date of this AD, whichever occurs first, accomplish paragraphs (a)(1) and (a)(2) of this AD.

(1) Perform mechanical inspections to detect discrepancies, in accordance with paragraph 4.2.1. of Airbus All Operators Telex AOT 24–05, Revision 1, dated June 7, 1994. Repeat the inspection thereafter at intervals not to exceed 1,050 flight hours. If any discrepancy is detected, prior to further flight, repair or replace discrepant parts, and perform an electrical inspection in accordance with the AOT.

(2) Perform an electrical inspection to detect discrepancies, in accordance with paragraph 4.2.2. of Airbus All Operators Telex AOT 24–05, Revision 1, dated June 7, 1994. Repeat the inspection thereafter at intervals not to exceed 18 months. If any discrepancy is detected, prior to further flight, repair or replace discrepant parts, and reposition the looms, in accordance with the AOT.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(d) The inspections, repair, and replacement shall be done in accordance with Airbus All Operators Telex AOT 24–05, Revision 1, dated June 7, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus

Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 21, 1995.

Issued in Renton, Washington, on May 9, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–11907 Filed 5–19–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–146–AD; Amendment 39–9229; AD 95–10–12]

Airworthiness Directives; Airbus Model A320–111, –211, and –212 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320–111, –211, and –212 series airplanes, that requires modification of the junction box and connector backshells of a certain electrical harness assembly. This amendment is prompted by a report indicating that traces of fungus and corrosion have been found on the electrical harness junction box of the thrust reverser. The actions specified by this AD are intended to prevent such corrosion, which could result in multiple faults in the thrust reverser position indication, and subsequent uncontrolled reduction of engine power.

DATES: Effective June 21, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 21, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A320–111, –211, and –212 series airplanes was published in the **Federal Register** on December 27, 1994 (59 FR 66493). That action proposed to require modification of the junction box and connector backshells of the electrical harness assembly of the thrust reverser.

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

Both commenters support the proposed rule.

Since issuance of the notice, Airbus has issued Service Bulletin A320–71–1011, Revision 1, dated June 27, 1994. This service bulletin is essentially identical to the original issue, but contains certain editoral changes. The FAA has revised the final rule to include reference to this revision of the service bulletin as an alternative source of service information.

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

The FAA estimates that 50 airplanes of U.S. registry will be affected by this AD, that it will take approximately 24 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by ROHR, Inc. (the manufacturer of the junction box, connector backshells, and the electrical harness assembly) at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $72,000, or $1,440 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–10–12 Airbus Industrie: Amendment 39–9229. Docket 94–NM–146–AD.

Applicability: Model A320–111, –211, and –212 series airplanes powered by CFM 56–5A engines equipped with an electrical harness assembly having part number (P/N) 238W0908–513; on which Airbus Modification 23693 (reference Airbus Service Bulletin A320–71–1011) has not been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority

provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously. To prevent multiple faults in the thrust reverser position indication, and subsequent uncontrolled reduction of engine power, accomplish the following:

(a) Within 3,000 flight hours after the effective date of this AD, modify the junction box, connector backshells, and the electrical harness assembly of the thrust reverser, in accordance with Airbus Service Bulletin A320–71–1011, dated November 17, 1993, or Revision 1, dated June 27, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(d) The modification shall be done in accordance with Airbus Service Bulletin A320–71–1011, dated November 17, 1993; or in accordance with Airbus Service Bulletin A320–71–1011, Revision 1, dated June 27, 1994, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 4–6	1	June 27, 1994.
2, 3, 7–11	Original .	Nov. 17, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 21, 1995.

Issued in Renton, Washington, on May 9, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–11908 Filed 5–19–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–187–AD; Amendment 39–9233; AD 95–10–16]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped with Pratt & Whitney Model JT9D Series Engines (Excluding Model JT9D–70 Engines)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires modification of the nacelle strut and wing structure, inspections and checks to detect discrepancies, and correction of discrepancies. This amendment is prompted by the development of a modification of the strut and wing structure that improves the damage tolerance capability and durability of the strut-to-wing attachments, and reduces reliance on inspections of those attachments. The actions specified by this AD are intended to prevent failure of the strut and subsequent loss of the engine.

DATES: Effective June 21, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 21, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2776; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on December 21, 1994 (59 FR 65733). That action proposed to require modification of the nacelle strut and wing structure, inspections and checks to detect discrepancies in the adjacent structure, and correction of discrepancies.

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

Revision of Descriptive Language

One commenter notes that the description of the unsafe condition that appeared in the Discussion section of the preamble to the notice refers to ''the structural fail-safe capability of the strut-to-wing attachment.'' The commenter states that this description is inaccurate, since it implies that the strut-to-wing attachment is inadequate. The commenter suggests that a more accurate description would be ''damage tolerance capability of the strut-to-wing attachment.'' The FAA acknowledges that the commenter's wording is more accurate. The pertinent wording this preamble to the final rule has been revised to reflect this change. Furthermore, the FAA considers the new structure of the strut as meeting the damage tolerance requirements of amendment 45 of section 25.571, ''Damage—tolerance and fatigue evaluation of structure'' of the Federal Aviation Regulations (14 CFR 25.571, amendment 45), which provides an even higher level of safety than simply fail-safe requirements.

One commenter provides further information to describe the purpose of the proposed modification of the nacelle strut and wing structure. This commenter suggests that the rule should specify that the modification not only significantly improves the load-carrying and durability of the strut-to-wing attachments, but ''reduces the reliance on non-routine inspections,'' as well. The FAA concurs with this suggestion and has revised the Summary section of the preamble to this final rule to include wording relevant to this aspect.

One commenter provides clarification of the description in the Explanation of Service Information section of the preamble to the proposal. That section of the preamble described the various terminating actions specified in the service bulletins listed in paragraph I.C., Table 2, Prior or Concurrent Service

Bulletins,'' on page 13 of Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994 (which was referenced in the notice as the appropriate source of service information). The commenter notes that it is replacement of the ''diagonal brace strut lower spar fitting'' which is specified as a terminating action in that listing. The notice, however, incompletely described that particular terminating action as the replacement of ''the diagonal brace strut and wing and attachment fittings.'' The FAA acknowledges that the commenter provides a more complete description of that terminating action. However, since the Explanation of Service Information section is not restated in this rule, no change to the final rule is necessary.

Clarification of Note 1

One commenter requests that **Note 1** of the proposal be clarified since it is too vague to determine exactly when FAA approval of alternative methods of compliance (AMOC) is necessary. The FAA concurs. Although every effort is made to keep the language simple and clear, it is apparent that some additional explanation is necessary to clarify the intent of **Note 1**. Performance of the requirements of this final rule is ''affected'' if an operator is unable to perform those requirements in the manner described in this AD. For example, if an AD requires a visual inspection in accordance with a certain service bulletin, and the operator cannot perform that inspection because of the placement of a repair doubler over the structure to be inspected, then ''performance of the AD is affected.''

In addition, performance of the requirements is ''affected'' if it is physically possible to perform the requirements, but the results achieved are different from those specified in the AD. For example, if the AD requires a non-destructive test (NDT) inspection in accordance with a certain service bulletin, and the operator is able to move the NDT probe over the specified area in the specified manner, but the results are either meaningless or inaccurate because of a repair doubler placed over that area, then ''performance of the AD is affected.''

While **Note 1** itself is not capable of addressing every possible situation, ''affected'' is normally an easy standard to apply: either it is possible to perform the requirements as specified in the AD and achieve the specified results, or it is not possible. Therefore, if the requirements of this AD cannot be performed, then operators must submit a request for an approval of an AMOC from the FAA, in accordance with the provision of paragraph (d) of this final rule.

Accomplishment of any modification requirement of an AD, such as the modification of the nacelle strut and wing structure required by this final rule, does not ''affect performance of the AD;'' it *is* performance of the AD. Every AD includes a provision, with which operators are familiar, that states, ''Compliance required as indicated, unless accomplished previously .'' If an operator performs such a requirement before the AD is issued, the FAA is confident that the operator will recognize that it has already complied with the AD and no further action (including obtaining approval of an AMOC) is required. This is consistent with current law and practice, which **Note 1** is not intended to change.

Compliance Time for Modification

One commenter requests that the compliance times of proposed paragraph (a), which requires modification of the nacelle strut and wing structure, be extended by 4 months. The commenter notes that a 4-month extension of the compliance times would coincide with the times recommended in the referenced Boeing Alert Service Bulletin 747–54A2159 for that modification. Furthermore, the commenter states that the referenced alert service bulletin contains numerous errors, and a 4-month extension would allow the manufacturer sufficient time to publish a revision to that alert service bulletin to correct those errors.

The FAA does not concur with the commenter's request. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the manufacturer's recommendation as to an appropriate compliance time, the availability of required parts, and the practical aspect of installing the required modification within a maximum interval of time allowable for all affected airplanes to continue to operate without compromising safety. Further, the FAA took into account the 3-year and 5-year compliance times recommended by the manufacturer, as well as the number of days required for the rulemaking process; in consideration of these factors, the FAA finds that 32 months and 56 months after the effective date of this final rule will fall approximately at the same time for compliance as recommended by the manufacturer. Furthermore, the FAA does not consider that delaying this action until after the release of the manufacturer's planned revision to the alert service bulletin is warranted, since the changes in the revised alert service bulletin are mostly minor and clarifying in nature and do not affect the procedures to accomplish the modification of the nacelle strut and wing structure.

However, under the provisions of paragraph (d) of the final rule, any operator may submit requests for adjustments to the compliance time along with data demonstrating that such requests will not compromise safety. In evaluating such requests for adjustments to the compliance time, the FAA will closely examine the operator's explanation of why an extension is needed. The FAA will also consider the operator's good faith attempt at complying within the compliance times contained in this final rule, which can be demonstrated by accomplishing the modification on a significant percentage of the airplanes in the operator's fleet prior to submitting a request for adjustments to the compliance times. The FAA will take into consideration the number of airplanes in the operator's fleet on which the modification has been accomplished and the number of unmodified airplanes remaining in the operator's fleet. Additionally, the operator may be asked to submit a schedule for accomplishing the modification on the airplanes remaining in its fleet.

Calculation of Age of Affected Airplanes

Several commenters request that the age of the airplanes be measured as of the date of issuance of Boeing Alert Service Bulletin 747–54A2159, rather than as of the effective date of the AD, as proposed in paragraphs (a)(1) and (a)(2). Some of these commenters state that this change would coincide with the thresholds recommended in that alert service bulletin. One of these commenters notes that this change would move three of the airplanes in its fleet from the applicability provisions of paragraph (a)(2) (which would allow it 32 months) to paragraph (a)(1) (which would allow it the maximum amount of time of 56 months) to accomplish the modification of the nacelle strut and wing structure.

The FAA concurs. As discussed above, the FAA's intent was to align the compliance times as closely as possible with those recommended by the manufacturer in the referenced alert service bulletin. Therefore, paragraphs (a)(1) and (a)(2) of the final rule have been revised to specify that the age of the airplane is to be measured as of November 3, 1994, which is the date of issuance of the alert service bulletin.

Service Bulletins Listed in Note 2

Several commenters request that **Note 2**, which follows proposed paragraph (a)(2)(i), be revised either to exclude or to add service bulletins to the list of bulletins that describe modifications that must be accomplished in order to gain the maximum time allowable (56 months) in which to accomplish the modification of the nacelle strut and wing structure. One of these commenters requests that the list be revised to exclude all Boeing service bulletins, with the exception of the following two:

1. Boeing Alert Service Bulletin 747–54A2155, dated September 23, 1993, which specifies inspection of the midspar fittings; and

2. Boeing Alert Service Bulletin 747–54A2152, Revision 2, dated September 16, 1993, which specifies installation of (third generation fuse pins) upper link diagonal brace and midspar fuse pins [required by AD 93–17–07, amendment 39–8678 (58 FR 45827, August 31, 1993)].

This commenter states that, if the other service bulletins are excluded from the list, safety would not be compromised since various repetitive inspections already are required by numerous other AD's that are intended to ensure the structural integrity of the strut-to-wing attachments and the fail-safe capability of the strut structure.

The FAA does not concur. As stated in the preamble to the proposal, one of the purposes of this rulemaking action is to reduce reliance on inspections of the strut-to-wing attachments. The FAA has determined that long term continued operational safety will be better assured by actual modification of the airframe to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The modification requirement of this final rule is in consonance with these considerations.

Modification of Engine Mounts

Two commenters request that the list of service bulletins be revised to exclude Boeing Alert Service Bulletin 747–71A2269, Revision 1, dated July 7, 1994, which describes procedures for modification of the engine mounts. These commenters state that modification of the engine mounts is an entirely separate subject that is not related to the unsafe condition addressed by the proposed rule. One of these commenters believes that modification of the engine mounts is addressed more appropriately in AD 94–10–05.

The FAA does not concur. The FAA finds that the unsafe conditions addressed in both AD 94–10–05 [amendment 39–8912 (59 FR 25288, May 16, 1994)] and this AD are closely related. AD 94–10–05 requires replacement of the existing nut with a new castellated nut, and references Boeing Alert Service Bulletin 747–71A2269 as the appropriate source of service information. That AD addresses migration of the bolts out of the engine lug joint, which may lead to loss of the engine from the strut. Therefore, the FAA has determined that accomplishing the requirements of AD 94–10–05, prior to accomplishing the requirements of this final rule, reduces reliance on repetitive inspections, and decreases the likelihood of the engine separating from the airplane.

Replacement of Diagonal Braces

Certain commenters request that the list of service bulletins be revised to exclude Boeing Service Bulletin 747–54–2123, which describes procedures for replacement of the diagonal braces. One of these commenters notes that it has found no significant discrepancies on any of the airplanes in its fleet while performing the inspections of this area that are required by AD 90–20–20. Therefore, this commenter contends that replacement of the diagonal braces prior to accomplishment of the proposed modification of nacelle strut and wing structure is unnecessary if the brace lugs have been modified in accordance with Boeing Service Bulletin 747–54–2126 and the diagonal braces have been inspected in accordance with Boeing Service Bulletin 747–54–2123.

Further, these commenters contend that temporarily replacing the diagonal braces is cost-prohibitive: one of these commenters estimates the cost at $50,000 per airplane, while the other commenter estimates the cost at $60,000 per airplane. These commenters also point out that these costs are unreasonable, especially in light of the fact that the diagonal braces must be replaced once more as part of the proposed modification of the nacelle strut and wing structure.

Additionally, one of these commenters suggests that there is potential for a parts availability problem if all operators choose to replace these diagonal braces. Consequently, these commenters request the removal of Boeing Service Bulletin 747–54–2123 from the list of service bulletins.

The FAA does not concur. In addressing these particular comments, the FAA points out that there are three types of diagonal braces currently available:

1. ''Type 1 Braces'' have been addressed previously by two AD's:

—AD 89–07–15, amendment 39–6167 (54 FR 11693, March 22, 1989), references Boeing Service Bulletin 747–54–2126. That AD requires the lugs of Type 1 Braces to ultrasonically inspected every 1,000 flight cycles. That AD was prompted by reports of cracking in the lugs that had initiated at corrosion pits in the lug bores and was propagated by fatigue. Terminating action for those inspections consists of removing bushings, oversizing of the hole to eliminate corrosion, and installing high interference fit bushings. There have been reports of 11 cracked braces found during the inspections required by this AD.

—AD 90–20–20, amendment 39–6725 (55 FR 37859, September 14, 1990), references Boeing Service Bulletin 747–54–2123. That AD requires Type 1 Braces to be either visually inspected every 1,000 flight cycles, or ultrasonically inspected every 3,000 flight cycles; any cracked brace is required to be replaced with either a serviceable Type 1 Brace or a ''Type 2 Brace'' (see below). That AD was prompted by the finding of a completely separated brace in service. Separation was attributed to circumferential cracks initiating from a tool mark in the brace's inner surface. (There also has been one additional report of a crack found, but separation did not occur.) Terminating action for these inspections consists of replacing Type 1 Braces with ''Type 2 Braces.''

2. ''Type 2 Braces'' are not susceptible to the cracking conditions of the brace's inner surface (as was found on the Type 1 Braces) because of their revised internal and external surface finish. Additionally, during production, the lugs associated with these Type 2 Braces were modified in accordance with the terminating action specified in AD 89–07–15; with this modification, the ultrasonic inspections required by that AD are not necessary on this type of brace.

3. ''Type 3 Braces'' are those that are required to be installed as part of the full strut modification program on which this AD is based. These braces are optimal because they have increased

strength and are not susceptible to the type of cracking found in Type 1 Braces.

The FAA points out that this final rule provides operators 32 months in which to accomplish the full strut modification if Type 1 Braces are currently installed. Likewise, this final rule provides operators 56 months in which to accomplish the full strut modification if Type 2 Braces are currently installed, or if Type 2 Braces are installed within 32 months (and the additional modifications specified in the service bulletins listed in **Note 2** are accomplished, as well).

Optimally, the FAA would prefer that all affected airplanes be modified within 32 months. However, when developing the compliance time for this AD, the FAA recognized the high costs (down time) that would be imposed on operators when accomplishing the full strut modification program. In so doing, the FAA looked for ways to lessen that economic burden, while still ensuring that a higher level of safety would exist than that currently provided. Based on analyses following relevant accidents involving failure of the strut-to-wing attachment and subsequent separation of the engine from the airplane during flight, the FAA determined that the Type 1 Brace, with its extensive history of service difficulties, is not adequate for long term assurance of safety. Even with repetitive inspections, these Type 1 Braces have inadequate damage tolerance. In light of this and the catastrophic consequences of fatigue cracking and/or corrosion in the strut-to-wing attachments, the FAA has determined that Type 1 Braces must be removed from the fleet sooner than the other braces that have a better service record.

As for the costs of replacement of the braces, the FAA finds that the figures quoted by the commenters need clarification. The manufacturer has provided the following figures relative to costs:

—Installation of Type 2 Braces requires from 88 to 116 work hours per airplane, at an average labor rate of $60 per work hour. The cost of each brace is, at most, $13,282 (in 1990 dollars) per brace; there are 4 braces on each airplane. Using these figures, the cost to install four Type 2 Braces on an airplane would be, at most, $53,128 in parts and $6,960 in labor charges.

—Parts and labor costs for the installation of Type 3 Braces, as part of the full strut modification kit, will be absorbed by the manufacturer.

Regardless of these costs, the FAA has determined that the safety benefit justifiably outweighs the economic cost of replacing diagonal braces. Further, the replacement of the Type 1 Brace with a Type 2 Brace is required only if the operator wants the longer compliance time of 56 months for accomplishing the full strut modification. This extended compliance time lessens the economic impact on operators in terms of the costs of special scheduling and down time. The FAA notes that certain operators have already accomplished the full strut modification; these operators have found it to be more cost effective to do so, since they incur no charges for parts. A full discussion of the cost impact of this rule on U.S. operators is discussed later in this preamble.

As for the availability of parts, the manufacturer has advised that there would be a problem with parts availability only if many of the affected operators elected to install the Type 2 Braces as an interim measure. However, as a matter of fact, both the manufacturer and the FAA expect that many operators will not elect to do this, but will opt to install the full strut modification, which includes the Type 3 Brace. The manufacturer has indicated that there are ample numbers of the full strut modification kits available.

Rework of Midspar Fitting Lugs

One commenter requests that the list of service bulletins be revised to add Boeing Service Bulletin 747–54–2100 as an alternative to Boeing Alert Service Bulletin 747–54A2152 (original or Revision 1). The commenter believes that procedures for rework of the midspar fitting lugs, which is described Service Bulletin 747–54–2100, is equivalent to that specified in Service Bulletin 747–54A2152.

The FAA does not concur, since it does not find that the two procedures described in the referenced service bulletins are equivalent. For example, the rework procedure described in Boeing Service Bulletin 747–54–2100 does not include an ''insurance'' cut that is included in the rework procedure described in Boeing Alert Service Bulletin 747–54A2152 (original issue and Revision 1). Further, Revision 2 of Boeing Alert Service Bulletin 747–54A2152 has refined the procedure even further: this revision [which is referenced in paragraphs (a)(2)(iii) and (a)(2)(iv) of the final rule] describes a magnetic particle inspection to detect cracking of the midspar fitting lugs. Consequently, the FAA finds the procedures described in Revision 2 of Boeing Alert Service Bulletin 747–54A2152 to be significantly better in detecting and removing undetected cracks than those described in the earlier versions of that alert service bulletin or in Boeing Service Bulletin 747–54–2100.

Clarification of Requirements for Modified Airplanes

One commenter requests that the requirements of proposed paragraph (a)(2)(i) be clarified. The commenter notes that Boeing Service Bulletin 747–54–2062, Revision 5, which is referenced in the list of modifications under **Note 2** of the proposal, must be accomplished to obtain the maximum amount of time allowable (56 months) in which to accomplish the proposed modification of the nacelle strut and wing structure. (These modifications are described in the service bulletins listed in paragraph I.D., ''Compliance,'' on page 17 of Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994.) However, the commenter notes that Revision 7 of that service bulletin, which is referenced in the list of terminating actions for the proposed rule, must be accomplished prior to or concurrently with the proposed modification of the nacelle strut and wing structure. (These terminating actions are described in the service bulletins listed in paragraph I.C., Table 2, ''Prior or Concurrent Service Bulletins,'' on page 13 of Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994.)

The FAA concurs that clarification is warranted. Although **Note 2** following paragraph (a)(2)(i) clearly states that subsequent revisions of the service bulletins ''are acceptable and preferred for accomplishment of the modifications,'' a footnote has been added to the final rule following that list to point out specifically that additional actions described in a subsequent revision of that service bulletin are required to be accomplished prior to or concurrently with the modification of the nacelle strut and wing structure, required by paragraph (a) of the final rule.

Shortening the Compliance Times of Other Related AD's

One commenter considers it inappropriate to use the proposed rule to shorten the 4,000-landing compliance time of AD 87–04–13 R1, amendment 39–5546 (52 FR 3421, February 4, 1987). That AD requires repetitive ultrasonic inspections of the fastener holes of the midspar fittings. The commenter states that, if the 1,000-landing compliance time specified in proposed paragraphs (a)(2)(ii)(B) and (a)(2)(iv)(B) is appropriate to accomplish the requirements of the proposal, then it

should also be appropriate for accomplishing the inspection requirements of AD 87–04–13 R1.

Similarly, the commenter states that it is equally inappropriate to use the proposal to shorten the 5,000-landing compliance time of AD 93–17–07. That AD requires repetitive ultrasonic inspections of the inboard midspar fitting lugs and references Boeing Alert Service Bulletin 747–54A2152 (original issue or Revision 1) as the appropriate source of service information. The commenter states that if the 2,500-landing compliance time specified in proposed paragraphs (a)(2)(iii)(B) and (a)(2)(iv)(C) is appropriate to accomplish the requirements of the proposal, then it should also be appropriate for accomplishing the requirements of AD 93–17–07. The commenter believes that the appropriate means to effect a change to the compliance times of AD 87–04–13 R1 and AD 93–17–07 should be by revising those AD's.

The FAA concurs with the commenter's observations.

As for AD 87–04–13 R1, the FAA will consider re-examining its compliance time to determine if a revision to it is appropriate. However, any revision to that AD would be proposed as a separate rulemaking action. Further, in re-examining the compliance times of proposed paragraphs (a)(2)(ii)(B), (a)(2)(iii)(B), (a)(2)(iv)(B), and (a)(2)(iv)(C), the FAA finds that operators may not be afforded the opportunity to obtain the maximum amount of time allowable to accomplish the modification of the nacelle strut and wing structure if the ''shortened'' compliance times of AD 87–04–13 R1 (from 4,000 landings to 1,000 landings) and AD 93–17–07 (from 5,000 landings or 5 years to 2,500 landings or 3 years) have already been exceeded. Therefore, the FAA has revised those paragraphs of the final rule to include a ''grace period.''

As for AD 93–17–07, **Note 4** of this final rule explains that the compliance time of 2,500 landings or 3 years since rework of the lugs, whichever occurs earlier, coincides with the compliance time recommended in Revision 2 of Boeing Alert Service Bulletin 747–54A2152, dated September 15, 1993, which the FAA has approved as an alternative method of compliance for accomplishment of the requirements of AD 93–17–07. However, the FAA will consider re-examining the compliance time of AD 93–17–07 to determine if further rulemaking is warranted. In the interim, the compliance time of paragraphs (a)(2)(iii)(B) and (a)(2)(iv)(C) of this final rule will remain unchanged. Any revision to the compliance time of AD 93–17–07, if deemed necessary, must be proposed in a separate rulemaking action.

Inspection Interval for the Inboard Midspar Fitting Lugs

One commenter requests that proposed paragraph (a)(2)(iii)(B) be revised to require the reduced 2,500-cycle compliance time only for the ultrasonic inspection of the inboard midspar fitting lugs. This change would make this requirement consistent with that of AD 93–17–07, amendment 39–8678 (58 FR 45827, August 31, 1993). This commenter also notes that outboard struts do not have spring beams.

The FAA concurs. Further, the FAA finds that this change is also applicable to paragraph (a)(2)(iv)(C) of the final rule. Therefore, paragraphs (a)(2)(iii)(B) and (a)(2)(iv)(C) of the final rule have been revised accordingly.

Correction of Typographical Error in Note 6

Three commenters request that a typographical error that appeared in **Note 6** [which follows proposed paragraph (a)(2)(v)] be corrected. The commenters note that the Table in **Note 6** erroneously referred to Boeing Alert Service Bulletin 747–54A2159. The correct reference should have been Boeing Alert Service Bulletin 747–54A2152, as it correctly appeared in paragraphs (a)(2)(iii) and (a)(2)(iv) of the proposal. The FAA concurs and has made the correction accordingly. Additionally, the FAA has reformatted the Table in **Note 6** for purposes of clarification: the column headed ''Revision Level'' has been removed, and the revision level of the service bulletin has been inserted adjacent to the service bulletin number itself.

Requirements Redundant to Part 121

One commenter requests that proposed paragraph (b) be deleted since the proposed inspection and repair of components (referenced in Notes 8, 9, and 10 of the Accomplishment Instructions on page 150 of Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994) are redundant to the requirements of part 121 of the Federal Aviation Regulations (14 CFR 121). Furthermore, the commenter believes that the proposed torque check of the fasteners of the diagonal brace fittings (referenced in Note 11 of the alert service bulletin) should be incorporated as part of the Accomplishment Instructions of the Boeing Alert Service Bulletin 747–54A2159, rather than as merely a Note in the Accomplishment Instructions.

The FAA does not concur with the commenter that the requirements of paragraph (b) should be deleted from the final rule. According to section 39.1 of the Federal Aviation Regulations (14 CFR 39.1), the issuance of an AD is based on the finding that an unsafe condition exists or is likely to develop in aircraft of a particular type design. Further, it is within the FAA's authority to issue an AD to require actions to address unsafe conditions that are not otherwise being addressed (or addressed adequately) by normal maintenance procedures. The FAA points out that fatigue cracking and corrosion in the strut-to-wing attachments have resulted in several incidents and catastrophic accidents. Although 14 CFR 121 addresses damage found on components during other maintenance activities, the FAA has determined that the catastrophic consequences of the unsafe condition are such that reiterating the necessity of performing inspections and repairs when any damage or corrosion is found while performing the modification of the nacelle strut and wing structure is warranted and necessary. The AD is the appropriate vehicle for mandating such actions.

AD's Terminated by This Final Rule

One commenter notes that the AD's listed in proposed paragraph (c) as those that are terminated once the actions of the proposal are accomplished, differs from those listed in Table 1 of Boeing Alert Service Bulletin 747–54A2159.

The FAA concurs that a difference does exist. However, several of the AD's included in the listing contained in the Boeing alert service bulletin have been superseded by new AD's. The FAA points out that, when an AD is superseded, it is deleted from the system, and as such, no longer exists, since it has been replaced with a ''new'' AD that has a new (different) AD number and amendment number. The FAA considers that referencing nonexistent AD's would serve no meaningful purpose, and may result in some confusion for affected operators. Consequently, no change to paragraph (c) of the final rule is necessary.

Clarification of Cost Estimate Information

Two commenters request that the cost estimate be revised to include the cost of out-of-service time for each aircraft during the time that the modification is accomplished, and the additional fuel costs that would be incurred due to the additional weight added to each aircraft by the modification hardware.

The FAA does not concur that a revision is necessary. The appropriate

number of hours required to accomplish the required actions, specified as between 7,700 and 8,892 work hours in the economic impact information, below, was developed with data provided by the manufacturer. This number represents the time required to gain access, remove parts, inspect, modify, install, and close up. The cost analysis in AD rulemaking actions typically does not include out-of-service time for each aircraft or additional fuel costs, as was suggested by the commenter. These costs would be impossible to calculate accurately due the differences in out-of-service time for each operator. Furthermore, the increase in fuel costs due to the weight added by the modification, would vary greatly from operator to operator, depending upon airplane utilization.

The Air Transport Association of America (ATA) requests that the FAA include costs ''beyond just parts and labor costs'' when calculating the estimated costs to accomplish the proposed actions. The ATA points out that the FAA should consider such costs to avoid requiring actions that the ATA considers inconsequential.

The FAA does not concur. Contrary to the ATA's assertion, in establishing the requirements of all AD's, the FAA does consider cost impact to operators beyond the estimates of parts and labor costs contained in AD preambles. For example, where safety considerations allow, the FAA attempts to impose compliance times that generally coincide with operators' maintenance schedules. However, because operators' schedules vary substantially, the FAA is unable to accommodate every operator's optimal scheduling in each AD. Each AD does allow individual operators to obtain approval for extensions of compliance times, based on a showing that the extension will not affect safety adversely. Therefore, the FAA does not consider it appropriate to attribute to the AD, the costs associated with the type of special scheduling that might otherwise be required.

Furthermore, because the FAA generally attempts to impose compliance times that coincide with operators' scheduled maintenance, the FAA considers it inappropriate to attribute the costs associated with aircraft ''downtime'' to the cost of the AD, because, normally, compliance with the AD will not necessitate any additional downtime beyond that of a regularly scheduled maintenance hold. Even if, in some cases, additional downtime is necessary for some airplanes, the FAA does not possess sufficient information to evaluate the number of airplanes that may be so affected or the amount of additional downtime that may be required. Therefore, attempting to estimate such costs would be futile.

The FAA points out that this AD is an excellent example of the fact that costs to operators are fully considered beginning at the earliest possible stages of AD development. In this case, the service bulletin that is referenced in this final rule was developed by Boeing only after extensive and detailed consultations with large numbers of operators of Model 747's. The compliance times and various optional means of compliance presented in this AD are based on those consultations, and were developed in order to minimize the economic impacts on operators to the extent possible consistent with the service bulletin's and this AD's safety objectives. Therefore, the costs that the ATA asserts were not considered by the FAA have, in fact, been a major consideration throughout this AD process; the fact that the FAA has not attempted to quantify speculative costs does not diminish the extent of this consideration.

Conclusion

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

Cost Impact

There are approximately 600 Model 747 series airplanes equipped with Pratt & Whitney Model JT9D series engines (excluding Model JT9D–70 engines) of the affected design in the worldwide fleet. The FAA estimates that 146 airplanes of U.S. registry will be affected by this AD.

The full strut modification required by this AD may take as many as 7,700 to 8,892 work hours to accomplish, depending upon the configuration of the airplane. The manufacturer will incur the cost of labor, on a pro-rated basis, with 20 years being the expected life of these airplanes. The total cost impact of this AD on U.S. operators is based on the median age for the fleet of Model 747 series airplanes equipped with Pratt & Whitney Model JT9D series engines, which is estimated to be 15 years. The average labor rate is estimated to be $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operator. Based on these figures, the cost impact of this proposal on U.S. operators is estimated to be between $50,589,000 ($346,500 per airplane) and $58,420,440 ($400,140 per airplane).

This cost impact figure does not reflect the cost of the terminating actions described in the service bulletins listed in paragraph I.C., Table 2, ''Prior or Concurrent Service Bulletins,'' on page 13 of Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994, that are required to be accomplished prior to or concurrently with the modification of the nacelle strut and wing structure. Since some operators may have accomplished certain modifications on some or all of the airplanes in its fleet, while other operators may not have accomplished any of the modifications on any of the airplanes in its fleet, the FAA is unable to provide a reasonable estimate of the cost of accomplishing the terminating actions described in the service bulletins listed in Table 2 of the Boeing alert service bulletin.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA is aware that some operators have already installed the strut modification that is required by this AD; therefore, the future economic cost impact of this rule on U.S. operators is reduced by that amount.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-

beneficial. When the FAA, as in this proposed AD, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the required actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this AD would be redundant and unnecessary.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–10–16 Boeing: Amendment 39–9233. Docket 94–NM–187–AD.

Applicability: Model 747 series airplanes having line positions 001 through 814 inclusive, equipped with Pratt & Whitney Model JT9D series engines (excluding Model JT9D–70 engines), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the strut and subsequent loss of the engine, accomplish the following:

(a) Accomplish the modification of the nacelle strut and wing structure in accordance with Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994, at the time specified in either paragraph (a)(1) or (a)(2) of this AD, as applicable. All of the terminating actions described in the service bulletins listed in paragraph I.C., Table 2, ''Prior or Concurrent Service Bulletins,'' on page 13 of Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994, must be accomplished in accordance with those service bulletins prior to or concurrently with the accomplishment of the modification of the nacelle strut and wing structure required by this paragraph.

(1) For airplanes that are younger than 15 years as of November 3, 1994, within 56 months after the effective date of this AD, accomplish the modification.

(2) For airplanes that are 15 years or older as of November 3, 1994, accomplish the modification, and other required actions, at the time specified in paragraph (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(2)(iv), or (a)(2)(v) of this AD, as applicable.

(i) For airplanes on which all of the modifications described in the service bulletins referenced by paragraph I.D., ''Compliance,'' on page 17 of Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994, have been accomplished: Within 56 months after the effective date of this AD, accomplish the modification of the nacelle strut and wing structure and perform the inspections of the adjacent structure that has not been replaced by the modification.

Note 2: Paragraph I.D., ''Compliance,'' on page 17 of Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994, references the following Boeing service bulletins. Subsequent revisions of the following service bulletins are acceptable and preferred for accomplishment of the modifications described therein:

Service bulletin No.	Revision level	Date
747–54–2027	1	February 23, 1973.
747–54–2030	Initial release.	February 23, 1973.
*747–54–2062.	5	June 1, 1984.
747–54A2069	6	October 22, 1982.
747–54–2118	Initial release.	July 25, 1986.
747–54–2123	1	March 1, 1990.
747–54A2151	Initial release.	October 6, 1992.
747–54A2152	2	September 16, 1993.
747–54A2155	Initial release.	September 23, 1993.
747–57A2235	Initial release.	June 27, 1986.
747–71A2269	1	July 7, 1994.

*AD 79–17–07, amendment 39–3533, requires inspection of the strut-to-diagonal brace fittings, which may be terminated by replacing the aluminum fittings with steel fittings in accordance with Revision 1 (or subsequent revisions) of Boeing Service Bulletin 747–54–2062. Revision 7 of this service bulletin (referenced in paragraph I.C., Table 2, ''Prior or Concurrent Service Bulletins,'' on page 13 of Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994) specifies the replacement of aluminum fittings with steel fittings and sealing the gap between the steel fitting and the closure web.

(ii) For airplanes on which all of the modifications described in the service bulletins referenced by paragraph I.D., ''Compliance,'' on page 17 of Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994, have been accomplished, excluding the modification described in Boeing Service Bulletin 747–54–2118, dated July 25, 1986:

(A) Within 56 months after the effective date of this AD, accomplish the modification of the nacelle strut and wing structure and perform the inspections of the adjacent structure that has not been replaced by the modification.

(B) Repeat the ultrasonic inspections to detect cracking of the aft-most two fastener holes in both strut midspar fittings on the inboard and outboard nacelle struts, as required by AD 87–04–13 R1, amendment 39–5546, within 4,000 landings following the immediately preceding inspection performed in accordance with AD 87–04–13 R1 or within 1,000 landings after the effective date of this AD, whichever occurs earlier, in accordance with Boeing Service Bulletin 747–54–2118, dated July 25, 1986, until the modification of the nacelle strut and wing structure is accomplished in accordance with Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994. Repeat this

inspection thereafter at intervals not to exceed 1,000 landings.

Note 3: These inspections of the fastener holes are required by AD 87–04–13 R1, amendment 39–5546, at 4,000-landing intervals. Accomplishment of the inspections of the fastener holes, as required by this paragraph at 1,000-landing intervals, constitutes compliance with paragraph A. of AD 87–04–13 R1.

(iii) For airplanes on which all of the modifications described in the service bulletins referenced by paragraph I.D., ''Compliance,'' on page 17 of Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994, have been accomplished; except that rework of the midspar fitting lugs was accomplished in accordance with Boeing Alert Service Bulletin 747–54A2152, dated December 23, 1992, or Revision 1, dated July 15, 1993, instead of Revision 2, dated September 16, 1993:

(A) Within 56 months after the effective date of this AD, accomplish the modification of the nacelle strut and wing structure and perform the inspections of the adjacent structure that has not been replaced by the modification.

(B) Prior to the accumulation of 3 years since rework of the inboard lugs, or within 6 months after the effective date of this AD, whichever occurs later, perform an ultrasonic inspection to detect cracking of the midspar fitting lugs of the inboard struts, in accordance with Boeing Alert Service Bulletin 747–54A2152, Revision 2, dated September 16, 1993. Repeat this inspection thereafter as required by AD 93–17–07.

Note 4: This ultrasonic inspection is required by AD 93–17–07, amendment 39–8678, to be performed prior to the accumulation of 5,000 landings or 5 years since accomplishment of the rework of the lugs, whichever occurs earlier, in accordance with Boeing Alert Service Bulletin 747–54A2152, dated December 23, 1992, or Revision 1, dated July 15, 1993. Repetitive inspections are required by that AD at intervals not to exceed 500 landings for inboard struts and 1,000 landings for outboard struts. Since the issuance of that AD, the FAA has approved Revision 2 of Boeing Alert Service Bulletin 747–54A2152, dated September 16, 1993, as an alternative method of compliance for accomplishment of these ultrasonic inspections and rework of the lugs. Revision 2 of the alert service bulletin recommends that inboard lugs that have been reworked in accordance with the original issue or Revision 1 of the alert service bulletin be inspected prior to the accumulation of 2,500 landings or 3 years since accomplishment of the rework of the lugs, whichever occurs earlier. Therefore, accomplishment of ultrasonic inspections prior to the accumulation of 2,500 landings or 3 years since accomplishment of rework of the lugs, whichever occurs earlier, and thereafter as required by AD 93–17–07, constitutes compliance with paragraph (e)(2)(i)(A) of AD 93–17–07 for the inboard lugs.

(iv) For airplanes on which all of the modifications described in the service bulletins referenced by paragraph I.D., ''Compliance,'' on page 17 of Boeing Alert Service Bulletin 747–54A2152, dated November 3, 1994, have been accomplished; except that rework of the midspar fitting lugs was accomplished in accordance with the Boeing Alert Service Bulletin 747–54A2152, dated December 23, 1992, or Revision 1, dated July 15, 1993, instead of Revision 2, dated September 16, 1993; and excluding the modification described in Boeing Service Bulletin 747–54–2118, dated July 25, 1986:

(A) Within 56 months after the effective date of this AD, accomplish the modification of the nacelle strut and wing structure and perform the inspections of the adjacent structure that has not been replaced by the modification.

(B) Repeat the ultrasonic inspections to detect cracking of the aft-most two fastener holes in both strut midspar fittings on the inboard and outboard nacelle struts, as required by AD 87–04–13 R1, within 4,000 landings following the immediately preceding inspection performed in accordance with AD 87–04–13 R1, or within 1,000 landings after the effective date of this AD, whichever occurs earlier, in accordance with Boeing Service Bulletin 747–54–2118, dated July 25, 1986, until the modification of the nacelle strut and wing structure is accomplished in accordance with Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994. Repeat this inspection thereafter at intervals not to exceed 1,000 landings.

(C) Prior to the accumulation of 3 years since rework of the inboard lugs, or within 6 months after the effective date of this AD, whichever occurs later, perform an ultrasonic inspection to detect cracking of the midspar fitting lugs of the inboard struts, and repeat the inspection thereafter as required by AD 93–17–07, until the modification of the nacelle strut and wing structure is accomplished in accordance with Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994.

Note 5: Notes 3 and 4 are also applicable to this paragraph.

(v) For all other airplanes not subject to the requirements of paragraph (a)(2)(i), (a)(2)(ii), (a)(2)(iii), or (a)(2)(iv) of this AD: Within 32 months after the effective date of this AD, accomplish the modification of the nacelle strut and wing structure and perform the inspections of the adjacent structure that has not been replaced by the modification.

Note 6: The following table graphically illustrates the applicability and compliance times for accomplishing the modification of the nacelle strut and wing structure as required by paragraph (a)(2) of this AD.

Paragraph	Accomplishment of service bulletins	Compliance time (months)
(i)	All in paragraph I.D.	56
(ii)	All except 747–54–2118.	56
(iii)	All except 747–54A2152, Revision 2.	56
(iv)	All except 747–54–2118 and 747–54A2152, Revision 2.	56
(v)	(*)	32

*Paragraph (a)(2)(v) of this AD is applicable to all airplanes, other than those addressed in paragraphs (a)(2)(i), (a)(2)(ii), (a)(2)(iii), and (a)(2)(iv) of this AD. As such, these airplanes may have accomplished some or none of the service bulletins listed in paragraph I.D. of Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994.

(b) Perform the inspections and checks specified in paragraph III, NOTES 8, 9, 10, and 11 of the Accomplishment Instructions on pages 149 and 150 of Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994, concurrently with the modification of the nacelle strut and wing structure required by paragraph (a) of this AD. Prior to further flight, correct any discrepancies found, in accordance with the alert service bulletin.

(c) Accomplishment of the modification of the nacelle strut and wing structure in accordance with Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994, constitutes terminating action for the inspections required by the following AD's:

AD No.	Amendment No.	Federal Register citation	Date of publication
94–17–17	39–9012	59 FR 44903	August 31, 1994.
94–10–05	39–8912	59 FR 25288	May 16, 1994.
93–17–07	39–8678	58 FR 45827	August 31, 1993.
93–03–14	39–8518	58 FR 14513	March 18, 1993.
92–24–51	39–8439	57 FR 60118	December 18, 1992.
92–07–11	39–8207	57 FR 10415	March 26, 1992.
90–20–20	39–6725	55 FR 37859	September 14, 1990.
90–17–18	39–6702	55 FR 33279	August 15, 1990.
89–07–15	39–6167	54 FR 11693	March 22, 1989.
87–04–13 R1	39–5546	54 FR 3421	February 4, 1987.

AD No.	Amendment No.	Federal Register citation	Date of publication
86–08–03	39–5289	51 FR 12836	April 16, 1986.
86–07–06	39–5270	51 FR 10821	March 31, 1986.
86–05–11	39–5255	51 FR 8479	March 12, 1986.
86–23–01	39–5450	51 FR 37712	October 24, 1986.
82–22–02	39–4476	47 FR 46842	October 21, 1982.
80–08–02	39–3738	45 FR 24450	April 10, 1980.
79–17–07	39–3533	44 FR 50033	August 27, 1979.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 7: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

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

(f) The modification, inspections, checks, and correction of discrepancies shall be done in accordance with Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on June 21, 1995.

Issued in Renton, Washington, on May 10, 1995.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–11968 Filed 5–19–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–163–AD; Amendment 39–9232; AD 95–10–15]

Airworthiness Directives; British Aerospace Model BAe 146–100A, –200A, –300A and Model Avro 146–RJ70A, –RJ85A, and –RJ100A Airplanes Equipped With Certain Air Cruisers Evacuation Slides

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146–100A, –200A, –300A and Model Avro 146–RJ70A, –RJ85A, and –RJ100A airplanes, that requires repetitive inspections to verify proper deployment of the evacuation slide at each door position, and various follow-on actions to correct discrepancies. This amendment is prompted by a report that, during operational checks of evacuation slides on in-service airplanes, the inflation valves failed to deploy the evacuation slide properly. The actions specified by this AD are intended to prevent failure of the evacuation slide to deploy automatically on demand, which would necessitate the flightcrew to manually deploy the slide; this situation could delay or impede the evacuation of passengers during an emergency.

DATES: Effective June 21, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 21, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Holdings, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington DC 20041–6039; and Air Cruisers Company, P.O. Box 180, Belmar, New Jersey 07719–0180. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146–100A, –200A, –300A and Model Avro 146–RJ70A, –RJ85A, and –RJ100A airplanes was published in the **Federal Register** on November 7, 1994 (59 FR 55382). That action proposed to require repetitive inspections to verify proper deployment of the evacuation slide at each door position, and various follow-on actions to correct discrepancies. That action also proposed to require modification of the inflation valve of the evacuation slide, which would terminate the repetitive inspection requirements.

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

One commenter questions the need for the rule since the major U.S. operators of the affected airplanes have accomplished the proposed actions. The commenter also states that for over two years there have been no reports of in-service deployment or inflation problems in the field, since the issuance of Air Cruisers Service Bulletin S.B. 201–25–17, dated June 4, 1992, referenced in the proposal as the appropriate source of service information. However, the commenter notes that, during an evacuation demonstration, an isolated incident did occur in which the inflation valve did not inflate automatically.

From these comments, the FAA infers that the commenter is requesting that the rule be withdrawn. The FAA does not concur. The FAA has received no documentation to indicate that all affected U.S. operators have accomplished the actions required by this AD. Even if that were the case, issuance of this AD is necessary to ensure that the required actions are accomplished on any British Aerospace Model BAe 146–100A, –200A, –300A and Model Avro 146–RJ70A, –RJ85A, and –RJ100A airplanes that may be imported and added to the U.S. Register in the future. Although the FAA recognizes that there have been no cases of failure of the slides in service, the potential for such failures does exist

with regard to these airplanes. This AD action addresses that potential unsafe condition.

This same commenter states that the manufacturer of the inflation valve, Air Cruisers Company, has not agreed to provide the valves at no cost to the operators, as was indicated in the preamble to the notice. The commenter states that the improved inflation valves will cost approximately $600 each. The FAA has verified with the manufacturer that the required parts will cost $600 per valve. The economic impact information, below, has been revised to include the price of required parts.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this long standing requirement.

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

The FAA estimates that 41 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3.5 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $600 per valve (4 valves per airplane). Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $107,010 or $2,610 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–10–15 British Aerospace Regional Aircraft Limited, AVRO International Aerospace Division (Formerly British Aerospace, plc; British Aerospace Commercial Aircraft Limited): Amendment 39–9232. Docket 94–NM–163–AD.

Applicability: Model British Aerospace BAe 146–100A, –200A, –300A and Model Avro 146–RJ70A, –RJ85A, and –RJ100A airplanes; equipped with Air Cruisers Company evacuation slides, as listed in British Aerospace Service Bulletin S.B. 25–328, Revision 2, dated July 10, 1993; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the evacuation slide to deploy automatically, which necessitates the flight crew to manually deploy the slide and subsequently could delay or impede the evacuation of passengers during an emergency, accomplish the following:

(a) Within 3 months after the effective date of this AD, perform an inspection to verify proper deployment of the evacuation slide at each door position, in accordance with British Aerospace Service Bulletin S.B. 25–328, Revision 2, dated July 10, 1993.

(1) If the slide deploys properly, repeat the inspection thereafter at intervals not to exceed 6 months.

(2) If any slide fails to deploy properly, prior to further flight, conduct the actions specified in paragraphs 2.A.3 through 2.A.6 of the Accomplishment Instructions of the service bulletin.

(b) Within 8 months after the effective date of this AD, modify the inflation valves of the evacuation slide, in accordance with Air Cruisers Company Service Bulletin S.B. 201–25–17, dated June 4, 1992. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(e) The modification shall be done in accordance with Air Cruisers Company Service Bulletin S.B. 201–25–17, dated June 4, 1992. The inspection shall be done in accordance with British Aerospace Service

Bulletin S.B. 25–328, Revision 2, dated July 10, 1993, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1	2	July 10, 1993.
2	1	Sept. 24, 1992.
3,4	Original .	Aug. 21, 1992.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Holding, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington DC 20041–6039. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on June 21, 1995.

Issued in Renton, Washington, on May 9, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–11905 Filed 5–19–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–150–AD; Amendment 39–9236; AD 95–11–02]

Airworthiness Directives; McDonnell Douglas Model DC–10 and Model MD–11 Series Airplanes and Model KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–10 series airplanes and Model KC–10A (military) airplanes and certain Model MD–11 series airplanes, that currently requires inspections to detect defects in the upper and lower lock links on the nose landing gear (NLG), and rework or replacement of any defective link with a serviceable link. The actions specified by that AD are intended to prevent collapse of the NLG. This amendment requires accomplishment of a certain inspection that constitutes terminating action for the currently required inspections.

DATES: Effective June 21, 1995. The incorporation by reference of McDonnell Douglas DC–10 Alert Service Bulletin A32–238, dated July 15, 1994, and McDonnell Douglas MC–11 Alert Service Bulletin A32–47, dated July 15, 1994, listed in the regulations was approved previously by the Director of the Federal Register as of September 15, 1994 (59 FR 44900, August 31, 1994).

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: For Model DC–10 series airplanes and Model KC–10A (military) airplanes: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5238; fax (310) 627–5210.

For Model MD–11 series airplanes: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5324; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 94–18–07, amendment 39–9020 (59 FR 44900, August 31, 1994), which is applicable to all McDonnell Douglas Model DC–10 series airplanes and Model KC–10A (military) airplanes and certain Model MD–11 series airplanes, was published in the **Federal Register** on December 8, 1994 (59 FR 63278). The action proposed to continue to require inspections to determine the serial numbers and to detect defects in the upper and lower lock links on the nose landing gear (NLG), and rework of any defective lock link, or replacement of any defective lock link with a serviceable lock link. The action also proposed to require an off-aircraft fluorescent penetrant inspection to detect defects in the upper and lower lock links on the NLG, and rework or replacement of any defective link.

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

One commenter supports the proposed rule.

The Air Transport Association (ATA) of America supports the proposed rule. However, on behalf of its members, the ATA requests that AD 94–18–07 be revised, rather than superseded, to reduce the administrative time required to incorporate the AD into maintenance records and to avoid unnecessarily complicated recordkeeping. The FAA does not concur. The FAA's current policy is that, whenever a ''substantive change'' is made to an existing AD that imposes any new burden, the AD must be superseded, rather than revised. ''Substantive changes'' are those made to any instruction or reference that affects the substance of the AD, and includes part numbers, service bulletin and manual references, compliance times, applicability, methods of compliance, corrective action, inspection requirements, and effective dates. In the case of this AD rulemaking action, the changes being made to the existing AD are considered substantive. This superseding AD is assigned a new amendment number and new AD number; the previous amendment is deleted from the system. This procedure facilitates the efforts of the Principal Maintenance Inspectors in tracking AD's and ensuring that the affected operators have incorporated the latest changes into their maintenance programs.

With regard to paperwork changes required by affected operators, section 121.380(a)(2)(v) of the Federal Aviation Regulations [14 CFR 121.380(a)(2)(v)], ''Maintenance recording requirements,'' requires that persons holding an operating certificate and operating under part 121 of the Federal Aviation Regulations (14 CFR part 121) must keep records ''indicating the current status of applicable airworthiness directives, including the method of compliance.'' Whether an existing AD is superseded or revised, the new AD is assigned a new AD number: a superseding AD is assigned a new 6-digit AD number; a revising AD retains the original 6-digit AD number, but an ''R1'' is added to it. In either case, the new AD is identified by its ''new'' AD number, not by the ''old'' AD number. In light of this, affected operators updating their maintenance records to indicate the current AD status would have to record a new AD number in all cases, regardless of whether the AD is a superseding or a revising AD. Further, operators are always given credit for

work previously performed in accordance with the existing AD by means of the phrase in the compliance section of the AD that states, ''Required * * * unless accomplished previously.''

Two ATA members state that the proposed rule is unnecessary since AD 94–18–07 is sufficient to ensure the continued airworthiness of the affected airplanes. The FAA infers that commenters request that the proposed rule be withdrawn. The FAA does not concur. As discussed in the preamble of the proposal, since fluorescent penetrant inspections (FPI) of the links were accomplished improperly during manufacturing, defects in the lock links may exist. After manufacture of a lock link, its material is etched and an FPI is performed to detect forging defects. FPI's accomplished on the affected lock links were performed without accomplishing the etching process.

AD 94–18–07 was issued as ''interim action,'' and requires eddy current inspections only of the areas of the links that are considered to be at a higher risk for the existence of forging flaws. That AD provided for an optional terminating action for the eddy current inspections by accomplishing an FPI. The FAA determined that an FPI must be accomplished to inspect the entire link in the manner that was intended during manufacture to ensure that no forging flaws exist. The compliance time for accomplishment of the FPI was sufficiently long so that notice and time for public comment were feasible. Therefore, the FAA specified in AD 94–18–07 that it was considering additional rulemaking to require accomplishment of the FPI. This action contains that requirement.

The FAA has revised paragraph (e)(2) of the final rule to specify, in part, that serviceable lock links are those that have been inspected in accordance with paragraph (d) of this AD. The paragraph reference was inadvertently specified incorrectly in the proposed rule as ''paragraphs (a) and (b).''

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

There are approximately 534 Model DC–10 and Model MD–11 series airplanes and Model KC–10A (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 310 airplanes of U.S. registry will be affected by this AD.

The inspections that were required previously by AD 94–18–07, and retained in this AD, take approximately 4.5 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the inspection requirements of AD 94–18–07 on U.S. operators is estimated to be $83,700, or $270 per airplane, per inspection cycle.

The fluorescent penetrant inspection required by this AD will take approximately 8 work hours per airplane to accomplish at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the fluorescent penetrant inspection requirement of this AD on U.S. operators is estimated to be $148,400, or $480 per airplane.

Accomplishment of the fluorescent penetrant inspection required by this AD terminates the repetitive inspection requirement that had been imposed previously by AD 94–18–07. Therefore, accomplishment of that fluorescent penetrant inspection will result in a reduction in costs to affected operators of $83,700 per inspection cycle that will no longer be required.

The number of required work hours for each requirement of this AD, as indicated above, is presented as if the accomplishment of the actions were to be conducted as ''stand alone'' actions. However, in actual practice, these actions, for the most part, will be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary additional work hours will be minimal in many instances. Additionally, any costs associated with special airplane scheduling will be minimal.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9020 (59 FR 44900, August 31, 1994), and by adding a new airworthiness directive (AD), amendment 39- , to read as follows:

95–11–02 McDonnell Douglas: Amendment 39–9236. Docket 94–NM–150–AD. Supersedes AD 94–18–07, Amendment 39–9020.

Applicability: All Model DC–10 series airplanes and Model KC–10A (military) airplanes; and Model MD–11 series airplanes, as listed in McDonnell Douglas MD–11 Alert Service Bulletin A32–47, dated July 15, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (h) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

Note 2: Visual inspections of the lock links, as required by paragraph (a) of this AD, and eddy current inspections of the lock links, as

required by paragraph (b)(1) of this AD, that have been accomplished prior to the effective date of this AD in accordance with McDonnell Douglas DC–10 Alert Service Bulletin A32–237, dated April 11, 1994; or McDonnell Douglas MD–11 Alert Service Bulletin A32–44, dated March 22, 1994, or Revision 1, dated June 16, 1994; as applicable; are considered acceptable for compliance with the applicable action specified in this amendment.

To prevent collapse of the nose landing gear (NLG), accomplish the following:

(a) Within 30 days after September 15, 1994 (the effective date of AD 94–18–07, amendment 39–9020), perform a visual inspection to determine the serial number of the upper lock links, part number ACG7396–1, and the lower lock links, part number ACG7237–1, on the NLG, in accordance with McDonnell Douglas DC–10 Alert Service Bulletin A32–238, dated July 15, 1994; or McDonnell Douglas MD–11 Alert Service Bulletin A32–47, dated July 15, 1994; as applicable.

(b) If the serial number of the lock link coincides with any of the suspect serial numbers listed in McDonnell Douglas DC–10 Alert Service Bulletin A32–238, dated July 15, 1994; or McDonnell Douglas MD–11 Alert Service Bulletin A32–47, dated July 15, 1994; as applicable; accomplish paragraphs (b)(1) and (b)(2) of this AD in accordance with the alert service bulletin.

(1) Prior to further flight, perform an eddy current inspection to detect defects in the lock link in accordance with Phase I (''Eddy Current Inspection—On Aircraft'') of the Accomplishment Instructions of the applicable alert service bulletin.

(2) Perform an expanded eddy current inspection to detect defects in the lock link, in accordance with Phase II (''Expanded Eddy Current Inspection—Off Aircraft'') of the Accomplishment Instructions of the applicable alert service bulletin at the time specified in paragraph (b)(2)(i) or (b)(2)(ii) of this AD, as applicable.

(i) For Model DC–10 series airplanes and Model KC–10A airplanes: Inspect prior to the accumulation of 450 landings after September 15, 1994 (the effective date of AD 94–18–07, amendment 39–9020), and thereafter at intervals not to exceed 450 landings until the inspection required by paragraph (d) of this AD is accomplished.

(ii) For Model MD–11 series airplanes: Inspect prior to the accumulation of 330 landings after September 15, 1994 (the effective date of AD 94–18–07, amendment 39–9020), and thereafter at intervals not to exceed 330 landings until the inspection required by paragraph (d) of this AD is accomplished.

(c) If any defect is found during any inspection required by paragraph (b) of this AD, prior to further flight, accomplish either paragraph (c)(1) or (c)(2) of this AD in accordance with McDonnell Douglas DC–10 Alert Service Bulletin A32–238, dated July 15, 1994; or McDonnell Douglas MD–11 Alert Service Bulletin A32–47, dated July 15, 1994; as applicable.

(1) Rework the lock link; or

(2) Replace the defective lock link with a serviceable lock link that has been inspected in accordance with paragraphs (a) and (b) of this AD and, if the lock link was found to contain any defect, that has been reworked in accordance with paragraph (c)(1) of this AD.

(d) Within 15 months after the effective date of this AD, perform a fluorescent penetrant inspection to detect defects of the lock links, in accordance with Phase III (''Fluorescent Penetrant Inspection—Off Aircraft'') of the Accomplishment Instructions of McDonnell Douglas DC–10 Alert Service Bulletin A32–238, dated July 15, 1994; or McDonnell Douglas MD–11 Alert Service Bulletin A32–47, dated July 15, 1994; as applicable. Accomplishment of this inspection constitutes terminating action for the inspections required by paragraph (b) of this AD.

(e) If any defect is found during an inspection performed in accordance with paragraph (d) of this AD, prior to further flight, accomplish either paragraph (e)(1) or (e)(2) of this AD in accordance with McDonnell Douglas DC–10 Alert Service Bulletin A32–238, dated July 15, 1994; or McDonnell Douglas MD–11 Alert Service Bulletin A32–47, dated July 15, 1994; as applicable.

(1) Rework the lock link; or

(2) Replace the defective lock link with a serviceable lock link that has been inspected in accordance with paragraph (d) of this AD and, if the lock link was found to contain any defect, that has been reworked in accordance with paragraph (e)(1) of this AD.

(f) As of September 15, 1994 (the effective date of AD 94–18–07, amendment 39–9020), no person shall install an upper lock link, part number ACG7396–1, or a lower lock link, part number ACG7237–1, on the NLG of any airplane unless that lock link has been inspected in accordance with paragraphs (a) and (b) of this AD and reworked, as necessary, in accordance with paragraph (c)(1) or (e)(1) of this AD.

(g) Within 30 days after any defect is found during any inspection required by this AD, submit a report of inspection findings to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712; fax (310) 627–5210. The report must include a description of the defect found, the part number of the defective lock link, the serial number of the defective lock link, the number of landings on the defective lock link, and the serial number of the airplane. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2120–0056.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

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

(j) The actions shall be done in accordance with McDonnell Douglas DC–10 Alert Service Bulletin A32–238, dated July 15, 1994; and McDonnell Douglas MD–11 Alert Service Bulletin A32–47, dated July 15, 1994; as applicable. The incorporation by reference of these documents was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of September 15, 1994 (59 FR 44900, August 31, 1994). Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(k) This amendment becomes effective on June 21, 1995.

Issued in Renton, Washington, on May 16, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–12445 Filed 5–19–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–ANE–21; Amendment 39–9227; AD 95–10–10]

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Pratt & Whitney (PW) JT8D series turbofan engines, that currently requires initial and repetitive inspections of certain front compressor fan hubs and shotpeening of the forward and aft rim to web radius. This amendment requires a reduction in the initial inspection interval for front compressor fan hubs installed in all positions of all applicable aircraft, establish a compliance end-date, and clarify the wording of the compliance requirements. This amendment is

prompted by a report of a front compressor fan hub fracture installed in a Boeing 737 aircraft that resulted in the release of fan blades and portions of the hub outer rim. The actions specified by this AD are intended to prevent fracture of the front compressor fan hub, which can result in an uncontained engine failure and damage to the aircraft.

DATES: Effective July 21, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 21, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, Technical Publications Department, M/S 132–30, 400 Main Street, East Hartford, CT, 06108. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington DC.

FOR FURTHER INFORMATION CONTACT: Mark A. Rumizen, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA, 01803–5299; telephone (617) 238–7137 , fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 93–14–14, Amendment 39–8638 (58 FR 39644, July 26, 1993) which is applicable to PW JT8D series turbofan engines, was published in the **Federal Register** on November 21, 1994 (59 FR 59973). That action proposed to reduce the initial inspection interval to require front compressor fan hubs installed in all positions of all applicable aircraft be inspected at the next shop visit, and to establish a compliance end date of December 31, 1999, or 6000 total part cycles (TPC) after the effective date of this AD for the initial inspection. That action also proposed to clarify the wording of paragraph (b)(4) to emphasize that the repetitive inspection is required at the next opportunity when the front compressor fan hub is accessible at the detail level in the shop only after accumulating 2500 additional cycles in service (CIS) since the last inspection. The actions would be required to be accomplished in accordance with Pratt & Whitney (PW) Alert Service Bulletin (ASB) No. A6104, Revision 3, dated June 16, 1994.

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

One commenter states that the reporting requirements of the AD be removed. The FAA does not concur. This corrective action program was based on a risk analysis that assumed a frequency of inspection relative to fleet usage. The reporting requirements of the AD allow this frequency of inspections to be monitored to ensure it is consistent with the assumptions, thereby confirming that the corrective action program is appropriate for maintaining the forecasted risk level.

One commenter supports the amendment as proposed.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 2165 engines of the affected design in the worldwide fleet. The FAA estimates that 1475 engines installed on aircraft of U.S. registry and 690 domestic uninstalled engines will be affected by this AD, that it will take approximately 12 work hours per engine to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,428,900.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–8638 (58 FR 39644, July 26, 1993) and by adding a new airworthiness directive, Amendment 39–9227, to read as follows:

95–10–10 Pratt & Whitney: Amendment 39–9227. Docket 94–ANE–21. Supersedes AD 93–14–14, Amendment 39–8638.

Applicability: Pratt & Whitney (PW) Model JT8D–9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines.

Note: This Airworthiness Directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (h) to request approval from the Federal Aviation Administration (FAA). This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent fracture of the front compressor fan hub, which can result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) For front compressor fan hubs installed in engines in the No. 2 position on Boeing 727 aircraft on or after the effective date of this AD, inspect and shotpeen the front compressor fan hub in accordance with Appendix A, Appendix B, and Attachment 1 (NDIP–764) of PW Alert Service Bulletin (ASB) No. A6104, Revision 3, dated June 16, 1994, as follows:

(1) Initially inspect the front compressor fan hub as follows:

Total part cycles (TPC) on the effective date of this AD	Initial inspection interval
Over 18,001 TPC	Inspect at the next shop visit, or within 300 cycles in service (CIS) after the effective date of this AD, whichever occurs first.
16,501 to 18,000 TPC	Inspect at the next shop visit, or within 500 CIS after the effective date of this AD, whichever occurs first.
15,001 to 16,500 TPC	Inspect at the next shop visit, or within 750 CIS after the effective date of this AD, whichever occurs first.
13,501 to 15,000 TPC	Inspect at the next shop visit, or within 1,000 CIS after the effective date of this AD, whichever occurs first.
10,501 to 13,500 TPC	Inspect at the next shop visit, or within 1,500 CIS after the effective date of this AD, whichever occurs first.
Less than 10,501 TPC	Inspect at the next shop visit but not to exceed 12,000 TPC, or by the compliance end-date, whichever occurs first.

(2) Engines removed from the No. 2 position on Boeing 727 aircraft and reinstalled in aircraft or positions other than the No. 2 position on Boeing 727 aircraft after the effective date of this AD must adhere to the initial inspection interval specified in paragraph (a)(1) of this AD. Inspect and shotpeen front compressor fan hubs on these repositioned engines in accordance with paragraph (a)(1) of this AD.

(3) Remove front compressor fan hubs from service if cracks are found during the inspection process and replace with a serviceable hub.

(4) Shotpeen the front compressor fan hubs that pass the inspections required by paragraph (a)(1) of this AD, in accordance with Appendix B of PW ASB No. A6104, Revision 3, dated June 16, 1994, prior to returning the hub to service.

(5) Thereafter, inspect, shotpeen, and remove from service, if necessary, front compressor fan hubs that are reinstalled in the No. 2 position of Boeing 727 aircraft, in accordance with Appendix A, Appendix B, and Attachment 1 (NDIP–764), as applicable, of PW ASB No. A6104, Revision 3, dated June 16, 1994, as follows:

(i) For hubs that were last inspected and shotpeened with greater than 12,000 TPC upon inspection, inspect and shotpeen at the first shop visit after 2,500 CIS since last inspection, but prior to the accumulation of 8,000 CIS since last inspection.

(ii) For hubs that were last inspected and shotpeened with less than or equal to 12,000 TPC upon inspection, inspect and shotpeen at the first shop visit after 2,500 CIS since last inspection, or prior to accumulating 12,000 TPC, whichever occurs later, but not to exceed 8,000 CIS since last inspection.

(6) Engines removed from the No. 2 position on Boeing 727 aircraft and reinstalled in aircraft or positions other than the No. 2 position on Boeing 727 aircraft prior to reaching the repetitive inspection interval specified in paragraph (a)(5) of this AD must be inspected as follows:

(i) For the next inspection, inspect in accordance with paragraph (a)(5) of this AD; and

(ii) thereafter, inspect and shotpeen in accordance with paragraph (b)(4) of this AD.

(b) For front compressor fan hubs installed in engines that are installed in aircraft or positions other than the No. 2 position on Boeing 727 aircraft on or after the effective date of this AD, inspect and shotpeen the front compressor fan hubs in accordance with Appendix A, Appendix B, and Attachment 1 (NDIP–764) of PW ASB No. A6104, Revision 3, dated June 16, 1994, as follows:

(1) Initially inspect the front compressor fan hub at the next shop visit after the effective date of this AD, but not later than the compliance end-date.

(2) Remove front compressor fan hubs from service if cracks are found during the inspection process and replace with a serviceable hub.

(3) Shotpeen the front compressor fan hubs that pass the inspection requirements specified in paragraph (b)(1) of this AD, in accordance with Appendix B of PW ASB No. A6104, Revision 3, dated June 16, 1994, prior to returning the hub to service.

(4) Thereafter, upon accumulating 2,500 addition CIS since the last inspection, inspect, shotpeen, and remove from service, if necessary, front compressor fan hubs that are not reinstalled in the No. 2 position on Boeing 727 aircraft, in accordance with Appendix A, Appendix B, and Attachment 1 (NDIP–764) of PW ASB No. A6104, Revision 3, dated June 16, 1994, when the front compressor fan hub is accessible at the detail level in the shop.

(5) Thereafter, inspect, shotpeen, and remove from service, if necessary, front compressor fan hubs that are reinstalled in the No. 2 position of Boeing 727 aircraft after the effective date of this AD in accordance with paragraph (a)(5) of this AD.

(c) Inspect and shotpeen front compressor fan hubs that were inspected and shotpeened in accordance with Appendix A, Appendix B, and Attachment 1 (NDIP–764) of PW ASB No. 6104, dated December 21, 1992, PW ASB No. 6104, Revision 1, dated May 21, 1993, or PW ASB No. 6104, Revision 2, date June 18, 1993, prior to the effective date of this AD in accordance with paragraphs (a)(5) or (b)(4) of this AD, as applicable.

(d) For the purpose of this AD, the compliance end-date referenced in paragraphs (a)(1) and (b)(1) of this AD is defined as December 31, 1999, or 6,000 TPC after the effective date of this AD, whichever occurs later.

(e) For the purpose of this AD, a shop visit is defined as an engine removal for engine maintenance that cannot be performed while installed in the aircraft, and that entails separation of pairs of mating (lettered) engine flanges or the removal of a compressor disk, hub, or spool, or removal of a turbine disk.

(f) For the purpose of this AD, accessibility of a front compressor fan hub at the detail level in the shop is defined as engine maintenance that entails separation of the front compressor fan hub from the front compressor and removal of the fan blades.

(g) Report the front compressor fan hub part number, total time, and total cycles in service for each hub that passes the inspections defined in this AD, within 60 days after the inspection, to the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts, 01803–5299; fax (617) 238–7199. For any hub that is found cracked, submit the information requested in paragraph B of Part 4, of the Accomplishment Instructions of PW ASB No. 6104, Revision 3, dated June 16, 1994, within 60 days after the inspection to the Manager, Engine Certification Office, at the address identified above. The reporting requirements of this AD terminate one year after the effective date of this AD. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provision of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and have been assigned OMB Control Number 2120–0056.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

(j) The modification and repair shall be done in accordance with the following service document:

Document No.	Pages	Revision	Date
PW ASB No. A6104 including Appendix A, and Appendix B	2, 6 1, 3, 4, 5, 7–12	1 3	May 21, 1993. June 16, 1994.
Total pages: 12			
PW ASB No. A6104 with Attachment 1 NDIP–764	1–14		Dec. 8, 1992.
Total pages: 14			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Pratt & Whitney, Materials Engineering. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(k) This amendment becomes effective on July 21, 1995.

Issued in Burlington, Massachusetts on May 11, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–12328 Filed 5–18–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–ANE–08; Amendment 39–9235; AD 95–11–01]

Airworthiness Directives; Turbomeca Arriel 1 Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Turbomeca Arriel 1 series turboshaft engines, that currently requires repetitive checks for engine rubbing noise during gas generator shutdown, and for free rotation of the gas generator by rotating the compressor manually after the last flight of the day. This amendment continues to require these checks, but eliminates the reference to the Turbomeca service bulletin, allows the pilot to perform all the checks required in this AD, clarifies the inspection interval requirement for daily checks, and specifies terminating action for the repetitive checks required by this AD. In addition, this AD allows the check for engine rubbing noise to be performed during engine motoring, and specifies that the engine turbine (T4) temperature must be below 150 degrees Centigrade when performing the check for free rotation. This amendment is prompted by comments submitted by operators of the affected engines in response to the existing AD and the availability of an improved design 2nd stage nozzle guide vane. The actions specified by this AD are intended to prevent engine failure due to rubbing of the 2nd stage turbine disk on the 2nd stage turbine nozzle guide vane, which could result in complete engine failure and damage to the aircraft.

DATES: Effective June 21, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 21, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Turbomeca 64511 Bordes Cedex - France. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Glorianne Messemer, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7132, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 93–23–09, Amendment 39–8745 (58 FR 63061, November 30, 1993), which is applicable to Turbomeca Arriel 1 series turboshaft engines, was published in the **Federal Register** on September 6, 1994 (59 FR 46005). That notice of proposed rulemaking (NPRM) proposed to continue to require repetitive checks for engine rubbing noise during gas generator shutdown, and for free rotation of the gas generator by rotating the compressor manually at a daily interval until installation of the improved 2nd stage nozzle guide vane. That NPRM proposed to allow pilots to perform all the required checks. Performing these checks does not require special training beyond that already incurred by pilots of the aircraft having affected engines, or the use of tools or special measuring equipment, or reference to technical data. Accordingly, the FAA has determined that pilots may perform all the checks required by that NPRM as an exception to Section 43.3 of the Federal Aviation Regulations (14 CFR 43.3) regarding the performance of maintenance.

In addition, the NPRM proposed to allow the check for engine rubbing noise to be performed during engine motoring, and specifies that the engine turbine (T4) temperature must be below 150 degrees Centigrade when performing the check for free rotation. Also, the NPRM proposed to require installation of modification TU 202, which incorporates an improved 2nd stage nozzle guide vane manufactured from a new material that is more resistant to fatigue cracking, at the next engine overhaul after the effective date of the NPRM, but not later than December 31, 1999, as terminating action for the repetitive checks. This calendar end-date is based upon parts availability. The installation would be performed in accordance with Turbomeca Service Bulletin No. 292 72 0150, dated April 10, 1992.

This engine model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement in effect at the time of type certification. The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

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

One commenter (the manufacturer) states that Arriel engine models 1A, 1A1, 1A2, 1C, 1C1, and 1C2 should be removed from the AD's applicability since these models are all installed in twin-engine helicopters. The FAA does not concur. The engine design characteristics that produce the unsafe condition are common to the Arriel 1 engine models specified in the applicability section of the proposed rule, and therefore must remain in the AD to correct for the unsafe condition.

The commenter also states that the compliance end-date for installation of the terminating action should be extended from December 31, 1999, to December 31, 2002, to facilitate logistical support of the improved hardware. The FAA concurs and has revised the compliance section of this final rule accordingly.

The commenter also states that modification TU 197 should be designated in addition to TU 202 as terminating action for the inspection requirements of this AD. Modification TU 197 is an improved 2nd stage nozzle guide vane introduced to correct for the unsafe condition that is installed on production engines, whereas TU 202, which is a similar design improvement, was introduced for in-service engines. The FAA concurs and has revised the compliance section of this final rule accordingly.

Since publication of the NPRM, the FAA has increased its estimate of labor cost from $55 to $60 per work hour to better reflect current maintenance labor rates. The FAA has revised the economic analysis of this final rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will not increase the scope of the AD.

The FAA estimates that 160 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 0.2 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $8,000 per engine. Based on an assumed utilization rate and an assumed modification rate, the total cost impact of the AD on U.S. operators over the five year compliance period is estimated to be $3,105,440.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**. List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–8745 (58 FR 63061, November 30, 1993) and by adding a new airworthiness directive, Amendment 39–9235, to read as follows:

95–11–01 Turbomeca: Amendment 39–9235. Docket 94–ANE–08. Supersedes AD 93–23–09, Amendment 39–8745.

Applicability: Turbomeca Arriel turboshaft engines Models 1B that do have modification TU 76 but do not have modification TU 197 or TU 202; Arriel Models 1D and 1D1 that do not have modification TU 197 or TU 202; Arriel Models 1A, 1A1, 1A2 that have had modification TU 76 but do not have modification TU 197 or TU 202; and Arriel Models 1C, 1C1, and 1C2 that do not have modification TU 197 or TU 202. These engines are installed on but not limited to Aerospatiale Models AS350B, SA365, and AS565 helicopters.

Note: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine failure due to rubbing of the 2nd stage turbine disk on the 2nd stage turbine nozzle guide vane, which could result in engine failure and damage to the aircraft, accomplish the following:

(a) For Turbomeca Arriel turboshaft engines Models 1B that have modification TU 76 but do not have modification TU 197 or TU 202; and Arriel Models 1D and 1D1 that do not have modification TU 197 or TU 202; accomplish the following:

(1) Perform a daily check for unusual engine rubbing noises during gas generator shutdown or as engine gas generator speed decreases after completion of engine motoring.

(2) Perform a daily check for free rotation of the gas generator, when T4 temperature is below 150 degrees Centigrade, by rotating the compressor manually.

(3) While checking for free rotation of the gas generator, perform a check for engine rubbing noise.

(b) For Turbomeca Arriel turboshaft engines Models 1A, 1A1, 1A2 that have modification TU 76 but do not have modification TU 197 or TU 202; and Arriel Models 1C, 1C1, and 1C2 that do not have modification TU 197 or TU 202; accomplish the following:

(1) Within 50 hours time in service (TIS) after the effective date of this AD, perform a check for unusual engine rubbing noise during gas generator shutdown or as engine gas generator speed decreases after completion of engine motoring.

(2) Thereafter, at intervals not to exceed 50 hours TIS since the last check, perform a check for unusual engine rubbing noise during gas generator shutdown or as engine gas generator speed decreases after completion of engine motoring.

(3) Perform a daily check for free rotation of the gas generator when T4 temperature is below 150 degrees C, by rotating the compressor manually.

(4) While checking for free rotation of the gas generator, perform a check for engine rubbing noise.

(c) If any engine rubbing noise is detected during the checks required by paragraphs (a) and (b) of this AD, prior to further flight replace gas generator module M03 with a serviceable module.

(d) Install the improved 2nd stage nozzle guide vane, modification TU 202 or TU 197,

at the next engine overhaul after the effective date of this AD, but not later than December 31, 2002, in accordance with Turbomeca Service Bulletin (SB) 292 72 0150, dated April 10, 1992, or in accordance with SB 292 72 0153, dated February 22, 1993, respectively. Installation of this hardware constitutes terminating action to the checks required by this AD.

(e) The checks required by paragraphs (a) and (b) of this AD may be performed by the pilot holding at least a private pilot certificate as an exception to the requirements of part 43 of the Federal Aviation Regulations (14 CFR part 43). The checks must be recorded in accordance with Sections 43.9 and 91.417(a)(2)(v) of the Federal Aviation Regulations (14 CFR 43.9 and 14 CFR 91.417(a)(2)(v)), and the records must be maintained as required by the applicable Federal Aviation Regulation.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative method of compliance with this AD, if any, may be obtained from the Engine Certification Office.

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

(h) The actions required by this AD shall be done in accordance with the following Turbomeca SB's:

Document No.	Pages	Date
292 72 0150 ..... Total pages: 4.	1–4	April 10, 1992.
292 72 0153 ..... Total pages: 5.	1–5	February 22, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Turbomeca 64511 Bordes Cedex—France. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(i) This amendment becomes effective on June 21, 1995. Issued in Burlington, Massachusetts, on May 15, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–12329 Filed 5–18–95; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS CARNEY (DDG 64) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: May 2, 1995.

FOR FURTHER INFORMATION CONTACT: Commander K.P. McMahon, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS CARNEY (DDG 64) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the following specific provision of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and the horizontal distance between the forward and after masthead lights; Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions; and Annex I, paragraph 3(c), pertaining to placement of task lights not less than 2 meters from the fore and aft centerline of the ship in the athwartship direction. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Four of § 706.2 is amended by:

a. Adding the following vessel to Paragraph 15:

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
USS CARNEY	DDG 64	1.90 meters.

b. Adding the following vessel to Paragraph 16:

Vessel	Number	Obstruction angle relative ship's headings
USS CARNEY	DDG 64	1.05.06 thru 112.50°.

3. Table Five of § 706.2 is amended by adding the following vessel:

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS CARNEY	DDG 64	X	X	X	20.4

Dated: May 2, 1995.

K.P. McMahon,

CDR, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 95–12475 Filed 5–19–95; 8:45 am]

BILLING CODE 3810–FF–P

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS SAIPAN (LHA 2) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as an amphibious support ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: March 22, 1995.

FOR FURTHER INFORMATION CONTACT: Commander K.P. McMahon, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Purusant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS SAIPAN (LHA 2) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the following specific provisions of 72 COLREGS without interfering with its special function as an amphibious support ship: Annex I, paragraph 3(a) pertaining to the horizontal distance between the forward and after masthead lights; Rule 21(a) pertaining to placement of masthead lights over the fore and aft centerline of the vessel; Annex I, paragraph 2(g) pertaining to the placement of sidelights above the hull of the vessel; Annex I, paragraph 3(b) pertaining to placement of the sidelights in front of the forward masthead light. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Two of § 706.2 is amended by revising the entry for USS SAIPAN to read as follows:

TABLE TWO

Vessel	Number	Masthead lights, distance to stbd of keel in meters; Rule 21(a)	Forward anchor light, distance below flight dk in meters; § 2(K), Annex I	Forward anchor light, number of; Rule 30(a)(i)	AFT anchor light, distance below flight dk in meters; Rule 21(e), Rule 30(a)(ii)	AFT anchor light, number of; Rule 30(a)(ii)	Side lights, distance below flight dk in meters; § 2(g), Annex I	Side lights, distance forward of forward masthead light in meters; § 3(b), Annex I	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I
USS SAIPAN	LHA–2	10.1	.....	1	.....	1	2.8	72.1	.....

3. Table Five of § 706.2 is amended by revising the entry for USS SAIPAN to read as follows:

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. annex 1, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS SAIPAN	LHA 2	.....	.....	.....	10.2

Dated: March 22, 1995.

Approved:

K.P. McMahon,

CDR, JAGC, U.S. Navy Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 95–12476 Filed 5–19–95; 8:45am]

BILLING CODE 3810–FF–M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS CURTIS WILBUR (DDG 54) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: May 1, 1995.

FOR FURTHER INFORMATION CONTACT: Commander K. P. McMahon, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS CURTIS WILBUR (DDG 54) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the following specific provision of 72 COLREGS without interfering with its special function as a naval ship: Annex I, section 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights; and, Annex I, section 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Four of section 706.2 is amended by revising the entry for USS CURTIS WILBUR in Paragraph 16 to read as follows:

Vessel	Number	Obstruction angle relative ship's headings
USS CURTIS WILBUR.	DDG 54	102.61 thru 112.50°.

3. Table Five of § 706.2 is amended by revising the entry for USS CURTIS WILBUR to read as follows:

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS CURTIS WILBUR	DDG 54	X	X	X	20.4

Dated: May 1, 1995.

Approved:

K. P. McMahon,

CDR, JAGC, U.S. Navy Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 95–12477 Filed 5–19–95; 8:45 am]

BILLING CODE 3810–FF–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CA–64–1–6997; FRL–5202–4]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of California, Approval of the Maintenance Plan for the San Francisco Bay Area and Redesignation of the San Francisco Bay Area to Attainment; Approval of Emissions Inventory; Approval of NO_X Exemption Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving a redesignation request and maintenance plan for the San Francisco Bay Area as a revision to California's State Implementation Plan (SIP) for ozone. In addition, EPA is approving the 1990 base year emissions inventory and a petition requesting an exemption from the section 182(f) nitrogen oxides (NO_X) requirements for the area.

On April 13, 1994, EPA notified the State of California that EPA had made a finding of incompleteness for required programs under the Clean Air Act (CAA or the Act). The EPA's redesignation of the San Francisco Bay Area to attainment and approval of the 1990 emissions inventory abrogates those requirements for the area. Therefore, the sanctions and federal implementation plan clocks begun by those findings are stopped at the time of this redesignation.

EFFECTIVE DATE: This final rule will become effective on June 21, 1995.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Plans Development Section (A–2–2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

California Air Resources Board, 2020 L Street, Sacramento, CA 94814.

FOR FURTHER INFORMATION CONTACT: Wallace Woo, Chief, Plans Development Section, Air & Toxics Division, U.S. Environmental Protection Agency, Region IX, at (415) 744–1207.

SUPPLEMENTARY INFORMATION:

Background

A. Ozone Redesignation Request and Maintenance Plan

The San Francisco Bay Area ozone nonattainment area has attained the National Ambient Air Quality Standard (NAAQS) for ozone based on three years of quality assured ambient air quality data, for the period 1990–1992. Therefore, in accordance with the CAA, as amended in 1990, and to ensure continued attainment of the standard for at least 10 years, the State of California has submitted an ozone maintenance plan which projects continued attainment of the ozone NAAQS in the San Francisco Bay Area.

The maintenance plan submitted for the San Francisco Bay Area meets all applicable requirements of the CAA. The San Francisco Bay Area submittal complies with section 175A of the Act which sets forth maintenance plan requirements for areas seeking redesignation from nonattainment to attainment. The plan demonstrates attainment of the NAAQS for at least 10 years after the area is redesignated.

Eight years after the redesignation, the state commits to submit a revised maintenance plan which demonstrates attainment for the ten year period following the initial ten year period. In the event of a NAAQS violation, the maintenance plan contains contingency measures adequate to ensure prompt correction of the air quality problem.

The state submittal being approved today contains a redesignation request in which the state demonstrates that the area has fulfilled the redesignation requirements of the CAA pursuant to section 107(d)(3)(E), a NO_X exemption petition pursuant to section 182(f), and a 1990 emissions inventory of ozone precursors pursuant to section 182(a) for the area.

On September 28, 1994 (59 FR 49361–49370), EPA published a notice of proposed rulemaking (NPRM) for the State of California SIP. The NPRM proposed that the San Francisco Bay Area be redesignated from nonattainment to attainment for ozone and that the maintenance plan submitted by the State of California as a revision to the California SIP be approved contingent upon EPA taking final rulemaking action to approve various SIP deficiencies for the San Francisco Bay Area (including volatile organic compound (VOC) reasonable available control technology (RACT) corrections, emission statement rule, NSR corrections) and California's submittal of the ozone maintenance plan amendments to the contingency plan and the 1990 base year emissions inventory. In addition, the NPRM proposed approval of a NO_X waiver petition and 1990 base year emissions inventory.

Since that time, the EPA has taken final rulemaking action to approve both the volatile organic compound (VOC) reasonable available control technology (RACT) rules which resolve the deficiencies and the emission statement rule. Below is the list of rules that the EPA has approved since the time of proposed rulemaking on the redesignation. These approvals remove one of the conditions for redesignation of the San Francisco Bay Area.

Rule No.	Rule title	Notice of final rulemaking
8–1	General Provisions	60 FR 15062, March 22, 1995.
8–2	Miscellaneous Operations	60 FR 15062, March 22, 1995.
8–4	General Solvent and Surface Coating Operations	60 FR 15092, March 22, 1995.
8–7	Gasoline Dispensing Facilities	60 FR 15062, March 22, 1995.
8–8	Wastewater (Oil-Water) Separators	59 FR 43328, August 29, 1994.
8–11	Metal Container Closure and Coil Coating	59 FR 63721, December 9, 1994.
8–12	Paper, Fabric, and Film Coating	60 FR 15062, March 22, 1995.
8–13	Light and Medium Duty Motor Vehicle Assembly Plants	NFRM signed March 29, 1995—publication pending.
8–14	Surface Coating of Large Appliance and Metal Furniture	NFRM signed March 29, 1995—publication pending.
8–15	Emulsified and Liquid Asphalts	60 FR 15062, March 22, 1995.
8–16	Solvent Cleaning Operations	59 FR 63721, December 9, 1994.

Rule No.	Rule title	Notice of final rulemaking
8–19	Surface Coating of Miscellaneous Metal Parts and Products	60 FR 16799, April 3, 1995.
8–20	Graphic Arts Printing and Coating Operations	60 FR 15062, March 22, 1995.
8–22	Valves and Flanges at Chemical Plants	60 FR 8949, February 16, 1995.
8–23	Coating of Flat Wood Paneling and Wood Flat Stock	NFRM signed March 29, 1995—publication pending.
8–24	Pharmaceutical and Cosmetic Manufacturing Operations	60 FR 15062, March 22, 1995.
8–25	Pump and Compressor Seals at Petroleum Refineries, Chemical Plants, Bulk Plants, and Bulk Terminals.	60 FR 12451, March 7, 1995.
8–28	Pressure Relief Valves at Petroleum Refineries and Chemical Plants	59 FR 63721, December 9, 1994.
8–29	Aerospace Assembly and Component Coating Operations	60 FR 16799, April 3, 1995.
8–30	Semiconductor Manufacturing Operations	60 FR 15062, March 22, 1995.
8–31	Surface Coating of Plastic Parts and Products	60 FR 15062, March 22, 1995.
8–32	Wood Product Coatings	60 FR 15062, March 22, 1995.
8–33	Gasoline Bulk Terminals and Gasoline Delivery Vehicles	60 FR 16799, April 3, 1995.
8–34	Solid Waste Disposal Sites	60 FR 15062, March 22, 1995.
8–35	Coating, Ink, and Adhesive Manufacturing	60 FR 15062, March 22, 1995.
8–38	Flexible and Rigid Disk Manufacturing	60 FR 16799, April 3, 1995.
8–39	Gasoline Bulk Plants and Gasoline Delivery Vehicles	60 FR 16799, April 3, 1995.
8–40	Aeration of Contaminated Soil	60 FR 15062, March 22, 1995.
8–41	Vegetable Oil Manufacturing Operations	60 FR 15062, March 22, 1995.
8–42	Large Commercial Bakeries	60 FR 12451, March 7, 1995.
8–43	Surface Coating of Marine Vessel	NFRM signed March 29, 1995—publication pending.
8–45	Motor Vehicle and Mobile Equipment Coating Operations	60 FR 15062, March 22, 1995.
8–47	Air Stripping and Soil Vapor Extraction Operations	NFRM signed March 29, 1995—publication pending.
8–50	Polyester Resin Operations	60 FR 12451, March 7, 1995.
2–1	Emission Statement Rule	60 FR 16799, April 3, 1995.

In addition, the State of California has submitted the amendments to the maintenance plan necessary for final approval, including the revised 1990 base year emissions inventory and amendments to the contingency plan. The ozone maintenance plan amendments include a commitment by the Governor to implement the improvements to the basic inspection and maintenance (I/M) program by the end of 1995 as an early contingency measure and a revised contingency process. The reductions from these I/M improvements were not included in the maintenance plan emission inventory projections. In the event of a violation during the maintenance period, the Bay Area Air Quality Management District (BAAQMD) will meet with the EPA within 30 days of the violation to discuss which of the adopted NO_X RACT rules are appropriate to submit into the SIP as fully adopted and implemented contingency provisions. The list of NO_X controls include six rules which are scheduled for implementation through 2001. The improvements to the basic I/M program and the NO_X RACT controls supersede the original contingency plan submitted in November 1993. The original submittal included a commitment to implement an enhanced I/M program in the event of a violation during the maintenance period. However, the final enabling legislation for enhanced I/M in California prohibited areas not explicitly required to implement enhanced I/M by the CAA from opting into the centralized portion of the program. Therefore, the BAAQMD revised the contingency plan as described above.

Below is the list of NO_X RACT contingency measures submitted by CARB as part of the contingency plan.

BAAQMD NO_X RULES AS CONTINGENCY MEASURES

Title regulation 9	Adopted	Implementation year(s)	NO_X reductions (TPD)
NO_X and CO from Industrial, Institutional and Commercial Boilers, Steam Generators (rule 7).	9/16/92	1/1/96	14.9
NO_2 and CO_2 Emissions from Stationary Internal Combustion Engines (rule 8)	1/20/93	1/1/97	8.3
NO_X from Stationary Gas Turbines (rule 9)	5/5/93	1/1/97	7.0
Refinery Boilers, Steam Generators and Process Heaters (rule 10)	1/5/94	5/31/95 (sources already meet RACT standards).	N/A
NO_X and CO from Utility Electric Power Generating Boilers (rule 11)	2/16/94	5/31/95	1–2.6
NO_X from Glass Melting Furnaces (rule 12)	1/19/94	1/1/97–1/1/2001	1.2

In early 1994, new State laws (SB 198, AB 2018, SB 521, SB 629) were passed to improve the current decentralized I/M program. The improvements will begin implementation in 1995 and include: increased cost waiver limits for all models to $450; addition of functional tests for the evaporative control system; remote sensing or other roadside testing to discover gross polluters; centralized computer system reporting; improved quality assurance and enforcement; and improved technician training and certification. In addition, loaded-mode testing will either be a required program element (to be determined by the California Bureau of Automotive Repair), or will be implemented on request in the San Francisco Bay Area within one year of successful demonstration in areas of the State implementing enhanced I/M programs. Below is a chart which

estimates the emission reductions from these improvements by the year 2000.

EMISSION REDUCTION ESTIMATES FROM I/M PROGRAM IMPROVEMENTS BY 2000

	HC (percent)	CO (percent)	NO_X (percent)
Current Program	16.6	25.3	10.4
Improved Decentralized	22.1	30.0–34.6	15.0–22.2

Regarding the new source review (NSR) requirement, an EPA policy memo dated October 14, 1994 from Mary Nichols, Assistant Administrator for Air and Radiation, to the Division Directors entitled, ''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' amended earlier guidance [1] which required areas requesting redesignation to attainment after November 15, 1992 to have a fully approved NSR rule prior to final redesignation. In light of the new policy set forth in the October 14, 1994 Memorandum, the EPA is no longer obligated to approve the San Francisco Bay Area's NSR rule as a condition for final approval of the redesignation request. However, the State of California submitted an amended NSR rule for the San Francisco Bay Area on January 4, 1995, and the emission projections contained in BAAQMD's maintenance plan are predicated on continuation of NSR permitting. The BAAQMD must continue NSR permitting until such time as it receives delegation of the PSD program for VOC. Upon delegation of the PSD program for VOC, the NSR permitting program can be moved to the contingency portion of the maintenance plan, provided that BAAQMD's ability to show maintenance of the standard is not affected.

B. Section 182(f) NO_X RACT Waiver Petition

The EPA is finalizing the approval of a petition submitted by the Bay Area AQMD requesting that EPA grant an exemption from the section 182(f) requirements to control major stationary sources of oxides of nitrogen (NO_X) emissions. The exemption petition is based on ambient monitoring data and demonstrates that additional NO_X reductions in the Bay Area would not contribute to attainment of the NAAQS for ozone.

EPA has evaluated the exemption petition for consistency with the requirements of the CAA, EPA regulations, and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents.[2] EPA believes that the petition satisfies the applicable EPA requirements and, in accordance with the requirements of the CAA, has determined that additional NO_X reductions from major stationary sources in the San Francisco Bay Area would not contribute to attainment of the national ambient air quality standard (NAAQS) for ozone. EPA is finalizing this action to exempt the San Francisco Bay Area from implementing the NO_X requirements for RACT, NSR, and the applicable general conformity and I/M requirements [3] of the CAA. Because the San Francisco Bay Area is being redesignated to attainment of the ozone standard through this action, the transportation conformity requirements will consist of meeting the NO_X budget established in the maintenance plan.[4]

The EPA believes that all section 182(f) exemptions that are approved should be approved only on a contingent basis. As described in the EPA's NO_X Supplement to the General Preamble (57 FR 55628, November 25, 1992) and further guidance issued by EPA,[5] section 182(f) exemptions are granted on a contingent basis and last for only as long as the area's monitoring data continue to demonstrate attainment. The San Francisco Bay Area is required to continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area.

If a violation of the ozone standard occurs after the San Francisco Bay Area is redesignated to attainment of the ozone NAAQS, the NO_X requirements are to be implemented as contingency measures as provided in the maintenance plan.

C. 1990 Base Year Emissions Inventory

In the NPRM, the EPA proposed approval of a revised 1990 base year emissions inventory as requested by the state in a letter dated July 21, 1994. In this letter, the state requested that EPA approve a revised 1990 emissions inventory and projections as part of the maintenance plan. As discussed in the NPRM, below is a summary of the 1990 VOC and NO_X emission inventory and projections through the year 2005. The projections show that the area will continue to demonstrate attainment of the ozone NAAQS with current control measures (adopted through December 31, 1992).

VOC EMISSION INVENTORY SUMMARY*

[Tons Per Day]

	1990	1995	2000	2005
Point	78	73	75	77
Area	173	154	141	141
Mobile On-Road	300	204	142	104
Mobile Non-Road	81	85	82	84
Anthropogenic. Total	631	515	440	406
Biogenics	300	300	300	300
Total	931	815	740	706

NO_X EMISSION INVENTORY SUMMARY*

[Tons Per Day]

	1990	1995	2000	2005
Point	131	130	141	146
Area	15	16	17	18
Mobile On-Road	251	194	166	158
Mobile Non-Road	159	164	176	186
Total	557	504	499	508

*Entries are rounded to the nearest whole number, totals may not equal to sum of column entries.

[1] Memorandum entitled, ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' from John Calcagni, Director, Air Quality Management Division, to Regional Air Division Directors.

Memorandum entitled, ''SIP Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and CO NAAQS On or After November 15, 1992,'' from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, to Regional Air Division Directors.

[2] See ''Guidance for Determining the Applicability of Nitrogen Oxides Requirements Under Section 182(f)'', issued by EPA's Office of Air Quality Planning and Standards, December 1993 and EPA's NO_X Supplement to the General Preamble, 57 FR 55628, November 25, 1992.

[3] See ''Scope of Nitrogen Oxides (NO_X) Exemptions,'' from G.T. Helms, Group Leader, Ozone/Carbon Monoxide Programs Branch (MD–15), to the Air Branch Chiefs, January 12, 1995. ''I/M Requirements in NO_X RACT Exempt Areas'', from Mary T. Smith, Acting Director, Office of Mobile Sources, to the Air Division Directors, October 14, 1994.

[4] EPA's approval of the Bay Area's maintenance plan begins the maintenance period as defined in the transportation conformity regulation at 40 CFR Part 51.392. During the maintenance period, the Bay Area must meet the requirements of parts 51.428 and 51.430 of the transportation conformity regulation. These sections specify that the transportation plan and transportation improvement program (TIP) must be consistent with the motor vehicle emissions budgets in the applicable implementation plan, which in this case, is the maintenance plan. The requirement of parts 51.436 and 51.438 that plans and TIPs satisfy the ''build/no build'' test, or demonstrate that the plan and TIPs contribute to emissions reductions, no longer apply during the maintenance period.

[5] See ''Section 182(f) Nitrogen Oxides (NO_X) Exemptions—Revised Process and Criteria'', issued by John S. Seitz, Director, Office of Air Quality Planning and Standards (MD–10), May 27, 1994.

II. Public Comment/EPA Response

The EPA received 17 letters commenting on the proposal. Four letters expressed strong support for the redesignation based on the tremendous progress the San Francisco Bay Area has made over the past 30 years by attaining the ozone NAAQS. Nine letters expressed concern and/or opposition to the redesignation because of the transport of pollution from the San Francisco Bay Area to neighboring areas, and three letters voiced opposition to the redesignation for reasons other than transport. Finally, one letter addressed the section 182(f) NO_X RACT waiver petition only. Below is a summary of the comments received and the EPA's response.

A. EPA Response to Comments: Redesignation Request and Maintenance Plan

Comment 1

Several commenters stated that Congress intended EPA to deal with interstate transport only, as noted in section 176A of the Clean Air Act (CAA), and that the regulation of intrastate transport is outside of EPA jurisdiction and not a criteria for redesignation. Other comments stated that the California Clean Air Act (CCAA) adequately addresses interbasin transport. Furthermore, transport is a complicated issue, and the existing data is not sufficiently accurate to provide better solutions at this time. Finally, in some cases, the San Francisco Bay Area is the recipient of pollution from other air basins during certain meteorological conditions when air flow tends to be from inland areas and the San Joaquin Valley can model attainment without additional measures from the San Francisco Bay Area. The San Francisco Bay Area should not be unfairly singled out for scrutiny of intrastate transport, especially when the CCAA provides a workable process.

EPA Response

As outlined in the General Preamble to Title I of the CAA (57 FR 13528, April 16, 1992), the CAA assigns responsibility to the states for developing and submitting attainment demonstrations which show that the standard will be attained by the applicable attainment dates for areas where the demonstration of attainment is complicated by transport between two areas of different classifications. However, EPA needs to be assured that the attainment plans adequately address transport so as to ensure attainment for all areas within a state by the applicable attainment deadlines.

CARB has submitted attainment demonstration plans for all areas in California, including the Sacramento and San Joaquin Valley nonattainment areas.[6] This submittal included modeling of a large part of California, including Sacramento and the San Francisco Bay Area, as well as the San Joaquin Valley. EPA will review those plans and address the adequacy of the submittals through the federal rulemaking process.

While the State has the initial responsibility for dealing with intrastate transport issues, such issues are the subject of the Clean Air Act and within EPA's jurisdiction. For example, section 110(a)(2)(A) imposes the same obligation on areas to ensure that emissions will not interfere with attainment in downwind intrastate areas that section 110(a)(2)(D) imposes with respect to downwind interstate areas. At the present time, however, the information available to EPA concerning potential transport effects due to emissions from the San Francisco Bay Area is not sufficient to warrant action on the part of EPA or otherwise affect EPA's action regarding the San Francisco Bay Area's redesignation. While the preliminary studies conducted to date indicate that there is transport of emissions from the San Francisco Bay Area to nearby areas,[7] EPA believes that the state and local agencies can adequately address the issue initially. If, however, EPA determines that there are transport problems that warrant action on its part, EPA has the authority to issue a SIP call under sections 110(k)(5) and 110(a)(2)(A) to require the State to deal with those problems.

Comment 2

Several commenters expressed concern or opposition to the redesignation due to the issue of transported emissions from the San Francisco Bay Area to surrounding areas. Several commenters felt that the proposed action to redesignate the San Francisco Bay Area was made despite an accurate assessment of the impact of its emissions on attainment in neighboring areas, including the San Joaquin Valley and Sacramento Area, and requested that EPA delay final action to redesignate the San Francisco Bay Area until an accurate assessment and mitigation of transported pollution to neighboring areas can be made. Several commenters suggested that EPA coordinate a meeting with the state, the affected downwind air pollution control agencies, and the BAAQMD to resolve the transport issue.

EPA Response

As noted in the response to Comment 1, the information available concerning transport from the San Francisco Bay Area is preliminary in nature and EPA does not believe that it should affect EPA's action on this redesignation. Moreover, should EPA consider it necessary and appropriate to take action in the future, EPA has the authority under sections 110(a)(2)(A) and 110(k)(5) to deal with any such transport issues.

However, to respond to the transport concerns and several suggestions that EPA coordinate a meeting with the state and local air pollution control agencies affected by transport from the San Francisco Bay Area, EPA met with the California Air Resources Board (CARB), the BAAQMD and the affected downwind air pollution control agencies on February 2, 1995 to discuss transport from the San Francisco Bay Area to neighboring areas. The affected downwind air pollution control agencies include the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD), the Sacramento Metropolitan Air Quality Management District (SMAQMD), the Yolo-Solano Air Pollution Control District (YSAPCD), the Placer County Air Pollution Control District (PCAPCD), the El Dorado County Air Pollution Control District (ECAPCD), and the Feather River Air Quality Management District (FRAQMD).

This group, the newly formed Interbasin Transport Group (ITG), discussed strategies for dealing with transport from the San Francisco Bay Area to downwind areas. The ITG consists of a main policy body of Air Directors from EPA, CARB, BAAQMD, and affected downwind air pollution control agencies, and a technical subcommittee, consisting of modeling experts, which will discuss the ongoing transport studies in California. The technical subcommittee will develop a needs assessment for gathering additional information on transport and report ongoing modeling results to the policy body at regularly scheduled meetings. Decisions on how to deal with transport will be made collectively by the policy body of the ITG.

At the first ITG meeting on February 2, 1995, the BAAQMD presented an

[6] With respect to the Sacramento attainment plan, CARB submitted a voluntary ''bump-up'' request from a serious to a severe classification pursuant to section 181. The request for ''bump-up'' for the Sacramento nonattainment area will be dealt with in a separate **Federal Register** notice.

[7] As one commenter pointed out, the statewide modeling effort to date indicates that pollutant transport from Sacramento to the San Francisco Bay Area also occurs.

overview of the maintenance plan controls which include aggressive stationary source and mobile source controls adopted at the local, state and federal level as of December 31, 1992. With these control measures in place, the VOC emission trend declines through the year 2005, and the NO_X emissions do not exceed the 1990 attainment year emissions inventory (the emissions ''cap'').

At the end of the first ITG meeting, after consultation with the group, EPA indicated its belief that any issues regarding transport from the San Francisco Bay Area to neighboring areas should be dealt with separately from the redesignation as new technical information becomes available. The group committed to investigate additional short and long term measures for the San Francisco Bay Area to be implemented to further mitigate any downwind transport effects. The establishment of the ITG provides an avenue to deal effectively with the transport issue after the redesignation as new information becomes available.

Since the first meeting of the ITG, the Greater Sacramento Area Air Pollution Control Districts (APCDs) revised their original comments submitted during the public comment period on the proposed redesignation. Specifically, the Sacramento Area APCDs' letter of December 15, 1994 urged EPA to delay final action on the redesignation until transport was addressed. In a more recent letter[8] to EPA, the Sacramento area now agrees that the transport issue can be dealt with separately from the federal redesignation process and concurs with EPA's proposal to redesignate the San Francisco Bay Area from nonattainment to attainment.

Many of the comments were based on a recently released CARB study, ''Preliminary Assessment of Transport on San Joaquin Valley Ozone,'' which discusses recent simulations to assess the impact of transported emissions in the San Joaquin Valley. The results discussed in the report are based on an extreme scenario in which anthropogenic emissions for the San Francisco Bay Area and the Sacramento area are set to zero. (In other words, the modeling simulation assumes that there are no VOC or NO_X anthropogenic emissions in the San Francisco Bay Area or the Sacramento Area. This exercise enables one to estimate the proportion of locally generated ozone versus transported pollution into the Valley.) The report indicates that there would be a decrease in ozone measurements of 27% in the Northern San Joaquin Valley, 10% in the Central San Joaquin Valley and 7% in the Southern San Joaquin Valley. The modeling study indicates that the Northern San Joaquin Valley is most affected by transported emissions. However, the attainment plan submitted for the San Joaquin Valley which relies on this modeling study purports to show that the San Joaquin Valley models attainment by the applicable deadline. In addition, monitoring data for the northern portion of the San Joaquin Valley shows that this site has collected air quality data which demonstrates attainment of the ozone NAAQS.

The report indicates that the Central and Southern San Joaquin Valley ozone concentrations would be reduced by 10% and 7%, respectively, if anthropogenic (generated by man) emissions were set to zero for the San Francisco Bay Area and Sacramento. Given that the Sacramento Area and the San Joaquin Valley will continue to adopt and implement aggressive new controls in response to the Federal and California Clean Air Acts and the San Francisco Bay Area will continue to adopt and implement new controls in response to the California Clean Air Act, the amount of emissions transported and locally generated emissions will continue to decrease to the Central and Southern San Joaquin Valley in the near future.

The formation of the ITG and the commitment from all affected agencies to work together to resolve potential transport issues, in conjunction with the California ozone plans submitted on November 15, 1994 which purport to demonstrate attainment of the ozone NAAQS for the Sacramento Area and the San Joaquin Valley by the applicable attainment deadlines, indicates that any intrastate transport issues should be effectively handled at the state level initially. EPA is committed to the goals of the ITG and will continue to participate in the group to offer support and review the adequacy of any new state or local agency strategy for dealing with transport.

With respect to the handling of transport issues at the state level, EPA notes that the California Clean Air Act (CCAA), adopted by the State of California in 1988, contains provisions which are designed to reduce the amount of pollution transport between nonattainment areas within the state. Specifically, areas which are the origin of transported pollutants, such as the San Francisco Bay Area, must include sufficient emission control measures in the state attainment plan (the ''clean air plan'') to mitigate the impact of pollution sources within their jurisdictions on ozone concentrations downwind. In the San Francisco Bay Area, these requirements include VOC and NO_X best available retrofit control technology (BARCT) for source categories that collectively amount to 75% of the 1987 actual hydrocarbon (HC) emissions inventory for stationary sources and 75% of 1987 actual NO_X emission inventory for permitted stationary sources no later than January 1, 1994. The BARCT controls, in most cases, exceed the federal RACT requirements. If these recently adopted controls were calculated into the projections in the maintenance plan, the NO_X emission trend would decrease through the year 2005. In addition, the San Francisco Bay Area is required to continue to implement a stringent NSR permitting program for new stationary sources. The CCAA requires that areas design attainment plans that include these controls and ensure attainment of the more stringent California Ambient Air Quality Standard (CAAQS) for ozone (0.09 ppm) by the earliest practicable date. According to CARB, the BAAQMD has fully complied with the CCAA's transport mitigation requirements and is continuing to adopt and implement all feasible control measures in its effort to attain the more stringent CAAQS of 0.09 ppm.

Although the BAAQMD has requested to be exempt from the NO_X RACT requirements of the Federal Clean Air Act, the BAAQMD had proceeded to adopt NO_X best available retrofit control technology (BARCT) and stringent New Source Review (NSR) regulations to comply with the transport mitigation requirements of the CCAA. Therefore, the maintenance plan controls and additional controls adopted in response to the CCAA ensure that any transport of pollutants from the San Francisco Bay Area to neighboring areas, whatever its current magnitude, will continue to decrease throughout the maintenance period.

In addition, the CCAA requires CARB to compile a report which assesses transport within the State every three

[8] In a letter dated February 27, 1995, Kenneth Selover, Air Pollution Control Officer from the Yolo-Solano APCD representing the Greater Sacramento Area APCD, states that the concerns expressed in the comment letter dated December 15, 1994 in response to EPA's proposal to redesignate the San Francisco Bay Area from nonattainment to attainment, were based on a lack of understanding of the BAAQMD's proposed program to further mitigate NO_X and other emissions in response to the CCAA. In the December 15, 1994 letter, the Sacramento APCDs requested an extension of the public comment period until the issue of transport was addressed. The Sacramento area now agrees that the transport issue can be dealt with separately from the federal redesignation process, and the redesignation should proceed.

years. Using several data analysis techniques, CARB determines the level of pollutant transport between various California air basins. These assessments are used in the process of requiring BARCT as described above, and also in the ozone planning process to assign responsibility for pollution reductions. CARB leads this effort and meets with the local air pollution control agencies on a regular basis to discuss the ongoing analysis.

Comment 3

Since the San Francisco Bay Area will not be subject to additional emission reduction requirements, the public health of the citizens of San Joaquin Valley will continue to be at risk when EPA redesignates the San Francisco Bay Area.

EPA Response

As discussed above, although the San Francisco Bay Area is not subject to additional emission reduction requirements for the federal CAA (since the area can demonstrate maintenance of the NAAQS for the 10 year maintenance period without additional controls), the area will continue to adopt and implement aggressive VOC and NO_X controls to further reduce ozone and meet the more stringent CAAQS for ozone. In addition, the emission inventory projections contained in the maintenance plan, which include controls adopted through December 1992, show a decrease in VOC emissions and show that NO_X emissions are not expected to increase over the 1990 attainment levels through 2005 (the 10 year maintenance plan horizon). Therefore, any transported pollution to the San Joaquin Valley from the San Francisco Bay Area will continue to decrease in the future. Finally, CARB submitted an ozone plan which purports to demonstrate attainment of the ozone standard in the San Joaquin Valley by 1999, the statutory deadline for attainment under the CAA.

Comment 4

Several commenters note that San Joaquin Valley and Sacramento industries, businesses, and citizens are subject to more onerous control requirements, such as more stringent NSR requirements and enhanced I/M, in order to compensate for transported pollution. This creates an economic disparity between the regions and penalizes the citizens in the downwind areas. Arbitrary air pollution control boundaries should not be used to create economic disparity among regions in the state.

EPA Response

The classification system under the CAA is based on actual monitored air pollution values during 1987 through 1989 for each nonattainment area. The CAA requires specific controls for each classification, with increasingly stringent control requirements for more seriously polluted areas. The air quality data recorded in the San Joaquin Valley and the Sacramento Area was more serious than the air quality monitored in the San Francisco Bay Area during the same time period. The Sacramento Area and the San Joaquin Valley air quality monitoring data collected during 1987–1989 warranted a ''serious'' classification,[9] whereas the monitoring in the San Francisco Bay Area warranted a ''moderate'' classification. Based on the statewide modeling effort to date, it appears that both the Sacramento Area and the San Joaquin Valley are responsible for the vast majority of the ozone pollution monitored in their areas. Therefore, EPA cannot concur that there is evidence indicating that the higher classifications warranted by the air quality monitoring in the Sacramento area and the San Joaquin Valley are due solely to transport.

The ozone episode (a single, short period of high ozone readings) that was modeled for the Sacramento ozone plan submittal occurred in August 1990 and had a small amount of transport from outside the area, but was essentially a locally-generated episode. This is important because it means that there are days when, with little or no transported emissions, Sacramento generates enough ozone pollution to exceed the standard. Because this episode was used as the basis for determining emission control levels, sources in the Sacramento area will be controlled to levels which will address their own effect on ozone, rather than transport from the San Francisco Bay Area. An episode from July 1990 which included more transported emissions did not perform well when the model was applied to it and was therefore not included in the Sacramento Area's attainment demonstration. However, this episode did indicate that the emission reductions from Sacramento sources needed for attainment are no greater than those indicated by the August 1990 episode, which was predominately local emissions. Therefore, Sacramento and San Joaquin Valley businesses and citizens are not subject to more onerous controls to compensate for transported pollutants from the San Francisco Bay Area.

As noted above, the BAAQMD will continue to adopt and implement aggressive VOC and NO_X controls to comply with the CCAA which go beyond the control measures included in the maintenance plan and its emission reduction projections (controls adopted through December 1992). With respect to the NSR requirement, although the San Francisco Bay Area will no longer be required to continue federal NSR permitting after redesignation (as soon as a federally delegated PSD program is in place), the BAAQMD has fully complied with the transport mitigation requirements of the CCAA which include NSR requirements.

The air pollution control boundaries were not drawn arbitrarily or to create economic disparities within the state, but rather reflect the natural geographic air basins that exist in Northern California. In response to the CAA adopted in November 1990, EPA consulted with, and deferred to the State of California on the air pollution control boundaries within the State. Section 107(d)(1)(4)(iv) of the CAA requires that the entire metropolitan statistical area (MSA) or consolidated metropolitan statistical area (CMSA) be used for ozone or carbon monoxide nonattainment areas classified as serious or above. The boundaries of the Sacramento Area and the San Joaquin Valley reflect the MSA/CMSA designations. Since promulgation of the current air pollution boundaries in November 1991, EPA has not received any petitions to re-draw the boundaries in California.

According to the CAA, areas are required to attain the NAAQS as expeditiously as practicable but no later than the applicable attainment deadline. Since CARB submitted an ozone attainment plan to EPA on November 15, 1994 which purports to demonstrate attainment of the NAAQS for the San Joaquin Valley and Sacramento area by the applicable deadline, the state expects the ozone NAAQS in the San Joaquin Valley and Sacramento Area to be attained by the timelines required by the CAA.

Comment 5

Several commenters noted that the proposed action to redesignate the San Francisco Bay Area was made despite an adequate assessment of the impact of its emissions on attainment in neighboring areas (Sacramento and San Joaquin Valley). One commenter specifically noted that for the

[9] Since that time, CARB has submitted a ''bump-up'' request for the Sacramento area from serious to severe. EPA will act on this request in a separate **Federal Register** notice.

Sacramento Federal Implementation Plan (FIP) modeling, only one episode has been modeled. More specifically, they noted that NO_X emissions transported into Sacramento from the San Francisco Bay Area increase the severity and likelihood of ozone episodes and add to the attainment burden for the area. (See discussion in EPA Response to Comment 4)

EPA Response

As discussed above, EPA and the ITG will deal with transport issues separately from the redesignation. EPA is aware of the ongoing statewide modeling effort, the SARMAP study, and will continue to participate in those meetings to evaluate the latest modeling information. EPA is committed to addressing the latest transport studies and being involved in the ITG to work with state and local governments to resolve any transport issues.

It should be noted that the SARMAP modeling study, portions of which were submitted to EPA in the San Joaquin Valley ozone plan, looked at an August 1990 episode for Sacramento which includes transport from neighboring areas. The results of this episode show that the emission reductions required for attainment in the Sacramento area are no greater than those indicated by the July 1990 episode, which includes mostly local emissions.

Comment 6

One commenter made several suggestions of items that EPA should require prior to redesignation. These include: 1. the completion of the technical studies on Sacramento modeling case, including the August ozone episode, using SARMAP. The outcome should be assignment of emission reductions to the San Francisco Bay Area; 2. the BAAQMD should install and maintain monitors to measure ozone and NO_X aloft to transport corridors to Sacramento and the San Joaquin Valley; 3. the BAAQMD should implement the voluntary ''Spare the Air'' program on days when ozone forecast predicts a violation, or near violation, in Sacramento; 4. the BAAQMD should contribute to any program efforts that are developed for the Sacramento air basins to slow travel on highway I–80 during periods when Sacramento is at risk of violating federal ozone standards; 5. EPA should coordinate a joint federal/state/local effort to assess equity issues in control of transported pollution, and consider requiring stationary source, fleet rule and off-road NO_X control equivalent to Sacramento rules within portions of the San Francisco Bay Area likely to transport to the Sacramento area.

EPA Response

As discussed above, EPA will continue to meet with the affected downwind air pollution control districts at regularly scheduled ITG meetings and any transport issues will be dealt with separately from the redesignation process. Specifically, CARB is continuing to look at episodes in August 1990, and additional monitors are being installed to look at pollution transport between the areas. All of the suggestions listed above will be examined by the group at upcoming meetings, and the technical subcommittee of the ITG will look into the modeling suggestions and new technical data on an ongoing basis.

Comment 7

One commenter opposed the redesignation unless transport is assessed because the San Joaquin Valley, which is affected by pollution transported from the San Francisco Bay Area and Sacramento, may be unable to make a conformity determination for the area. It is difficult to explain this situation to the public and elected officials when modeling results show that Stanislaus County would be in attainment if transport was addressed.

EPA Response

As discussed above, the issue of transport will be addressed separately from the redesignation process. However, it should be noted that the emission trend for the San Francisco Bay Area for VOC continually decreases over the 10 year maintenance period and NO_X emissions do not exceed the 1990 attainment year level (the emissions ''cap''). If the NO_X BARCT controls adopted by the BAAQMD were included in the maintenance plan, the NO_X emissions would also show a continual decrease over the 10 year maintenance period. Therefore, any transport impacts from the San Francisco Bay Area on other areas will continue to diminish in the future. It should be noted that CARB submitted an ozone attainment demonstration plan for the San Joaquin Valley which purports to reach attainment by the serious area deadline, 1999.

Comment 8

One commenter asserted that there are no monitoring stations for air emissions in the West Oakland area which is comprised of a community of predominately low income and color and is near one of the busiest highway intersections in the country. Census track analysis shows a high incidence of cancer in this area. American Lung Association studies show that the acceptable levels for particulates in the Clean Air Act are not protective of human health. In addition, benzene levels may be above the EPA acceptable 10^{-4} cancer risk level. The redesignation sends the wrong message to the community and policy makers and will not encourage public transit use. The redesignation is based on insufficient data since the monitoring network does not address ''hotspots''.

EPA Response

The proposal which EPA is finalizing today redesignates the area to attainment only for ozone. This action does not relate to emissions of particulate matter or benzene. This decision is based on clean air quality data for ozone recorded at the monitoring network since 1990. The BAAQMD currently monitors for ozone in the Oakland MSA.

With regard to particulate matter, the San Francisco Bay Area is currently designated as ''unclassifiable'' for PM–10 (particulate matter with an aerodynamic diameter of ten microns or less). However, EPA will continue to evaluate the PM–10 monitoring data in the air basin and redesignate the area to nonattainment if warranted. EPA is also working with the BAAQMD to locate an additional PM–10 monitor in the San Francisco Bay Area. In addition, at the national level, EPA is currently reassessing the existing particulate matter NAAQS,[10] and the Agency may be promulgating a new particulate matter NAAQS in the near future.

With regard to benzene, there is no NAAQS for this pollutant. Rather, benzene is one of 189 hazardous air pollutants listed in Section 112 of the CAA. Emissions of benzene are regulated at the source where they are emitted, rather than through an ambient air quality standard, such as that for ozone. The National Emission Standard for Hazardous Air Pollutants (NESHAP) for benzene, 40 CFR Part 61, Subpart FF, is an example of such a regulation.

With respect to public transit use, the federally approved SIP contains transportation control measures which encourage public transit use. In addition, all of the relevant local agencies continue to have a strong commitment to promoting the use of public transit.

The term ''hotspots'' usually is used to refer to hazardous air pollutants or

[10] Under court order, EPA must complete its review of the particulate matter NAAQS by January 31, 1997. *American Lung Association* v. *Browner,* U.S. District Court for the District of Arizona, October 6, 1994 (CIV–93–643–TUC–ACM).

other air pollutants with localized effects. While there can be areas of high concentrations of ozone, generally ozone is formed over the course of several hours over a large area when NO_X and VOCs react in the presence of sunlight. With regard to ozone, the BAAQMD's monitoring network meets the federal requirements and the data collected from this network is sufficient for redesignation.

Comment 9

With respect to NO_X emissions, one commenter asserts that the maintenance plan shows that the area can continue to meet the ozone standard even with increasing NO_X emissions after 2000. Furthermore, BAAQMD projects that NO_X emissions under their jurisdiction will increase 18 tons per day (TPD) between 1990 and 2005. Even though non-jurisdictional sources make up for this increase, BAAQMD should adopt control measures to reduce jurisdictional NO_X emissions by 18 TPD by 2005. This is particularly important since the San Joaquin Valley ozone formation is predominately affected by the level of NO_X emissions.

EPA Response

The maintenance plan does not show an overall increase in NO_X emissions during the maintenance period. Through the year 2005, the level of NO_X emissions remains at or below the 1990 attainment level NO_X carrying capacity. In addition, it should be noted that the NO_X projections in the maintenance plan do not include the NO_X BARCT controls adopted by BAAQMD in response to the transport mitigation requirements of the CCAA. If those controls were included, the NO_X projections would show a continuous decrease through the year 2005. Specifically, the BAAQMD adopted NO_X BARCT controls by 1995 which will be fully implemented by 2002. With these control measures in place, the NO_X emission projections decrease the emission trend by an additional 74 TPD in 2005 beyond the current trend line contained in the maintenance plan.

Comment 10

One commenter stated that the area evaluated for attainment and maintenance of the federal ozone standard for the San Francisco Bay Area, as required in 40 CFR 50.9, should include data from the monitoring locations in the portion of adjacent air basins immediately downwind of the San Francisco Bay Area air basin. These adjacent areas have experienced ozone concentrations above the federal standard as a direct consequence of emissions from the San Francisco Bay Area with little or no contribution from local emissions and may experience similar events in the future. In addition, the September 1, 1993 Memorandum from Mary Nichols states that EPA intends to apply to intrastate transport the provision of section 110(a)(2)(D)(i)(1), which requires each state's SIP prohibit emissions which will contribute significantly to nonattainment. There are little or no local emissions between these monitoring sites and the upwind San Francisco Bay Area. It appears EPA has expressed a policy which could prohibit the approval of the San Francisco Bay Area SIP unless violations caused in adjacent air basins are addressed.

EPA Response

To qualify for redesignation in accordance with section 107(d)(3)(E), an area must demonstrate, among other things, that the ambient air quality monitoring data in the area meets the NAAQS. The San Francisco Bay Area has satisfied this requirement by submitting five consecutive years of monitoring data which show no violations of the ozone NAAQS. As discussed above, EPA is fully aware of the potential transport issues and is committed to working with the State and local air pollution control agencies to resolve any issues through the ITG. EPA has the authority to deal with intrastate transport issues under the Clean Air Act, but the information presently available does not warrant action by EPA at this time.

Comment 11

One commenter stated that the 1990 VOC and NO_X ''carrying capacity'' levels in the maintenance plan should be made federally enforceable. The measures identified as contingencies should be incorporated into the SIP to mitigate any possible emission reduction shortfall.

EPA Response

The 1990 VOC and NO_X emission inventory and emission projections through 2005 are based on control measures adopted through December 31, 1992 at the federal, state, and local level and approved into the SIP. Those emissions levels are already supported by federally enforceable requirements. The NO_X measures and improvements to the I/M program identified in the contingency plan are not included in the maintenance plan projections.

As expressed previously in an EPA policy [11] pursuant to section 182(f) of the CAA, EPA may allow areas which have demonstrated attainment of the ozone NAAQS without having implemented NO_X controls to be exempt from the federal NO_X RACT requirements. However, the maintenance plan includes NO_X controls as contingency measures which will be submitted for incorporation into the SIP in the event of a violation during the maintenance period.

Comment 12

One commenter stated that EPA should consider whether the urban area for maintenance planning should be extended beyond the air basin boundaries to the full extent of the urbanized area since related growth of the adjacent urban areas growth is directly controlled by policies implemented within the San Francisco Bay Area. EPA should ensure that redesignation does not cause ozone levels above the federal standard in the San Francisco Bay Area or adjacent air basins. This requires that all emission increases caused by urban growth and industrialization must be matched by equivalent deceases. EPA should ensure that the approval includes provisions which protect the adjacent air basins and federally protected forests and national parks. Protection should include requirements to maintain an extensive system of air monitors to detect high ozone levels, and maintaining emission levels for all ozone precursors at or below the level which does not cause ozone levels above the federal standard in the San Francisco Bay Area and adjacent air basins.

EPA Response

After the passage of the CAA in 1990, EPA consulted with the State of California regarding the appropriate boundaries for nonattainment areas within the State. The current boundary of the San Francisco Bay Area reflects the State's recommended boundary for the area. Section 107(d)(4)(A)(iv) of the CAA requires that the boundaries for areas classified as serious and above include entire metropolitan statistical areas (MSAs) or consolidated metropolitan statistical areas (CMSAs). Transport will be addressed as discussed previously.

As discussed previously, with respect to the comment concerning emissions

[11] ''Section 182(f) Nitrogen Oxides (NO_X) Exemption—Revised Process and Criteria,'' from John S. Seitz, Director, Office of Air Quality Planning and Standards, to the Regional Division Directors, May 27, 1994.

increases during the maintenance period, the maintenance plan for the San Francisco Bay Area projects that future emissions for VOC decrease throughout the maintenance period and NO_X emissions do not increase over the attainment levels. The San Francisco Bay Area must maintain its current ozone monitoring network as part of the maintenance plan. The suggestion that the San Francisco Bay Area install monitors to detect high ozone levels (or precursor pollutants at high elevations) will be considered by the ITG.

With regard to protection of air quality in national parks and forests, the prevention of significant deterioration (PSD) provisions contained in Part C of the CAA are specifically designed to protect air quality in ''clean air'' areas, and particularly in pristine areas such as national parks. These requirements provide sufficient protection for such areas and it is not necessary to include additional requirements as a condition of redesignation.

Comment 13

One commenter opposes the redesignation because it suggests that the air quality no longer poses a threat to public health. In addition, EPA research has shown that there is no safe level for ozone. In addition, a federal declaration of attainment conflicts with California's goal of a stricter ozone standard.

EPA Response

EPA's action to redesignate the San Francisco Bay Area means that the air quality in the region meets the federal NAAQS (health-based standard) for ozone, and does not address other air pollutants. The EPA is currently in the process of re-evaluating the ozone NAAQS and expects to make a final decision in mid-1997. Until any change is made, EPA is bound to implement the provisions of the Act as they relate to the current standard, including those relating to designations and redesignations.

With respect to the California ozone standard and California Clean Air Act, EPA's action to redesignate the San Francisco Bay Area to attainment for the federal ozone standard does not impede California or the BAAQMD from striving for a stricter ozone standard. EPA's action to redesignate the area to attainment for the federal ozone standard recognizes the tremendous progress made so far and does not prohibit the area from adopting additional control measures to control ozone. Nor does it preclude EPA from requiring emission reductions from sources in the San Francisco Bay Area should EPA ultimately determine that such reductions are needed.

Comment 14

One commenter asserted that attainment levels had been recorded only because of particular meteorological conditions which lead to the transport of pollutants to nearby air basins. In addition, any current air quality benefit will be wiped out by the BAAQMD's own calculation of increased motor vehicle traffic in the future.

EPA Response

According to section 107(d)(3)(E)(iii), the Administrator must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from the implementation of measures in the applicable plan and applicable federal regulations. Between 1987 and 1990, the SIP control measures account for an approximate 69 TPD decrease in VOC emissions. In addition, the maintenance plan analyzed trend data for summer temperatures and vehicle miles traveled and employment during the 1990–1992 timeframe to determine if the improvement in air quality was due to meteorological circumstances or a downturn in the economy. The analysis showed that neither exceptionally cool temperatures nor a downturn in the economy were responsible for the area meeting the federal ozone standard, but rather the emission reductions and improved air quality were the result of permanent measures in the SIP. EPA has accepted this analysis. It should be noted that the San Francisco Bay Area has actually measured ''clean'' air quality data for ozone for five consecutive years.

With respect to transport, CARB released preliminary results from a modeling study which show that emissions from the San Francisco Bay Area and the Sacramento Area do impact ozone concentrations in the San Joaquin Valley (see discussion above). However, for the reasons described above, EPA cannot concur that the San Francisco Bay Area has met the ozone NAAQS because of transport of emissions to nearby air basins. In addition, as discussed above, future control regulations that are being adopted by the BAAQMD will further reduce any transported emissions to nearby air basins in the future.

The projections in the maintenance plan do show that vehicle miles travelled (VMT) will continue to increase in the future. However, emission projections through 2000 show an overall reduction in ozone precursor emissions from mobile sources due to the retirement of older vehicles and the increase in proportion of new, cleaner vehicles.

Comment 15

One commenter asserted that the BAAQMD's transportation control measure plan in the Clean Air Plan will increase vehicle miles traveled.

EPA Response

The transportation control measure (TCM) plan in the Bay Area Clean Air Plan has not been submitted to become part of the SIP, but rather fulfills the requirements under the California Clean Air Act. EPA has not reviewed this plan since it is not part of the control strategy used to demonstrate attainment or maintenance of the federal ozone standard.

B. EPA Response to Comments: Section 182(f) NO_X Waiver Petition

In August 1994, three environmental groups submitted joint comments on the proposed approvals of NO_X exemptions for the Ohio and Michigan ozone nonattainment areas. The comments address EPA's general policy regarding NO_X exemptions and apply to all actions EPA takes regarding section 182(f) NO_X exemptions. These comments as well as those received specifically addressing the BAAQMD proposed NO_X RACT exemption are addressed below.

NO_X Waiver Comment 1

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

EPA Response

Section 182(f) contains very few details regarding the administrative procedure for acting on NO_X exemption requests. The absence of specific guidelines by Congress leaves EPA with discretion to establish reasonable procedures, consistent with the requirements of the Administrative Procedure Act (APA).

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

With respect to major stationary sources, section 182(f) requires States to adopt NO_X NSR and RACT rules, unless exempted. These rules were generally due to be submitted to EPA by November 15, 1992. Thus, in order to avoid the CAA sanctions, areas seeking a NO_X exemption would have needed to submit their exemption request for EPA review and rulemaking action several months before November 15, 1992. In contrast, the CAA specifies that the attainment demonstrations are not due until November 1993 or 1994 (and EPA may take 12–18 months to approve or disapprove the demonstration). For marginal ozone nonattainment areas (subject to NO_X NSR), no attainment demonstration is called for in the CAA. For maintenance plans, the CAA does not specify a deadline for submittal of maintenance demonstrations. Clearly, the CAA envisions the submittal of and EPA action on exemption requests, in some cases, prior to submittal of attainment or maintenance demonstrations.

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

NO_X Waiver Comment 2

The commenters stated that the modeling required by EPA guidance is insufficient to establish that NO_X reductions would not contribute to attainment since only one level of NO_X control, i.e., ''substantial'' reductions, is required to be analyzed. They further explained that an area must submit an approvable attainment plan before EPA can know whether NO_X reductions will aid or undermine attainment.

EPA Response

The EPA does not believe that this comment is applicable to the San Francisco Bay Area exemption because the demonstration is based on three years of ambient monitoring data and not modeling.

NO_X Waiver Comment 3

The commenters provided a comment that three years of ''clean'' data fail to demonstrate that NO_X reductions would not contribute to attainment, and that EPA's policy erroneously equates the absence of a violation for one three-year period with ''attainment''.

EPA Response

The EPA has separate criteria for determining if an area should be redesignated to attainment under section 107 of the CAA. The section 107 criteria are more comprehensive than the CAA requires with respect to NO_X exemptions under section 182(f).

Under section 182(f)(1)(A), an exemption from the NO_X requirements may be granted for nonattainment areas outside an ozone transport region if EPA determines that ''additional reductions of [NO_X] would not contribute to attainment'' of the ozone NAAQS in those areas. In some cases, an ozone nonattainment area might attain the ozone standard, as demonstrated by 3 years of adequate monitoring data, without having implemented the section 182(f) NO_X provisions over that 3-year period. The EPA believes that, in cases where a nonattainment area is demonstrating attainment with 3 consecutive years of air quality monitoring data without having implemented the section 182(f) NO_X provisions, it is clear that the section 182(f) test is met since ''additional reductions of [NO_X] would not contribute to attainment'' of the NAAQS in that area. The EPA's approval of the exemption, if warranted, would be granted on a contingent basis (i.e., the exemption would last for only as long as the area's monitoring data continue to demonstrate attainment).

NO_X Waiver Comment 4

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

Some stated specifically that NO_X emissions from the Bay Area are likely to exacerbate ozone nonattainment downwind in the Sacramento Basin and the San Joaquin Valley, and that until transport of ozone precursors from the San Francisco Bay Area to the Sacramento Basin and the San Joaquin Valley are addressed, granting an exemption from the NO_X requirements is not consistent with the requirements of the Clean Air Act.

The commenters further added that transport of NO_X emissions from the San Francisco Bay Area adds to the attainment burden of the Sacramento Basin, and results in substantially different air quality rules in the two regions which translates into economic inequities and unfair economic

penalties to the Sacramento area community. Also, insufficient technical studies have been conducted to assess multi-basin transport regarding the San Francisco Bay Area and the Sacramento Basin, without which, redesignation and the NO_X exemption should not be granted.

The commenters contend that EPA's policy could prohibit approval of the SIP for the BAAQMD unless violations in adjacent air basins are addressed. Therefore, because of previous ozone concentrations monitored above the Federal standard in the San Joaquin Valley which were a consequence of San Francisco Bay Area emissions, areas evaluated for attainment, maintenance, and exemptions should include data from monitoring locations in adjacent air basins downwind of the San Francisco Bay Area. In addition, until all data, including recent data showing the Northern portion of the San Joaquin Valley would be in attainment of the Federal ozone standard in the absence of transported pollutants from the San Francisco Bay Area, which identifies the San Francisco Bay Area as a transport couple with the San Joaquin Valley is adequately assessed to define the effects of San Francisco Bay Area emissions on the ozone attainment status of the San Joaquin Valley, a NO_X RACT exemption should not be approved.

EPA Response

As a result of these comments and comments received regarding ozone transport in NO_X exemption requests for other areas in the United States, EPA has reevaluated its position on this issue and decided to revise the previously issued guidance.[12] As described below, EPA intends to use its authority under section 110(a)(2)(D) to require a State to reduce NO_X emissions from stationary and/or mobile sources where there is evidence, such as photochemical grid modeling, showing that NO_X emissions would contribute significantly to nonattainment in, or interfere with maintenance by, any other State. This action would be independent of any action taken by EPA on a NO_X exemption request for stationary sources under section 182(f). That is, EPA action to grant or deny a NO_X exemption request under section 182(f) would not shield that area from EPA action to require NO_X emission reductions, if necessary, under section 110(a)(2)(D).

Modeling analyses are underway in many areas for the purpose of demonstrating attainment in the 1994 SIP revisions. Recent modeling data suggest that certain ozone nonattainment areas may benefit from reductions in NO_X emissions far upwind of the nonattainment area. For example, the northeast corridor and the Lake Michigan areas are considering attainment strategies which rely in part on NO_X emission reductions hundreds of kilometers upwind. The EPA is working with the States and other organizations to design and complete studies which consider upwind sources and quantify their impacts. As the studies progress, EPA will continue to work with the States and other organizations to develop mutually acceptable attainment strategies.

At the same time as these large scale modeling analyses are being conducted, certain nonattainment areas in the modeling domain have requested exemptions from NO_X requirements under section 182(f). Some areas requesting an exemption may be upwind of and impact upon downwind nonattainment areas. EPA intends to address the transport issue through section 110(a)(2)(D) based on a domain-wide modeling analysis.

Under section 182(f) of the Act, an exemption from the NO_X requirements may be granted for nonattainment areas outside an ozone transport region if EPA determines that ''additional reductions of [NO_X] would not contribute to attainment of the national ambient air quality standard for ozone in the area.''[13] As described in section 4.3 of the December 16, 1993 guidance document, EPA believes that the term ''area'' means the ''nonattainment area'' and that EPA's determination is limited to consideration of the effects in a single nonattainment area due to NO_X emissions reductions from sources in the same nonattainment area.

Section 4.3 of the guidance goes on to encourage, but not require, States/petitioners to include consideration of the entire modeling domain, since the effects of an attainment strategy may extend beyond the designated nonattainment area. Specifically, the guidance encourages States to ''consider imposition of the NO_X requirements if needed to avoid adverse impacts in downwind areas, either intra- or inter-State. States need to consider such impacts since they are ultimately responsible for achieving attainment in all portions of their State (see generally section 110) and for ensuring that emissions originating in their State do not contribute significantly to nonattainment in, or interfere with maintenance by, any other State [see section 110(a)(2)(D)(i)(I)].''

In contrast, section 4.4 of the guidance states that the section 182(f) demonstration would not be approved if there is evidence, such as photochemical grid modeling, showing that the NO_X exemption would interfere with attainment or maintenance in downwind areas. The guidance goes on to explain that section 110(a)(2)(D) [not section 182(f)] prohibits such impacts.

Consistent with the guidance in section 4.3, EPA believes that the section 110(a)(2)(D) and 182(f) provisions must be considered independently, and hence is withdrawing the guidance presently contained in section 4.4. Thus, if there is evidence that NO_X emissions in an upwind area would interfere with attainment or maintenance in a downwind area, that action should be separately addressed by the State(s) or, if necessary, by EPA in a section 110(a)(2)(D) action. In addition, a section 182(f) exemption request should be independently considered by EPA. In some cases, then, EPA may grant an exemption from across-the-board NO_X RACT controls under section 182(f) and, in a separate action, require NO_X controls from stationary and/or mobile sources under section 110(a)(2)(D). It should be noted that the controls required under section 110(a)(2)(D) may be more or less stringent than RACT, depending upon the circumstances.

NO_X Waiver Comment 5

Comments were received regarding exemption of areas from the NO_X requirements of the conformity rules. The commenters argue that such exemptions waive only the requirements of section 182(b)(1) to contribute to specific annual reductions, not the requirement that conformity SIPs contain information showing the maximum amount of motor vehicle NO_X emissions allowed under the transportation conformity rules and, similarly, the maximum allowable amounts of any such NO_X emissions under the general conformity rules. The commenters admit that, in prior

[12] See ''Section 182(f) Nitrogen Oxides (NO_X) Exemptions—Revised Process and Criteria'', issued February 8, 1995 by John S. Seitz, Director of EPA's Office of Air Quality Planning and Standards.

[13] There are 3 NO_X exemption tests specified in section 182(f). Of these, 2 are applicable for areas outside an ozone transport region; the ''contribute to attainment'' test described above, and the ''net air quality benefits'' test. EPA must determine, under the latter test, that the net benefits to air quality in an area ''are greater in the absence of NO_X reductions'' from relevant sources. Based on the plain language of section 182(f), EPA believes that each test provides an independent basis for receiving a full or limited NO_X exemption. Consequently, as stated in section 1.4 of the December 16, 1993 EPA guidance, ''[w]here any one of the tests is met (even if another test is failed), the section 182(f) NO_X requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply.''

guidance, EPA has acknowledged the need to amend a drafting error in the existing transportation conformity rules to ensure consistency with motor vehicle emissions budgets for NO_X, but want EPA in actions on NO_X exemptions to explicitly affirm this obligation and to also avoid granting waivers until a budget controlling future NO_X increases is in place.

EPA Response

With respect to conformity, EPA's conformity rules[14,15] provide a NO_X waiver if an area receives a section 182(f) exemption. In its ''Conformity; General Preamble for Exemption from Nitrogen Oxides Provisions'', 59 FR 31238, 31241 (June 17, 1994), EPA reiterated its view that in order to conform, nonattainment and maintenance areas must demonstrate that the transportation plan and transportation improvement plan (TIP) are consistent with the motor vehicle emissions budget for NO_X even where a conformity NO_X waiver has been granted. Due to a drafting error, that view is not reflected in the current transportation conformity rules. As the commenters correctly note, EPA states in the June 17th notice that it intends to remedy the problem by amending the conformity rule. Although that notice specifically mentions only requiring consistency with the approved maintenance plan's NO_X motor vehicle emissions budget, EPA also intends to require consistency with the attainment demonstration's NO_X motor vehicle emissions budget. However, EPA is not granting an exemption from the transportation conformity requirements under section 182(f) in this action for the Bay Area. Rather, EPA's approval of the Bay Area's redesignation and maintenance plan begins the maintenance period, and an area's transportation plans and TIPs must be consistent with the motor vehicle emissions budget in the maintenance plan. The requirements of the transportation conformity regulation that plans and TIPs satisfy the ''build/no build'' test and achieve emissions reductions, does not apply to areas redesignated and operating under a maintenance status.

[14] ''Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. of the Federal Transit Act,'' November 24, 1993 (58 FR 62188).

[15] ''Determining Conformity of General Federal Actions to State or Federal Implementation Plans; Final Rule,'' November 30, 1993 (58 FR 63214).

NO_X Waiver Comment 6

Some commenters argue that the CAA does not authorize any waiver of the NO_X reduction requirements until conclusive evidence exists that such reductions are counter-productive.

EPA Response

The EPA does not agree with this comment since it ignores Congressional intent as evidenced by the plain language of section 182(f), the structure of the Title I ozone subpart as a whole, and relevant legislative history. By contrast, in developing and implementing its NO_X exemption policies, EPA has sought an approach that reasonably accords with Congress' intent. Section 182(f), in addition to imposing control requirements on major stationary sources of NO_X similar to those that apply for such sources of VOC, also provides for an exemption (or limitation) from application of these requirements if, under one of several tests, EPA determines that in certain areas NO_X reductions would generally not be beneficial. In subsection 182(f)(1), Congress explicitly conditioned action on NO_X exemptions on the results of an ozone precursor study required under section 185B. Because of the possibility that reducing NO_X in a particular area may either not contribute to ozone attainment or may cause the ozone problem to worsen, Congress included attenuating language, not just in section 182(f) but throughout the Title I ozone subpart, to avoid requiring NO_X reductions where it would be nonbeneficial or counterproductive. In describing these various ozone provisions (including section 182(f)), the House Conference Committee Report states in pertinent part: ''[T]he Committee included a separate NO_X/VOC study provision in section [185B] to serve as the basis for the various findings contemplated in the NO_X provisions. The Committee does not intend NO_X reduction for reduction's sake, but rather as a measure scaled to the value of NO_X reductions for achieving attainment in the particular ozone nonattainment area.'' H.R. Rep. No. 490, 101st Cong., 2d Sess. 257–258 (1990). As noted in response to an earlier comment by these same commenters, the command in subsection 182(f)(1) that EPA ''shall consider'' the 185B report taken together with the timeframe the Act provides both for completion of the report and for acting on NO_X exemption petitions clearly demonstrate that Congress believed the information in the completed section 185B report would provide a sufficient basis for EPA to act on NO_X exemption requests, even absent the additional information that would be included in affected areas' attainment or maintenance demonstrations. However, while there is no specific requirement in the Act that EPA actions granting NO_X exemption requests must await ''conclusive evidence'', as the commenters argue, there is also nothing in the Act to prevent EPA from revisiting an approved NO_X exemption if warranted due to better ambient information.

In addition, the EPA believes (as described in EPA's December 1993 guidance) that section 182(f)(1) of the CAA provides that the new NO_X requirements shall not apply (or may be limited to the extent necessary to avoid excess reductions) if the Administrator determines that any one of the following tests is met:

(1) In any area, the net air quality benefits are greater in the absence of NO_X reductions from the sources concerned;

(2) In nonattainment areas not within an ozone transport region, additional NO_X reductions would not contribute to ozone attainment in the area; or

(3) In nonattainment areas within an ozone transport region, additional NO_X reductions would not produce net ozone air quality benefits in the transport region.

Based on the plain language of section 182(f), EPA believes that each test provides an independent basis for receiving a full or limited NO_X exemption.

Only the first test listed above is based on a showing that NO_X reductions are ''counter-productive.'' If one of the tests is met (even if another test is failed), the section 182(f) NO_X requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply.

III. EPA Final Action

In this final action, EPA is approving the San Francisco Bay Area ozone maintenance plan because it meets the requirements of section 175A. In addition, the Agency is redesignating the San Francisco Bay Area to attainment for ozone because the State of California has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. Finally, EPA is approving the NO_X waiver petition and 1990 emissions inventory for the San Francisco Bay Area.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each

request for revision shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements. The ozone SIP is designed to satisfy the requirements of Part D of the CAA and to provide for attainment and maintenance of the ozone NAAQS. This final redesignation should not be interpreted as authorizing the State of California to delete, alter, or rescind any of the VOC or NO_X emission limitations and restrictions contained in the approved ozone SIP. Changes to the ozone SIP VOC RACT regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation (section 173(b) of the CAA) and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the CAA.

This action has been classified as a Table 2 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 14, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from the requirements of section 6 of Executive Order 128866.

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.

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA, approval of a section 182(f) exemption, and approval of an emissions inventory do not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

Under Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of the state implementation plan or plan revisions approved in this action, the State and any affected local or tribal governments have elected to adopt the program provided for under section 175A and 182(a)(1) of the Clean Air Act. Also, EPA's final action approving the section 182(f) NO_X waiver petition relieves requirements otherwise imposed under the CAA and, hence does not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act. The rules and commitments approved in this action may bind State, local and tribal governments to perform certain actions and also may ultimately lead to the private sector being required to perform certain duties. To the extent that the rules and commitments being approved by this action will impose or lead to the imposition of any mandate upon the State, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. Therefore, EPA has determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Courts of Appeals for the appropriate circuit by July 21, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2) of the Act, 42 U.S.C. 7607(b)(2).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, and Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National Parks, Wilderness Areas.

Dated: April 24, 1995.

Felicia Marcus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Parts 52 and 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(205)(i)(B) and (212) to read as follows:

§ 52.220 Identification of Plan.

* * * * *

(c) * * *

(205) * * *

(i) * * *

(B) Bay Area Air Quality Management District.

(*1*) Amendments to the San Francisco Bay Area Redesignation Request and Maintenance Plan for the National Ozone Standard and 1990 Emissions Inventory adopted on September 7, 1994 by the Bay Area Air Quality Management District, October 5, 1994 by the Metropolitan Transportation Commission, and August 24, 1994 by the Association of Bay Area Governments.

* * * * *

(212) Ozone redesignation request for the Bay Area Air Quality Management District submitted on November 5, 1993, by the Governor's designee.

(i) Incorporation by reference.

(A) Redesignation request for the San Francisco Bay Area and the Ozone Maintenance Plan for the National Ozone Standard adopted on September 1, 1993 by the Bay Area Air Quality Management District, September 22, 1993 by the Metropolitan Transportation Commission, and September 16, 1993 by the Association of Bay Area Governments.

* * * * *

PART 81—[AMENDED]

Subpart B—Designation of Air Quality Control Regions

3. In section 81.305, the table for ''California—Ozone'' is amended by revising the entry ''San Francisco Bay Area'' to read as follows:

§ 81.305 California.

* * * * *

CALIFORNIA—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date	Type
San Francisco–Bay Area:				
Alameda County	June 21, 1995	Attainment.		
Contra Costa County	.....	.....do.		
Marin County	.....	.....do.		
Napa County	.....	.....do.		
San Francisco County	.....	.....do.		
San Clara County	.....	.....do.		
San Mateo County	.....	.....do.		
Solano County (part)	.....	.....do.		
That portion of the county that lies south and west of the line described that follows: Description of boundary in Solano County between San Francisco and Sacramento: Beginning at the intersection at the westerly boundary of Solano County and the ¼ section line running east and west through the center of Section 34; T.6 N., R. 2 W., M.D.B.&M., thence east along said ½ section line to the east boundary of Section 36, T. 6 N., R. 2 W., thence south ½ mile and east 2.0 miles, more or less, along the west and south boundary of Los Putos Rancho to the northwest corner of Section 4, T. 5 N., R. 1 W, thence east along a line common to T. 5 N., and T. 6 N. to the northeast corner of Section 3, T. 5 N., R. 1 E., thence south along section lines to the southeast corner of Section 10 T. 3 N., R. 1 E., thence east along section lines to the south ¼ corner of Section 8 T. 3 N., R. 2 E., thence east to the boundary between Solano and Sacramento Counties.	.....	.....do.		
Sonoma County (part)	.....	.....do.		

[1] The date is November 15, 1990 unless otherwise noted.

[FR Doc. 95–12407 Filed 5–19–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR PART 300

[FRL–5209–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Final Rule: Notice of Deletion of United States Army Fort Lewis Landfill No. 5 from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of United States Army Fort Lewis Landfill No. 5, located in Pierce County, Washington from the National Priorities List (NPL). The NPL is Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Washington Department of Ecology have determined the Site poses no significant threat to public health or the environment and, therefore, no further remedial measures pursuant to CERCLA are appropriate.

EFFECTIVE DATE: May 22, 1995.

FOR FURTHER INFORMATION CONTACT: Mary Jane Nearman, Site Manager, U.S. Environmental Protection Agency, Region 10, 1200 6th Avenue, HW–124, Seattle, WA 98101, (206) 553–6642.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: United States Army Fort Lewis Landfill No. 5, Pierce County, Washington.

A Notice of Intent to Delete for this site was published March 27, 1995. (60 FR 15737). The closing date for comments on the Notice of Intent to Delete was April 26, 1995. EPA received no comments.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Any site deleted from the NPL remains eligible for remedial actions in the unlikely event that conditions at the site warrant such action in the future. NCP Section 300.425(e)(3). Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and record keeping requirements, Superfund, Water pollution control, and Water supply.

Dated: May 12, 1995.

Gerald A. Emison,

Regional Administrator, Region 10.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: 42 U.S.C. 9601-9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 2 of Appendix B to part 300 is amended by removing the site for United States Army Fort Lewis Landfill No. 5, Pierce County, Washington.

[FR Doc. 95–12473 Filed 5–19–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–145; RM–8556]

Radio Broadcasting Services; Sageville, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of The Sageville Shopper, allots Channel 291A to Sageville, IA, as the community's first local FM service. *See* 59 FR 65749, published December 21, 1994. Channel 291A can be allotted to Sageville in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 42–35–42 North Latitude and 90–43–18 West Longitude.

With this action, this proceeding is terminated.

DATES: Effective July 3, 1995. The window period for filing applications will open on July 3, 1995, and close on August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 94–145, adopted May 10, 1995, and released May 17, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by adding Sageville, Channel 291A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–12456 Filed 5–19–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 94–133; RM–8539]

Radio Broadcasting Services; Wewoka, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Jean and Jerry Spencer, allots Channel 284A to Wewoka, Oklahoma, as the community's first local FM service. *See* 59 FR 60011, published November 22, 1994. Channel 284A can be allotted to Wewoka in compliance with the Commission's minimum distance separation requirements with a site restriction of 11 kilometers (6.8 miles) southwest, at coordinates 35–04–52 North Latitude and 96–34–07 West Longitude, to avoid short-spacings to Stations KMYZ-FM, Channel 283C1, Pryor, OK, KREK, Channel 285A, Bristow, OK, and KTMC-FM, Channel 285A, McAlester, OK. With this action, this proceeding is terminated.

DATES: Effective July 3, 1995. The window period for filing applications will open on July 3, 1995, and close on August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 94–133, adopted May 10, 1995, and released May 17, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Wewoka, Channel 284A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–12457 Filed 5–19–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 678

[I.D. 051595H]

Atlantic Shark Fisheries; Large Coastal Shark Species

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

ACTION: Closure.

SUMMARY: NMFS is closing the commercial fishery for large coastal sharks conducted by vessels with a Federal Atlantic Shark permit in the Western North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. This action is necessary to prevent exceeding the semiannual quota of 1285 metric tons (mt) for the period January 1 through June 30, 1995.

EFFECTIVE DATE: The closure is effective from 11:30 P.M. local time May 31, 1995, through June 30, 1995.

FOR FURTHER INFORMATION CONTACT: C. Michael Bailey, 301–713–2347; Kevin B. Foster, 508–281–9260; or Michael Justen 813–570–5305.

SUPPLEMENTARY INFORMATION: The Atlantic shark fishery is managed by NMFS according to the Fishery Management Plan (FMP) for Atlantic Sharks prepared by NMFS under

authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq*.). Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR part 678.

Section 678.23(b)(1) of the regulations provides for two semiannual quotas of large coastal sharks to be harvested from Atlantic, Caribbean, and Gulf of Mexico waters by commercial fishermen. The first semiannual quota of 1,285 mt is available for harvest from January 1 through June 30, 1995.

The Assistant Administrator for Fisheries, NOAA (AA), is required under § 678.24 to monitor the catch and landing statistics and, on the basis of these statistics, to determine when the catch of Atlantic, Caribbean, and Gulf of Mexico sharks will equal any quota under § 678.23(b)(1). When shark harvests reach, or are projected to reach, a quota established under § 678.23(b)(1), the AA is further required under § 678.24 to close the fishery.

The AA has determined, based on the reported catch and other relevant factors, that the semiannual quota for the period January 1 through June 30, 1995, for large coastal sharks, in or from the Western North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, will be attained by May 31, 1995. During this closure, for vessels issued a permit under § 678.4, retention of large coastal sharks from the management unit is prohibited, unless the vessel is operating as a charter vessel or headboat, in which case, the vessel limit per trip is four large coastal sharks. Also, the sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of carcasses and/or fins of large coastal sharks harvested by a person aboard a vessel that has been issued a permit under § 678.4(a)(4), is prohibited, except for those that were harvested, offloaded, and sold, traded, or bartered prior to May 31, 1995, and were held in storage by a dealer or processor.

Vessels that have been issued a Federal permit under § 678.4 are reminded that as a condition of permit issuance, the vessel may not retain a large coastal shark during the closure, except as provided by § 678.24(a)(2). Fishing for pelagic and small coastal sharks may continue. The recreational fishery is not affected by this closure.

Classification

This action is taken under 50 CFR part 678 and is exempt from review under E.O. 12866.

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

Dated: May 16, 1995.

Richard H. Schaefer,

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

[FR Doc. 95–12478 Filed 5–19–95; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 98
Monday, May 22, 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.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 11

National Appeals Division Rules of Procedure

AGENCY: Office of the Secretary, National Appeals Division, USDA.

ACTION: Proposed rule.

SUMMARY: The National Appeals Division (NAD) in the Office of the Secretary proposes to add a new rule to implement Title II, Subtitle H, of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 by setting forth procedures for program participant appeals of adverse decisions by United States Department of Agriculture (USDA) agency officials to the National Appeals Division (NAD). This action also defines those appeals over which NAD has jurisdiction.

DATES: Written comments via letter, facsimile, or Internet are invited from interested individuals and organizations and must be received on or before June 21, 1995.

ADDRESSES: Comments should be sent to L. Benjamin Young, Jr., Office of the General Counsel, Research and Operations Division, AgBox 1415, United States Department of Agriculture, Washington, D.C. 20250–1415; fax number: 202/720–5837; Internet: hqdomain.lawpo.young@sies.wsc.ag.gov.

FOR FURTHER INFORMATION CONTACT: L. Benjamin Young, Jr. at the above address or 202/690–1979.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been reviewed under E.O. 12866, and it has been determined that it is not a ''significant regulatory action'' rule because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule will not create any serious inconsistencies or otherwise interfere with actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof, and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in E.O. 12866.

Regulatory Flexibility Act

The Department certifies that this proposed rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–534, as amended (5 U.S.C. 601, *et seq.*).

Background and Purpose

On December 27, 1994 (see 59 FR 66,517), the Secretary of Agriculture noticed that the NAD was established pursuant to Title II, Subtitle H of Pub. L. 103–354, the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994. NAD was assigned responsibility for all administrative appeals formerly performed by the National Appeals Division of the former Agricultural Stabilization and Conservation Service and by the National Appeals Staff of the former Farmers Home Administration, appeals arising from decisions of the Federal Crop Insurance Corporation and the former Soil Conservation Service, appeals arising from decisions of the successor agencies to the foregoing agencies established by the Secretary, and such other administrative appeals arising from decisions of agencies and offices of USDA as may in the future be assigned by the Secretary. Conforming changes to the regulations of the affected agencies will be published with the final rule.

This proposed part sets forth the jurisdiction of the NAD and the procedures appellants and agencies must follow upon appeal of adverse decisions by covered USDA program ''participants'' as defined in detail in the proposed part.

The proposed part defines ''adverse decisions'' to include denial of equitable relief to a program participant by an officer, employee, or committee of an agency or the failure of an officer, employee, or committee of an agency to issue a decision or otherwise act on the request or right of the participant, but to exclude decisions over which the Agriculture Board of Contract Appeals would have jurisdiction. ''Agency'' includes the Consolidated Farm Service Agency, the Commodity Credit Corporation, the Farmers Home Administration, the Federal Crop Insurance Corporation, the Rural Business and Cooperative Development Service, the Rural Development Administration, the Rural Housing and Community Development Service, the Natural Resources and Conservation Service, a State, county, or area committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)), any successor agency to the above-named agencies, and any other agency or office of the Department that the Secretary may designate. Designation of other agencies or offices by the Secretary shall be accomplished by virtue of a delegation of authority to NAD by the Secretary, or by future amendment of these rules by the Secretary.

These rules would apply to any adverse decision issued by any agency on or after October 20, 1994, and to any appeals or requests pending before an agency, including any predecessor agency, prior to October 20, 1994.

The proposed part would be applicable to adverse decisions with respect to: (1) Denial of participation in any program of an agency; (2) compliance with program requirements; and (3) the making or amount of payments or other program benefits to a participant in any program of an agency.

The proposed part preserves participants' rights to avail themselves of certain informal agency review processes prior to instituting an appeal under the proposed part.

The proposed part states that the Administrative Procedure Act, the Equal Access to Justice Act, and the Federal Rules of Evidence do not apply to proceedings under the proposed part.

The proposed part provides filing requirements and deadlines, evidentiary hearing procedures for appeals of adverse decisions (including rules applicable to the issuance of subpoenas), procedures for NAD

Director review of an agency determination that a decision is not appealable, and procedures for NAD Director review of hearing officer determinations.

The proposed part provides for judicial review of final determinations of NAD.

List of Subjects in 7 CFR Part 11

Administrative practice and procedure, Agriculture, Agricultural commodities, Crop insurance, Ex parte communications, Farmers, Federal aid programs, Loan programs, Price support programs, Soil conservation.

For the reasons set out in the preamble, Title 7, Subtitle A, of the Code of Federal Regulations is amended by adding Part 11 to read as follows:

PART 11—NATIONAL APPEALS DIVISION RULES OF PROCEDURE

Sec.

11.1 Definitions.
11.2 General statement.
11.3 Applicability.
11.4 Inapplicability of other laws and regulations.
11.5 Informal agency hearings and exhaustion.
11.6 Right of participants to Division hearing or Director review of agency determination of appealability.
11.7 Division hearings.
11.8 Director review of determinations of Hearing Officers.
11.9 Bases for determinations.
11.10 Effective date and implementation of final determinations of the Division.
11.11 Judicial review.
11.12 Filing of appeals and computation of time.

Authority: 5 U.S.C. 301; Title II, Subtitle H, Pub. L. 103–354, 108 Stat. 3228 (7 U.S.C. 6991); Reorganization Plan No. 2 of 1953 (5 U.S.C. App.).

§ 11.1 Definitions.

For purposes of this part:

Adverse decision means an administrative decision made by an officer, employee, or committee of an agency that is adverse to a participant. The term includes a denial of equitable relief by an agency or the failure of an agency to issue a decision or otherwise act on the request or right of the participant within timeframes specified by agency program regulations. The term does not include a decision over which the Board of Contract Appeals has jurisdiction.

Agency means:

(1) The Consolidated Farm Service Agency;
(2) The Commodity Credit Corporation;
(3) The Farmers Home Administration;
(4) The Federal Crop Insurance Corporation;
(5) The Rural Business and Cooperative Development Service;
(6) The Rural Development Administration;
(7) The Rural Housing and Community Development Service;
(8) The Natural Resources Conservation Service;
(9) A State, county, or area committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)); and
(10) Any successor agency to the above-named agencies, and any other agency or office of the Department which the Secretary may designate.

Agency record means all the materials maintained by an agency related to an adverse decision which are submitted to the Division by an agency for consideration in connection with an appeal under this part , but shall not include records or information not directly related to the adverse decision at issue. All materials contained in the agency record submitted to the Division shall be deemed admitted as evidence for purposes of a hearing or a record review under § 11.7.

Agency representative means any person, whether or not an attorney, who is authorized to represent the agency in an administrative appeal under this part.

Appeal means a written request by a participant asking for review by the National Appeals Division of an adverse decision under this part.

Appellant means any participant who appeals an adverse decision in accordance with this part. Unless separately set forth in this part, the term ''appellant'' includes an authorized representative.

Authorized representative means any person, whether or not an attorney, who is authorized in writing by a participant, consistent with § 11.6(a), to act for the participant in an administrative appeal under this part. The authorized representative may act on behalf of the participant except when the provisions of this part require action by the participant or appellant personally.

Case record means all the materials maintained by the Secretary related to an adverse decision. The case record includes both the agency record and the hearing record.

Days means calendar days unless otherwise specified.

Department means the United States Department of Agriculture.

Director means the Director of the Division or a designee of the Director.

Division means the National Appeals Division established by this part.

Equitable relief means relief which is authorized under section 326 of the Food and Agriculture Act of 1962 (7 U.S.C. 1339a) and other laws administered by the agency.

Ex parte communication means an oral or written communication not contained in the hearing record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding connected with the appeal involved.

Hearing except with respect to § 11.5, means a proceeding before the Division to afford a participant the opportunity to present testimony or documentary evidence or both in order to have a previous determination reversed and to show why an adverse determination was not proper.

Hearing Officer means an individual employed by the Division who conducts the hearing and determines appeals of adverse decisions by any agency.

Hearing record means all documents, evidence, and other materials generated in relation to a hearing under § 11.7.

Implement means the taking of action by an agency of the Department in order fully and promptly to effectuate a final determination of the Division.

Participant means any individual or entity whose right to participate in or receive a payment, loan, loan guarantee, or other benefit in accordance with any program of an agency to which these regulations apply is affected by a decision of such agency, including a decision by a reinsured company which is authorized by the Federal Crop Insurance Corporation to issue insurance policies. The term does not include:

(1) Participants in programs subject to adjudicatory proceedings under the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statues, 7 CFR Part 1, Subpart H;

(2) Participants in programs governed by Federal contracting laws and regulations (appealable under other rules and to other forums, including to the Department's Board of Contract Appeals under 7 CFR part 24);

(3) Appellants from decisions to deny the release of information sought by members of the public under the Freedom of Information Act (appealable under 7 CFR Part 1, Subpart A);

(4) Participants in suspension and debarment disputes, including, but not limited to, those falling within the scope of 7 CFR Parts 1407 and 3017;

(5) Participants in export programs administered by the Commodity Credit Corporation;

(6) Reinsured companies engaged in disputes with the Federal Crop Insurance Corporation;

(7) Tenants prosecuting grievances or appeals pursuant to the provisions of 7 CFR Part 1944, Subpart L, under the multi-family housing program carried out by the Rural Housing and Community Development Service;

(8) Persons having personnel, equal employment opportunity, and other similar disputes with any agency or office of the Department which arise out of the employment relationship;

(9) Persons pursuing claims against the United States arising under the Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.*, or the Military Personnel and Civilian Employees Claims Act of 1964, 31 U.S.C. 3721; or

(10) Program participants pursuing claims under the nondiscrimination regulations at 7 CFR parts 15, 15a, 15b, and 15e.

Record review means an appeal considered by the Hearing Officer in which the Hearing Officer's determination is based on the agency record and other information submitted by the appellant and the agency, including information submitted by affidavit or declaration.

Secretary means the Secretary of Agriculture.

§ 11.2 General statement.

This part sets forth procedures for proceedings before the National Appeals Division within the Department. The Division is an organization within the Department which is independent from all other agencies and offices of the Department, including Department officials at the state and local level. The Director of the Division reports directly to the Secretary of Agriculture. The authority of the Hearing Officers and the Director of the Division, and the administrative appeal procedures which must be followed by program participants who desire to appeal an adverse decision and by the agency which issued the adverse decision, are included in this part.

§ 11.3 Applicability.

(a) *Subject matter.* The regulations contained in this part are applicable to adverse decisions made by an agency, including, for example, those with respect to:

(1) Denial of participation in, or receipt of benefits under, any program of an agency;

(2) Compliance with program requirements; and

(3) The making or amount of payments of other program benefits to a participant in any program of an agency.

(b) *Effective date.* This part is applicable to:

(1) Any adverse decision issued by any agency on or after October 20, 1994; and

(2) All appeals or requests for reconsideration which were pending before any agency, including any predecessor agency abolished by the Secretary pursuant to the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, Pub. L. 103–354, 108 Stat. 3178, prior to October 20, 1994.

§ 11.4 Inapplicability of other laws and regulations.

The provisions of the Administrative Procedure Act, as amended, 5 U.S.C. 551, *et seq.*, are not applicable to proceedings under this part. The Equal Access to Justice Act, as amended, 5 U.S.C. 504, does not apply to these proceedings. The Federal Rules of Evidence, 28 U.S.C. App., shall not apply to these proceedings.

§ 11.5 Informal agency hearings and exhaustion.

(a) *Required exhaustion of informal hearing options.* No administrative decision issued at the field service office level by an officer or employee of the Consolidated Farm Service Agency, or by any employee of a county or area committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act, 16 U.S.C. 590h(b)(5), shall be considered to be an adverse decision for purposes of the provisions of this part until a program participant has perfected an informal appeal to and received a decision thereon from the county or area committee with responsibility for the administrative decision at issue, and any program participant shall be required to exhaust his or her right to informal review by such county or area committee prior to seeking review by the Division under the provisions of this part.

(b) *Optional informal hearings.* If an officer or employee of an agency of the Department makes an adverse decision, at the request of the participant the agency shall hold an informal hearing on or conduct an informal review of the decision. A participant is encouraged to utilize an agency's informal review process initially, and may do so without prejudice to the participant's right subsequently to appeal the agency's decision to the Division. A participant shall also have the right to utilize any available alternative dispute resolution or mediation program, including any mediation program available under title V of the Agriculture Credit Act of 1987, 7 U.S.C. 5101 *et seq.*, in order to seek an informal review of any adverse decision prior to any appeal of such decision to the Division in accordance with this part.

§ 11.6 Right of participants to division hearing or Director review of agency determination of appealability.

(a) *Right of participants.* A participant has the right to appeal an adverse decision to the Division for an evidentiary hearing by a Hearing Officer consistent with § 11.7. If an officer, employee, or committee of an agency determines that an agency decision is not applicable, the participant may request a review of that determination by the Director pursuant to paragraph (b) of this section. If a participant is represented by an unauthorized representative, the authorized representative must file a declaration with NAD, executed in accordance with 28 U.S.C. 1746, stating that the participant has duly authorized the declarant in writing to represent the participant for purposes of a specified adverse decision or decisions, and attach a copy of the written authorization to the declaration.

(b) *Director review of agency determination of appealability.* (1) Not later than 30 days after the date on which a participant receives a determination from an agency that an agency decision is not appealable, the participant must submit a written request to the Director to review the determination in order to be entitled to such review by the Director.

(2) The Director will conduct a review of a determination that an agency decision is not appealable using any information the Director determines is necessary. Based on such review, the Director will issue a final determination notice that upholds or reverses the determination of the agency. This final determination is not appealable. If the Director will notify the participant and the agency of that decision and inform the participant of his or her right to proceed with an appeal.

(3) The Director may delegate his or her authority to conduct a review under this subsection to any Deputy or Associate Directors of the Division. In any case in which such review is conducted by a Deputy or Associate Director under authority delegated by the Director, the Deputy or Associate Director's determination shall be considered to be the determination of the Director and shall be final and not appealable.

(c) *Appeals of adverse decisions.* (1) To be entitled to a hearing under § 11.7, a participant personally must request

such hearing not later than 30 days after the date on which the participant first received notice of the adverse decision. In the case of the failure of an agency to act on the request or right of a recipient, a participant personally must request such hearing not later than 30 days after the participant knew or should have known that the agency had not acted within the timeframes specified by agency program regulations, or, where such regulations specify no timeframes, not later than 30 days after the participant reasonably should have known of the agency's failure to act.

(2) A request for a hearing shall be in writing and personally signed by the participant, and shall include a copy of the adverse decision to be reviewed, if available, along with a brief statement of the participant's reasons for believing that the decision, or the agency's failure to act, was wrong. Instead of a hearing, the participant may request a record review.

§ 11.7 Division hearings.

(a) *General rules.* (1) The Director, the Hearing Officer, and the appellant shall have access to the agency record or any adverse decision appealed to the Division for a hearing.

(2) The Director and Hearing Officer shall have the authority to administer oaths and affirmations, and to require, by subpoena, the attendance of witnesses and the production of evidence.

(i) A subpoena requiring the production of evidence may be requested and issued at any time while the case is pending before the Division.

(ii) An appellant or an agency, acting through any appropriate official, may request issuance of a subpoena requiring the attendance of a witness by submitting such a request in writing at least 14 days before the scheduled date of a hearing.

(iii) A subpoena shall be issued only if the Director or a Hearing Officer determines that:

(A) For a subpoena of documents, the appellant or the agency has established that production of documentary evidence is necessary and is reasonably calculated to lead to information which would affect the final determination or is necessary to fully present the case before the Division; or

(B) For a subpoena of a witness, the appellant or the agency has established that either a representative of the Department or a private individual possesses information that is pertinent and necessary for disclosure of all relevant facts which could impact the final determination, that the information cannot be obtained except through testimony of the person, and that the testimony cannot be obtained absent issuance of a subpoena.

(iv) The party requesting issuance of a subpoena shall arrange for service. Service of a subpoena upon a person named therein may be made by registered or certified mail, or in person. Personal service shall be made by personal delivery of a copy of the subpoena to the person named therein by any person who is not a party and who is not less than 18 years of age. Proof of service shall be made by filing with the Hearing Officer or Director who issued the subpoena a statement of the data and manner of service and of the names of the persons served, certified by the person who made the service in person or by return receipts for certified or registered mail.

(v) The party at whose instance a subpoena is issued shall be responsible for the payment of any travel and subsistence costs incurred by the witness in connection with his or her appearance and any fees of a person who serves the subpoena in person. The Department shall pay the costs associated with the appearance of Department employees regardless of the party requesting the subpoena. The failure to make payment of such charges on demand may be deemed by the Hearing Officer or Director as sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

(vi) If a person refuses to obey a subpoena, the Director, acting through the Office of General Counsel of the Department and the Department of the Justice, may apply to the United States District Court in the jurisdiction where that person resides to have the subpoena enforced as provided in the Federal Rules of Civil Procedure (28 U.S.C. App.).

(3) Testimony required by subpoena pursuant to paragraph (a)(2) of this section may, at the discretion of the Director or a Hearing Officer, be presented at the hearing either in person or telephonically.

(4) *Ex parte* communication. (i)(A) At no time between the filing of an appeal and the issuance of a final determination by the Director shall the Hearing Officer or the Director engage in *ex parte* communications regarding the merits of the appeal with any person having any interest in the appeal pending before the Division, including any person in an advocacy or investigative capacity. This prohibition does not apply to:

(*1*) Discussion of procedural matters related to an appeal; or

(*2*) Discussions of the merits of the appeal with such a person by the Hearing Officer or the Director where all parties to the appeal have been given notice and an opportunity to participate.

(B) In the case of a communication described in paragraph (a)(4)(i)(A)(*2*) of this section, a memorandum of any such discussion shall be included in the hearing record.

(ii) No interested person shall make or knowingly cause to be made to the Hearing Officer or the Director an *ex parte* communications relevant to the merits of the appeal.

(iii) If the Hearing Officer or Director receives an *ex parte* communication in violation of this section, the one who receives the communication shall place in the hearing record:

(A) All such written communications;

(B) Memoranda stating the substance of all such oral communications; and

(C) All written responses to such communications, and memoranda stating the substance of any oral responses thereto, made by the Hearing Officer or Director.

(iv) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section the Hearing Officer or Director may, to the extent consistent with the interests of justice and the policy of the underlying program, require the party to show cause why such party's claim or interest in the appeal should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(b) *Hearing procedures applicable to both record review and hearings.* (1) Upon the filing of an appeal under this part of an adverse decision by any agency, the agency promptly shall provide the Division with a copy of the agency record. If requested by the appellant prior to the hearing, a copy of such agency record shall be provided promptly to the appellant by the agency.

(2) The Director shall assign the appeal to a Hearing Officer and shall notify the appellant and agency of such assignment. The notice also shall advise the appellant and the agency of the documents required to be submitted under paragraph (c)(2), of this section and notify the appellant of the option of having a hearing by telephone.

(3) The Hearing Officer will receive evidence into the hearing record without regard to whether the evidence was known to the agency officer, employee, or committee making the adverse decision at the time the adverse decision was made.

(c) *Procedures applicable only to hearings.* (1) Upon a timely request for a hearing under § 11.61(c), an appellant

has the right to have a hearing by the Division on any adverse decision within 45 days after the date of receipt of the request for the hearing by the Division.

(2) The Hearing Officer shall set a deadline for submission of the following documents not less than 28 days prior to the hearing:

(i) By the appellant:

(A) A short statement of why the decision is wrong;

(B) A copy of our list of documents the appellant anticipates introducing at the hearing; and

(C) A list of anticipated witnesses, or instead, brief descriptions of the evidence the appellant's witnesses will offer.

(ii) By the agency:

(A) A copy of the adverse decision challenged by the appellant;

(B) A written explanation of the agency's position, including the regulatory or statutory basis therefor;

(C) A copy of or list of documents the agency anticipates introducing at the hearing; and

(D) A list of anticipated witnesses, or instead, brief descriptions of the evidence the appellant's witnesses will offer.

(3) Not less than 21 days prior to the hearing, the Division must provide the appellant, the authorized representative, and the agency a notice of hearing identifying the time, date, and place of the hearing. The hearing will be held in the State of residence of the appellant, as determined by the Hearing Officer, or at a location that is otherwise convenient to the appellant and the Division. The notice also shall notify the appellant of the right to obtain a transcript of the hearing and the procedures for obtaining such transcript.

(4) Conduct of the hearing. (i) A hearing before a Hearing Officer will be in person unless the appellant agrees to a hearing by telephone.

(ii) The hearing will be conducted by the Hearing Officer in the manner determined by the Division most likely to obtain the facts relevant to the matter or matters at issue. The Hearing Officer will allow the presentation of evidence at the hearing without regard to whether the evidence was known to the agency officer, employee, or committee making the adverse decision at the time the adverse decision was made. The Hearing Officer may confine the presentation of facts and evidence to pertinent matters and exclude irrelevant, immaterial, or unduly repetitious evidence, information, or questions. The Hearing Officer may request or permit individuals other than those appearing on behalf of the appellant to present information or evidence at such hearing. The appellant shall have the opportunity to present oral and documentary evidence, oral testimony of witnesses, and arguments in support of the appellant's appeal; controvert evidence relied on by the agency; and question all witnesses. When appropriate, agency witnesses requested by the appellant will be made available at the hearing. Any evidence may be received by the Hearing Officer without regard to whether that evidence could be admitted in judicial proceedings.

(iii)(A) Official recording of the hearing in the form of a verbatim transcript may be made if:

(*1*) The appellant or the agency requests the Hearing Officer to arrange for such a transcript at least 14 days prior to the hearing and agrees to pay the expenses of the transcription service; or

(*2*) The Director determines that such a transcript is appropriate.

(B) In cases in which the appellant requests the transcript, the Hearing Officer will provide the appellant and the authorized representative with the name of the transcription service and an estimate of the cost of such service. After receiving an estimate of such cost, the appellant may withdraw the request for transcription services prior to the hearing, but, in such cases, the appellant will be responsible for all costs to the Division associated with the cancellation of such service. Unofficial recording of a hearing by a voice recorder or the use of an unauthorized transcription service may be permitted but such recording shall not be an official recording of the hearing and will not be made part of either the hearing record or the case record.

(5) Absence of parties. (i) If at the time scheduled for the hearing either the appellant or the agency representative is absent, and no appearance is made on behalf of such absent party, or no arrangements have been made for rescheduling the hearing, the Hearing Officer has the option to cancel the hearing, in which case the Hearing Officer will:

(A) Treat the appeal as a record review and issue a determination based on the agency record as submitted by the agency and the hearing record developed prior to the hearing date;

(B) Accept evidence into the hearing record submitted by other persons present at the hearing, and then issue a determination; or

(C) Dismiss the appeal.

(ii) In appropriate cases, the Hearing Officer will add any additional evidence to the hearing record, provide a copy of such evidence to the absent party or parties, and allow the absent party or parties 10 days to provide a response to such additional evidence for inclusion in the hearing record.

(6) Post-hearing procedure. The Hearing Officer will leave the hearing record open after the hearing for 10 days, or for such other period of time as the Hearing Officer shall establish, to allow the submission of information by the appellant or the agency, to the extent necessary to respond to new facts, information, arguments, or evidence presented or raised at the hearing. Any such new information will be added by the Hearing Officer to the hearing record and sent to the other party or parties by the submitter of the information. The Hearing Officer, in his or her discretion, may permit the other party or parties to respond to this post-hearing submission.

(d) *Interlocutory review*. Interlocutory review by the Director of rulings of a Hearing Officer are not permitted under the procedures of this part.

(e) *Burden of proof.* The appellant has the burden of proving that the adverse decision of the agency was erroneous by a preponderance of the evidence.

(f) *Timing of issuance of determination.* The Hearing Officer will issue a notice of the determination on the appeal to the appellant, personally, the authorized representative, and the agency not later than 30 days after a hearing or the closing date of the hearing record in cases in which the Hearing Officer receives additional evidence from the agency or appellant after a hearing. In the case of a record review, the Hearing Officer will issue a notice of determination within 45 days of receipt of the appellant's request for a record review. Upon the Hearing Officer's request, the Director may establish an earlier or later deadline. If the determination is not appealed to the Director for review under § 11.8, the notice provided by the Hearing Officer shall be considered to be an notice of a final determination under this part.

§ 11.8 Director review of determinations of Hearing Officers.

(a) *Requests for Director review*. (1) Not later than 30 days after the date on which an appellant receives the determination of a Hearing Officer under § 11.7, the appellant must submit a written request, signed personally by the appellant, to the Director to review the determination in order to be entitled to such review by the Director.

(2) Not later than 15 business days after the date on which an agency receives the determination of a Hearing Officer under § 11.7, the head of the

agency may make a written request that the Director review the determination. Any such request may be made by the head of an agency only, or by a person acting in such capacity, but not by any subordinate officer of such agency.

(b) *Notification of parties.* The Director promptly shall notify all parties of receipt of a request for review.

(c) *Determination of Director.* (1) The Director will conduct a review of the determination of the Hearing Officer using the agency record, the hearing record, the request for review, and such other arguments or information as may be accepted by the Director. Based on such review, the Director will issue a final determination notice that upholds, reverses, or modifies the determination of the Hearing Officer. The Director's determination upon review of a Hearing Officer's decision shall be considered to be the final determination under this part and shall not be appealable. However, if the Director determines that the hearing record is inadequate, the Director may remind all or a portion of the determination to the Hearing Officer for further proceedings to complete the hearing record or, at the option of the Director, to hold a new hearing.

(2) The Director will complete the review and either issue a final determination or remand the determination not later than—

(i) 10 business days after receipt of the request for review, in the case of a request by the head of an agency; or

(ii) 30 business days after receipt of the request for review, in the case of a request by an appellant.

(3) In any case or any category of cases, the Director may delegate his or her authority to conduct a review under this section to any Deputy or Associate Directors of the Division. In any case in which such review is conducted by a Deputy or Associate Director under authority delegated by the Director, the Deputy or Associate Director's determination shall be considered to be the determination of the Director under this part and shall be final and not appealable.

(d) *Equitable relief.* In reaching a decision on an appeal, the Director shall have the authority to grant equitable relief under this part in the same manner and to the same extent as such authority is provided an agency under applicable laws and regulations.

§ 11.9 Bases for determinations.

(a) The Hearing Officers and the Director are not bound by previous findings of facts by the agency in making a determination.

(b) In making a determination on the appeal, Hearing Officers and the Director shall ensure that the decision is consistent with the laws and regulations of the agency, and with the generally applicable interpretations of such laws and regulations.

(c) All determinations of the Hearing Officers and the Director must be based on information from the case record, laws applicable to the matter at issue, and applicable regulations published in the **Federal Register** and in effect on the date of the adverse decision or the date on which the acts that gave rise to the adverse decision occurred, whichever date is appropriate under the applicable agency program laws and regulations.

§ 11.10 Effective date and implementation of final determinations of the Division.

(a) On the return of a case to an agency pursuant to the final determination of the Division, the head of the agency shall implement the final determination not later than 30 days after the effective date of the notice of the final determination.

(b) A final determination will be effective as of the date of filing of an application, the date of the transaction or event in question, or the date of the original adverse decision, whichever is applicable under the applicable agency program statutes or regulations.

§ 11.11 Judicial review.

(a) A final determination of the Division shall be reviewable and enforceable by any United States District Court of competent jurisdiction in accordance with chapter 7 of title 5, United States Code.

(b) An appellant may not seek judicial review of any agency adverse decision appealable under this part without receiving a final determination from the Division pursuant to the procedures of this part.

§ 11.12 Filing of appeals and computation of time.

(a) An appeal, a request for Director review, or any other document will be considered ''filed'' when delivered in writing to the Division, when postmarked, or when a complete facsimile copy is received by the Division.

(b) Whenever the final date for any requirement of this part falls on a Saturday, Sunday, Federal holiday, or other day on which the Division is not open for the transaction of business during normal working hours, the time for filing will be extended to the close of business on the next working day.

(c) The time for filing an appeal, a request for Director review, or any other document, with the Division expires at 5:00 p.m. Eastern Standard Time or Eastern Daylight Savings time as applicable on the last day on which such filing may be made.

Done at Washington, D.C., this 12 day of May, 1995.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 95–12261 Filed 5–19–95; 8:45 am]

BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

9 CFR Part 3

[Docket No. 93–076–3]

Marine Mammal Negotiated Rulemaking Advisory Committee; Establishment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of intent to establish a committee.

SUMMARY: The Department of Agriculture announces its intent to establish an advisory committee to develop a recommended rulemaking proposal to revise the regulations governing the handling, care, treatment, and transportation of marine mammals in captivity. This committee, called the Marine Mammal Negotiated Rulemaking Advisory Committee, will be comprised of representatives with a definable stake in the outcome of the proposed rule.

DATES: Consideration will be given only to comments received on or before June 21, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 93–076–3, Animal and Plant Health Inspection Service, Policy and Programs Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737–1228. Please state that your comments refer to Docket No. 93–076–3. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Kohn, Senior Staff Veterinarian, Animal and Plant Health Inspection Service, Regulatory Enforcement and Animal Care, Animal Care, 4700 River Road Unit 84, Riverdale, MD 20737–1228, (301) 734–8699.

SUPPLEMENTARY INFORMATION:

Background

We are announcing our intent to establish an advisory committee to develop a recommended rulemaking proposal to revise the regulations governing the handling, care, treatment and transportation of marine mammals in captivity.

Under the Animal Welfare Act (the Act) (7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the human handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers. Regulations established under the Act are contained in 9 CFR parts 1, 2, an 3.

Under the Act, the Department established regulations in 1979 for the human handling, care, treatment, and transportation of marine mammals used for research or exhibition purposes. These standards were amended in 1984. During the 9 years since the standards were amended, advances have been made, new information has been developed, and new concepts have been implemented with regard to the housing and care of marine mammals.

On July 23, 1993, we published in the **Federal Register** (58 FR 39458, Docket No. 93–076–1) an advance notice of proposed rulemaking that solicited comments on appropriate revisions or additions to the standards for the humane care and transportation of marine mammals used for exhibition or research.

The comments we received in response to our advance notice suggest that it would be highly desirable to involve all interested parties in developing appropriate regulatory standards. We believe consensus among interested parties is attainable and that we should proceed with negotiated rulemaking in developing such standards

Negotiated Rulemaking

Negotiated rulemaking is a consensus-based approach to the promulgation of agency rules. It is considered to be an effective tool for developing regulatory solutions to problems that affect diverse, and often competing, interests among the regulated public. By participating in this effort, interested parties have more direct input into the substance of a proposed rule than they would through the usual form of notice-and-comment rulemaking, where a regulatory agency works more independently to develop a proposed rule. In negotiated rulemaking, the participating parties agree to work together until consensus is reached on the content of the proposed rule, which is then published for public comment. In this manner, negotiated rulemaking enables an agency to avoid many of the obstacles that might be raised in a usual notice-and-comment proposed rulemaking, and expedites the promulgation and implementation of a final rule.

We therefore intend to establish a Marine Mammal Negotiated Rulemaking Advisory Committee (Committee), chartered under the Federal Advisory Committee Act (Pub. L. 92–463). The Committee will advise the Department on the content of regulations to revise and update the standards for the handling, care, treatment, and transportation of marine mammals in captivity.

The establishment of this Committee is necessary and in the public interest in connection with the duties and responsibilities of the Administrator of the Animal and Plant Health Inspection Service (APHIS) in ensuring the humane care of marine mammals held in captivity by researchers and exhibitors. These duties and responsibilities include the promulgation of regulations. The Committee is intended to serve as a public forum in which interested parties can discuss and resolve the issues involved in developing revised standards for the care of marine mammals in captivity. We believe that this process will allow APHIS to develop effective regulations for the care of these animals.

Key Issues for Negotiation

We anticipate that the Committee will need to address the following issues in formulating a proposal:

* Space requirements;
* Transportation of marine mammals;
* ''Swim-with-the-dolphins'' programs;
* Noise levels;
* Water temperatures;
* Recordkeeping requirements;
* Water quality parameters to be monitored;
* Separation/isolation;
* Feeding;
* Training; and
* Stranding: When does rehabilitation end and captivity begin?

Guidelines

The following guidelines will apply to this negotiated rulemaking, subject to appropriate changes made as a result of comments received on this notice or as determined necessary during the negotiation process:

1. *Facilitator.* APHIS will use a facilitator. The facilitator, a neutral third party, will not be involved in the substantive development of the regulation. The facilitator's role will be to chair negotiating sessions, to act as a mediator, to help the negotiations proceed smoothly, and to help the participants define and reach consensus.

2. *Good faith negotiation.* Because participants must be willing to negotiate in good faith, each organization must authorize a senior official to represent its interest and to negotiate on its behalf. The issue of keeping or holding animals in captivity will not be addressed by the Committee. The Committee will address only issues relating to the care and maintenance of captive marine mammals.

3. *Administrative support and meetings.* APHIS will provide staff support for the Committee. Meetings will be held in the Washington, DC, metropolitan area.

4. *Consensus.* The goal of the negotiating process is consensus. Generally, consensus means that each interest concurs in the result.

5. *Record of meeting.* In accordance with the Federal Advisory Committee Act, APHIS will keep a record of all Committee meetings. The record will be placed in the administrative record for this rulemaking, and be made available for public inspection upon request. meetings will be open to the public.

6. *Committee procedures.* Under the general guidance and direction of the facilitator and subject to applicable legal requirements, the members of the Committee will establish detailed procedures for the conduct of their Committee meetings.

7. *Schedule.* The time and location of Committee meetings will be announced in the **Federal Register**.

8. *Participants.* The Committee will consist of no more than 25 members and a facilitator. Participation by more than 25 persons could make it difficult to conduct effective negotiations. One purpose of this notice is to help determine whether regulations concerning the care of marine mammals in captivity would substantially affect interests not adequately represented by the proposed participants listed in this notice. We do not believe that each potentially affected organization or individual must have its own representative on the Committee. However, we firmly believe that each interest must be adequately represented. Equal opportunity practices, consistent with U.S. Department of Agriculture policies, will be followed in all appointments to the Committee.

APHIS has tentatively identified the following interests and parties as potential participants on the Marine

Mammal Negotiated Rulemaking Advisory Committee:

Representing Facility Owners and Managers

American Zoo and Aquarium Association

Alliance of Marine Mammal Parks

International Association of Amusement Parks and Attractions

Marine Mammal Coalition

United States Navy

Related Industry Groups

Coalition of Animal Welfare Institute, Society for Animal Protective Legislation, and numerous other organizations

Center for Marine Conservation

Humane Society of the United States

Representing Those Who Work with Captive Marine Mammals in Various Capacities

American Association of Zoo Veterinarians

International Association for Aquatic Animal Medicine

International Marine Animal Trainers Association

Society for Marine Mammology

Federal Government

Marine Mammal Commission

Animal and Plant Health Inspection Service, USDA

Comments on this tentative list of participants are invited, as are suggestions for other potential participants. Please keep in mind that it is not necessary that every concerned organization be represented, as long as every significant interest is represented. Negotiation sessions will be open to the public. individuals and organizations without designated representatives on the Committee may attend sessions and communicate informally with members of the Committee.

Done in Washington, DC, this 17th day of March.

Wardell C. Townsend,

Assistant Secretary for Administration.

[FR Doc. 95–12434 Filed 5–19–95; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Efficiency Standards Test Procedures, Labeling, and Certification Reporting for Certain Commercial and Industrial Electric Motors

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public meeting.

SUMMARY: The Department of Energy (DOE) will hold an informal public meeting to discuss issues and gather information related to energy efficiency standards, test procedures, labeling, and compliance certification for 1 through 200 horsepower electric motors that are manufactured alone or as a component of another piece of equipment. All persons are hereby given notice of the opportunity to attend this public meeting and to submit written statements.

DATES: The public meeting will be held on Friday, June 2, 1995. Written statements, in quadruplicate, must be received by June 30, 1995.

ADDRESSES: Written statements should be labeled ''Test Procedures and Efficiency Certification for Electric Motors,'' and submitted to: Ms. Sandy Cooper, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: (202) 586–7574; Telefax: (202) 586–4617.

The meeting will begin at 9:30 a.m., and will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Anthony Balducci, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8459

James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8654

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION:

1. Authority

Part 3 of Title IV of the National Energy Conservation Policy Act of 1978 (NECPA), Pub. L. 95–619, amends the Energy Policy and Conservation Act of 1975 (EPCA) to add ''Energy Efficiency of Industrial Equipment,'' which includes electric motors. The most recent amendment to EPCA, the Energy Policy Act of 1992 (EPAct), Pub. L. 102–486, promulgates definitions related to electric motors in section 122(a), 106 Stat. 2807, test procedures for motor efficiency in section 122(b), 106 Stat. 2809, labeling for electric motors in section 122(c), 106 Stat. 2809, standards for nominal full-load efficiency in section 122(d), 106 Stat. 2814, and certification of compliance by manufacturers in section 122(e), 106 Stat. 2817.

Section 122(a)(3) of the EPAct (EPCA, section 340(13)(A), 42 U.S.C. 6311 (13)(A)), defines ''electric motor'' as any motor which is ''general purpose T-frame, single-speed, foot-mounting, polyphase squirrel-cage induction of the National Electrical Manufacturers Association (NEMA) Designs A and B, continuous-rated, operating on 230/460 volts and constant 60 Hertz line power, as defined in NEMA Standards Publication MG1–1987.'' Section 122(d) of the EPAct (EPCA, section 342(b)(1), 42 U.S.C. section 6313(b)(1)), prescribes standards for electric motors that are 1 through 200 horsepower, and ''manufactured (alone or as a component of another piece of equipment),'' except for ''definite purpose motors, special purpose motors, and those motors exempted by the Secretary.''

Section 122(b)(1) of the EPAct (EPCA, section 343(a)(5)(A), 42 U.S.C. 6314 (a)(5)(A)), requires that testing procedures for motor efficiency shall be the test procedures specified in NEMA Standards Publication MG1–1987, and the Institute of Electrical and Electronics Engineers (IEEE) Standard 112 Test Method B for motor efficiency, as in effect on October 24, 1992. Section 122(b)(1), EPCA section 343(a)(5)(B) and (C), provide for amendment of the testing procedures if the test procedures in the NEMA and IEEE standards are revised.

Section 122(c)(4) of the EPAct (EPCA, section 344(d), 42 U.S.C. 6315(d)) directs the Secretary, after consultation with the Federal Trade Commission, see EPCA section 344(f), 42 U.S.C. 6315(f), to prescribe rules requiring motor

labeling to indicate energy efficiency on the permanent nameplate, to display that motor energy efficiency prominently in catalogs and other marketing materials, and to include other markings to facilitate enforcement of the energy efficiency standards.

Section 122(e)(2) of the EPAct (EPCA, section 345(c), 42 U.S.C. 6316(c)) requires manufacturers to certify compliance with energy efficiency standards through an independent testing or certification program nationally recognized in the United States.

2. Background

The Department of Energy is drafting a proposed rule to implement the EPAct requirements for motors. However, the language of the EPAct raises several issues regarding definitions, testing, labeling, and certification.

The purpose of the public meeting is to discuss these issues, gather information, and seek early resolution.

3. Discussion

The Department is interested in receiving information and statements to help resolve the following issues:

a. Definitions.

(1) *Metric equivalents.* Section 122(d) of the EPAct (EPCA, section 342(b)(1), 42 U.S.C. 6313(b)(1)) lists standards for electric motor nominal full-load efficiency ratings corresponding to horsepower and number of poles. Additionally, section 205b. of the Metric Conversion Act of 1975, Pub. L. 94–168, 15 U.S.C. 205b., states ''the declared policy of the United States—(1) to designate the metric system of measurement as the preferred system of weights and measures for United States trade and commerce; (2) to require that each Federal agency, by a date certain and to the extent economically feasible by the end of the fiscal year 1992, use the metric system of measurement in its procurements, grants, and other business-related activities, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms, such as when foreign competitors are producing competing products in non-metric units.'' This policy is promulgated in Executive Order 12770 of July 25, 1991, ''Metric Usage in Federal Government Programs.'' 56 FR 35801–03 (July 29, 1991). The Department seeks advice on how to implement these statutes with respect to motors under the EPAct. Specifically, should the energy efficiency rules identify kilowatt ratings equivalent to corresponding horsepower ratings, and other electrical and mechanical equivalents? If so how?

(2) *Basic model.* The Code of Federal Regulations (CFR), in 10 CFR Part 430 § 430.2, provides a definition for the term ''basic model'' in regard to the appliance program: ''Basic model means all units of a given type of covered product (or class thereof) manufactured by one manufacturer and—* * * (as to dishwashers, for example) which have electrical characteristics that are essentially identical, and which do not have any differing physical or functional characteristics that affect energy consumption.'' Basic model is a term used to describe a product or item of equipment whose performance, design, mechanical, and functional characteristics are essentially the same. Components of similar design may be substituted in a basic model without requiring additional testing if the represented measures of energy consumption continue to satisfy applicable provisions for sampling and testing. In the case of electric motors, a manufacturer may produce one basic model and thousands more of other model numbers that are essentially the same, all based on variations in design features that do not affect energy efficiency.

The Department is considering defining the term ''basic model'' in its coverage of electric motors to mean all units of a given type of covered equipment (or class thereof) manufactured by a single manufacturer, and, with respect to electric motors, having the same rating, electrical design characteristics that are essentially identical, and no differing mechanical or functional characteristics that affect energy consumption or efficiency. The Department solicits the views of interested parties as to whether the Department should adopt such a definition.

(3) *Definite purpose motor.* Under section 122(d) of the EPAct (EPCA section 342(b)(1), 42 U.S.C. 6313(b)(1)), the energy efficiency standards for electric motors do not apply to ''definite purpose motors.'' Section 122(a)(3) of the EPAct (EPCA § 340(13)(B), 42 U.S.C. § 6311(13)(B)) defines a ''definite purpose motor'' as ''any motor designed in standard ratings with standard operating characteristics or standard mechanical construction for use under service conditions other than usual, or for use on a particular type of application which cannot be used in most general purpose applications.'' However, the EPAct does not define the term ''service conditions other than usual.'' Therefore, the Department is considering developing a definition for this term that will take into consideration adverse environmental and operating conditions, such as exposure to abrasive or combustible dusts, chemical fumes, nuclear radiation, salt-laden air, abnormal shock or vibration, unbalanced supply voltage, power system not grounded, frequent starting, frequent short circuits, and so forth. The Department seeks advice in developing a definition for ''service conditions other than usual.''

b. *Testing.*

(1) *Canadian Standards Association Standard C390.* Section 122(b)(1) of the EPAct (EPCA, section 343(a)(5)(A), 42 U.S.C. 6314(a)(5)(A)) states that ''the test procedures shall be the test procedures specified in NEMA Standards Publication MG1–1987 and IEEE Standard 112 Test Method B for motor efficiency, as in effect on the date of the enactment of the Energy Policy Act of 1992.'' Subsequently, the NEMA Standards Publication MG1–1987 was revised and superseded by MG1–1993 on November 19, 1992, and published in October 1993 as MG1–1993. A further amendment, Revision 1 to MG1–1993, was added on December 7, 1993.

The EPAct (42 U.S.C. 6314(a)(5)(B) and (C)) provides for amending the established test procedures if the test procedures in NEMA Standards Publication MG1–1987 and IEEE Standard 112 Test Method B are amended. MG1–1993 with Revision 1, section MG1–12.58.1 states: ''Efficiency and losses shall be determined in accordance with IEEE Std 112 or Canadian Standards Association Standard C390.'' In considering whether to amend the motor efficiency test procedures specified in NEMA Standards Publication MG1–1987 in order to require the motor efficiency test procedures specified in NEMA Standards Publication MG1–1993 with Revision 1, the Department hereby solicits information on the affect of the additional reference to Canadian Standards Association Standard C390.

(2) *Testing sampling plan.* Section 122(d) of the EPAct (EPCA, section 342(b), 42 U.S.C. 6313(b)) requires each electric motor to have a certain ''nominal full load efficiency,'' which is defined in section 122(a)(3) of the EPAct (EPCA section 340(13)(H), 42 U.S.C. 6311(13)(H)) as the average efficiency of a population of motors of duplicate design as determined in accordance with NEMA Standards Publication MG1–1987. NEMA Standards Publications MG1–1987 and MG1–1993 with Revision 1 both provide for the determination of nominal full load efficiencies that are to represent the average efficiency of a large population

of motors of duplicate design, and a corresponding minimum efficiency that any motor must equal or exceed to be rated at the corresponding nominal efficiency. The DOE contemplates establishing a testing sampling plan to reasonably ensure that the results from testing a few motors will establish the average efficiency of the large population of motors of duplicate design. This could be done by requiring the testing of a sufficient number of motors of a particular model, selected at random, so that an estimate at the 95 percent statistical confidence level can be made both that the motors of this model offered for sale have both a mean efficiency equal to or greater than the nominal efficiency given in NEMA Standards Publication MG1–1993 Revision 1 for this rating, and also that at least 99 percent of these motors of this same particular model have efficiencies equal to or greater than the minimum efficiency associated with the nominal efficiency given for this motor in the NEMA Standards Publication MG1–1993 Revision 1. The Department seeks advice on what type of sampling plan should be adopted.

(3) *Alternative method of efficiency determination.* In the case where a manufacturer produces hundreds of different basic models of electric motors, it may be neither technically feasible, nor economically justifiable to test all basic models for compliance. For such situations, the Department is considering the use of predictive mathematical calculations and statistical methodologies developed from scientific and engineering analyses that are substantiated by actual test data in order to calculate the efficiency, i.e. total power losses, for some basic models of electric motors. Such ''alternative efficiency determination methods,'' engineering or statistical analyses, would require support by actual testing of some minimum number of basic models and would incorporate computer simulations, modeling, or other mathematical evaluations of performance data. The alternate efficiency determination method to verify compliance for motors is similar to the method used in the appliance program, 10 CFR part 430, § 430.24(m)(2)(ii), that permits manufacturers of central air conditioners to verify compliance by use of an ''alternative rating method.''

The Department solicits views on both the feasibility of testing all models of motors, as well as appropriate alternative methods for determining efficiency in the event it is not feasible to test all models.

c. *Labeling.* Section 122(c)(4) of the EPAct (EPCA, section 344(d), 42 U.S.C. 6315(d)) requires the following: (1) ''Not later than 12 months after the Secretary establishes test procedures for electric motors * * * the Secretary shall prescribe labeling rules * * * taking into consideration NEMA Standards Publication MG1–1987;'' and (2) such labeling rules shall ''(1) indicate the energy efficiency of the motor on the permanent nameplate attached to such motor; (2) prominently display the energy efficiency of the motor in equipment catalogs and other material used to market the equipment; and (3) include such other markings as the Secretary determines necessary, solely to facilitate enforcement of the standards.''

Based upon these EPAct requirements, the Department is considering the required use of a distinct logo, such as lower case letters ''ee'' within a circle, to identify motors that are manufactured as energy-efficient and in compliance with the EPAct. Such a logo would be permanently marked on the motor nameplate to facilitate enforcement, be prominently displayed on packaging, in shipping documents, in customs and commercial documents, and other materials. The Department is also considering a requirement of permanent markings on the motor nameplate of both the nominal efficiency and the minimum efficiency associated with that nominal efficiency, and of prominent displays of both the nominal and minimum efficiency values in catalogs to assist purchasers in making purchasing decisions.

In addition, section 122(c)(4) of the EPAct (EPCA, section 344(c), 42 U.S.C. 6315(c)) authorized additional required displays of information about electric motor energy efficiency that are likely to assist purchasers in making purchasing decisions, including instructions for maintenance, use, or repair of the motor, and information on energy use. Thus, the Department is also considering use of a label(s) or marking(s) that bear(s) the following statement(s): (1) ''This motor complies with energy efficiency requirements in the Energy Policy Act of 1992 at the time of original manufacture, [DATE].'' or ''Efficiency complies with EPACT at time of manufacture, [DATE].''; (2) ''Consult the manufacturer for maintenance, use, or repair.'' or ''Repair only in factory authorized shop.''; and (3) ''Estimated kilowatts used after 2000 hours continuous operation according to manufacturer's ratings: _____'', or ''Est. annual kW used: _____''. (Annual would be defined as ''2000 hours continuous operation according to manufacturer's ratings.'')

The Department seeks advice on whether such label(s) or marking(s) would assist purchasers, and on the content, design, size, location, and attachment of such label(s) or marking(s).

d. *Certification.* Section 122(e)(2) of the EPAct (EPCA section 345(c), 42 U.S.C. 6316(c)) requires ''manufacturers to certify, through an independent testing or certification program nationally recognized in the United States, that such motor meets the applicable (nominal full-load efficiency standard).''

(1) *Compliance.* The Department is considering implementation of the EPAct requirement for ''manufacturers to certify'' by means of a compliance statement and certification report that each basic model of energy efficient electric motor meets the requirements of the EPAct. This is similar to 10 CFR 430.62(a), which sets forth the appliance program procedures to be followed for certification by requiring each manufacturer to ''certify by means of a compliance statement and certification report that each basic model meets the requirements of that standard.'' A manufacturer's compliance statement and certification report for each basic model of energy efficient electric motor would be based, at least in part, upon actual testing or an alternative efficiency determination method. The Department solicits the views of interested parties on such a requirement.

(2) *Independent testing and certification.* The Department is also considering how to interpret and implement the EPAct requirement for ''manufacturers to certify, through an independent testing or certification program nationally recognized in the United States, that such motor meets the applicable (nominal full-load efficiency standard).'' Such testing or certification programs could be operated by commercial laboratories, government laboratories, and trade associations. The Department seeks information as to the identity, nature, and capabilities of any nationally recognized program(s) for the testing and certification of motors. The Department is aware that the Association of Home Appliance Manufacturers conducts a program to verify manufacturers' certifications of the total refrigerated volume of refrigerators and the energy efficiency values of room air conditioners; that the Gas Appliance Manufacturers Association conducts a testing program to verify manufacturers' certifications of the energy efficiency of water heaters, furnaces, room heaters, and boilers; and

that the Air Conditioning and Refrigeration Institute conducts a testing program to verify manufacturers' certifications of the energy efficiency and other performance criteria of residential and commercial air conditioning and heat pump systems. The Department seeks information on any similar existing programs that certify or verify the performance characteristics of motors. In addition, the Department seeks information as to whether foreign commercial laboratories, foreign government laboratories, or trade associations operate such programs.

The Department also seeks advice concerning two other possible issues under 122(e) of the EPAct (EPCA section 345(c), 42 U.S.C. 6316(c)). First, questions may arise as to what constitutes ''an independent testing or certification program [that is] nationally recognized.'' The Department seeks input as to the criteria by which an organization should be considered competent (1) to conduct the specific tests or calibrations for motors according to the required test procedures, and (2) to operate a certification program. One possibility is that the Department could consider a motor testing or certification program to be ''nationally recognized'' if the program were accredited by the National Institute of Standards and Technology/National Voluntary Laboratory Accreditation Program (NIST/NVLAP). The Department seeks views on such an approach, including the question of whether a foreign program recognized by NIST/NVLAP should be considered ''nationally recognized in the United States.'' Second, the Department seeks views as to whether manufacturers are permitted to self-test or self-certify the energy efficiency of their own motors, and, if so, under what circumstances.

e. *Identification of other issues.* The Department will seek to resolve the above issues in developing a proposed rule. In addition, there may be other issues that the Department will need to address. The purpose of the meeting is to identify all of these various issues and to begin dialogue with interested parties to help resolve them.

4. Public Meeting Procedure

The meeting will be conducted in an informal, conference style. A court reporter will be present to record the minutes of the meeting. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by antitrust law. After the meeting and period for written statements, the Department will consider the views presented in formulating a Notice of Proposed Rulemaking regarding energy efficient motors.

Issued in Washington, DC, May 16, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 95–12492 Filed 5–19–95; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–13–AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes Equipped With BFGoodrich Off-Wing Ramp/Slide Evacuation Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This proposal would require modification of the off-wing ramp/slide evacuation systems. This proposal is prompted by reports of punctured tubes on certain BFGoodrich off-wing ramp/slide evacuation systems installed on these airplanes. The actions specified by the proposed AD are intended to prevent such tube punctures, which could delay or impede the evacuation of passengers during an emergency.

DATES: Comments must be received by July 17, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No 95–NM–13–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207; and BFGoodrich Company, Aircraft Evacuation Systems, Sustaining Engineering, Dept. 7916, Phoenix, Arizona 85040. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Andrew Gfrerer, Aerospace Engineer, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5338; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–13–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–13–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of punctured tubes on BFGoodrich off-wing ramp/slide evacuation systems, having part numbers (P/N) 101630, 101655, and 101656, installed on certain Boeing Model 767 series airplanes. There have been several incidents in

which the ramp/slides have been damaged or punctured during inflation of the ramp/slide. Investigation revealed that the tubes were punctured when the ramp/slides became trapped in the spoiler gap or were caught on the inboard edge of the flap during inflation. Puncture of the tubes on an off-wing ramp/slide evacuation system, if not corrected, could cause portions of the slide to deflate and, thus, delay or impede the evacuation of passengers during an emergency.

The FAA has reviewed and approved Boeing Service Bulletin 767–25–0218, dated December 15, 1994, which describes procedures for modication of the off-wing ramp/slide evacuation systems. This modification involves replacement of nuts on the bearings on the packboards with new nuts.

The FAA has also reviewed and approved BFGoodrich Service Bulletin 101630/655/656–25–269, dated October 28, 1994, which describes procedures for modication of the off-wing ramp/slide evacuation systems. This modification involves replacement of velcro retainers with improved retainers, installation of a cover panel on the bottom of the inflatable, and installation of a chafe panel between the upper and lower tubes near the transfer tube.

Accomplishment of the modifications described in these two service bulletins will improve the resistance to a tube puncture when the ramp/slide impinges on the spoiler gap and inboard flap edge during inflation.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modication of the off-wing ramp/slide evacuation systems. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Operators should note that the applicability of this proposed rule affects Boeing Model 767 series airplanes that are equipped with certain BFGoodrich evacuation systems. The FAA's general policy is that, when an unsafe condition results from the installation of an appliance or other item that is installed in only one particular make and model of aircraft, the AD is issued so that it is applicable to the aircraft, rather than the item. The reason for this is simple: Making the AD applicable to the airplane model on which the item is installed ensures that operators of those airplanes will be notified directly of the unsafe condition and the action required to correct it. While it is assumed that an operator will know the models of airplanes that it operates, there is a potential that the operator will not know or be aware of specific items that are installed on its airplanes. It is for this reason that this proposed AD would be applicable to Model 767's rather than to the BFGoodrich evacuation system. Additionally, calling out the airplane model as the subject of the AD prevents ''unknowing non-compliance'' on the part of the operator.

The FAA recognizes that there are situations when an unsafe condition exists in an item that is installed in many different aircraft. In those cases, the FAA considers it impractical to issue AD's against each aircraft; in fact, many times, the exact models and numbers of aircraft on which the item is installed may not be known. Therefore, in those situations, the AD is issued so that it is applicable to the item; furthermore, those AD's usually indicate that the item is known to be installed on, but not limited to, various aircraft models.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

There are approximately 992 BFGoodrich off-wing ramp/slide evacuation systems installed on 496 Model 767 series airplanes (2 evacuation systems per airplane) of the affected design in the worldwide fleet. The FAA estimates that 376 BFGoodrich off-wing ramp/slide evacuation systems installed on 188 Model 767 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 9 work hours per evacuation system to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $200 per evacuation system. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $278,240, or $740 per evacuation system.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 95–NM–13–AD.

Applicability: Model 767 series airplanes, equipped with BFGoodrich off-wing ramp/slide evacuation systems having part number (P/N) 101630, 101655, or 101656; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent tube puncture of the ramp/slide evacuation system, which could delay or impede the evacuation of passengers during an emergency, accomplish the following:

(a) Within 36 months after the effective date of this AD, modify the off-wing ramp/slide evacuation systems in accordance with Boeing Service Bulletin 767–25–0218, dated December 15, 1994, and BFGoodrich Service Bulletin 101630/655/656–25–269, dated October 28, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

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

Issued in Renton, Washington, on May 16, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–12442 Filed 5–19–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–51–AD]

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–120 series airplanes. This proposal would require removal of the upper channel fairings and their shims; and rework of the riveting holes, the aileron sealing canvas (aerodynamic seals), and the protective covers of the trim tab hinge fittings of the aileron and elevator. This proposal is prompted by reports of binding of the aileron due to water freezing between the upper channel fairings and the surface of the leading edge of the aileron. The actions specified by the proposed AD are intended to prevent water from freezing between the upper channel fairings and the surface of the leading edge on the aileron, which could result in binding of the aileron and subsequent reduced controllability of the airplane.

DATES: Comments must be received by July 3, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–51–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia.

FOR FURTHER INFORMATION CONTACT: Linda Haynes, Aerospace Engineer, Propulsion Branch, ACE–117A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7377; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–51–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–51–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departamento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, recently notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–120 series airplanes. The DAC advises that it has received reports of binding of the aileron on Model EMB–120 series airplanes. In these instances, movement of the aileron was possible, but difficult. All of the airplanes involved were equipped with upper channel fairings (Kevlar strips) on the aileron. Investigation revealed that, when the upper channel fairings are wet and come in contact with a surface of the leading edge of the aileron that is also wet, water can freeze between the two parts. This condition, if not corrected, could result in binding of the aileron and subsequent reduced controllability of the airplane.

EMBRAER has issued Service Bulletin No. 120–57–0021, Change 1, dated September 10, 1993, which describes procedures for removal of the upper channel fairings and their shims; and rework of the riveting holes, the aileron

sealing canvas (aerodynamic seals), and the protective covers of the trim tab hinge fittings of the aileron and elevator. Rework of the aileron sealing canvas involves increasing the gaps between the aileron sealing canvas and the wing fittings, and enlarging the drain hole on the protective covers of the trim tab hinge fittings of the aileron and the elevator. Removal of the fairings and their shims will allow more water to enter the region of the aileron sealing canvas (aerodynamic seals). The DAC classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in Brazil.

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require removal of the upper channel fairings and their shims; and rework of the riveting holes, the aileron sealing canvas (aerodynamic seals), and the protective covers of the trim tab hinge fittings of the aileron and elevator. The actions would be required to be accomplished in accordance with the service bulletin described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

The FAA estimates that 263 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 10 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The cost for required parts would be negligible. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $157,800, or $600 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Embraer: Docket 95–NM–51–AD.

Applicability: Model EMB–120 series airplanes; as listed in EMBRAER Service Bulletin No. 120–57–0021, Change 1, dated September 10, 1993; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent binding of the aileron and subsequent reduced controllability of the airplane, accomplish the following:

(a) Within 3,000 hours time-in-service after the effective date of this AD, remove the upper channel fairings and their shims; and rework the riveting holes, the aileron sealing canvas (aerodynamic seals), and the protective covers of the trim tab hinge fittings of the aileron and elevator; in accordance with EMBRAER Service Bulletin No. 120–57–0021, Change 1, dated September 10, 1993.

(b) As of the effective date of this AD, no person shall install any aileron sealing canvas having part number (P/N) 120–08130–001, 120–08131–001, or 120–08132–001, on any airplane unless that canvas has been reworked in accordance with EMBRAER Service Bulletin No. 120–57–0021, Change 1, dated September 10, 1993.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

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

Issued in Renton, Washington, on May 16, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–12441 Filed 5–19–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–ANE–57]

Airworthiness Directives; International Aero Engines AG Model V2500–A1 Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to International Aero Engines AG Model V2500–A1 engines. That action would have required the installation of damping wires and anti-fret coating on high pressure compressor disks and blades. Since the issuance of the NPRM, the FAA has determined that the probability of an unsafe condition is extremely remote, and that all affected engines in service have been modified as proposed. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Marc Bouthillier, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7135, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to International Aero Engines AG (IAE) Model V2500–A1 engines, was published in the **Federal Register** on December 1, 1993 (58 FR 63307). The proposed rule would have required the installation of damping wires and an anti-fret coating to high pressure compressor (HPC) disks and blades. That action was prompted by seven occurrences of HPC stage 7 and 8 blade failures. The proposed actions were intended to prevent HPC blade failures, which could result in engine inflight shutdowns.

Since the issuance of that notice of proposed rulemaking (NPRM), the FAA has conducted additional airworthiness assessment of the described problem, and has determined that the probability of a hazardous or unsafe condition is extremely remote. This assessment was conducted in accordance with the guidelines of a continued airworthiness assessment methodology process currently in use.

In addition, the FAA has determined that all affected engines have been modified as proposed. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this notice of proposed rulemaking constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 93–ANE–57, published in the **Federal Register** on December 1, 1993, (58 FR 63307), is withdrawn.

Issued in Burlington, Massachusetts, on May 15, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–12439 Filed 5–19–95; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 10 and 966

[Docket No. R–95–1772; FR–3819–P–01]

RIN 2501–AB92

Public Housing Lease and Grievance Procedures

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: HUD is proposing to amend its regulations governing eviction from public and Indian housing. If HUD determines that local law requires a pre-eviction due process hearing in court (known as a ''due process determination''), a tenant is not entitled to a hearing by the housing authority before eviction for drug-related or other criminal activity. This proposed rule would clarify that HUD is not required to use notice and comment rulemaking procedures for issuance of a due process determination.

DATES: Comments due date: July 21, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title and to the specific sections in the regulation. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Sherone Ivey, Acting Director, Occupancy Division, Room 4206, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; Telephone numbers (202) 708–0744; (202) 708–0850 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Issuance of Due Process Determination

This proposed rule would clarify that HUD is not required to use HUD's notice and comment rulemaking procedures when HUD determines that the law of a jurisdiction requires a due process court hearing before eviction of a public housing tenant.

Under 42 U.S.C. 1437d(k), a housing authority is generally required to provide a tenant with the opportunity for an administrative hearing before the commencement of eviction proceedings in the local landlord-tenant courts. However, the statute and the implementing HUD regulations at 24 CFR part 966 permit the housing authority to bypass the administrative hearing for evictions involving a tenant engaged in certain criminal activity.

Specifically, 24 CFR 966.51 requires that the eviction involve ''any drug-related criminal activity'' or ''[a]ny criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises'' of the public housing residents and employees. Furthermore, HUD must first determine that the law of the jurisdiction requires a pre-eviction court hearing that provides the basic elements of due process as further defined by 24 CFR 966.53(c). This determination is known as a ''due process determination.'' (24 CFR 966.51(2)(i)).

HUD has voluntarily chosen to provide for public participation in rulemaking for HUD programs and functions. Under 24 CFR part 10, HUD invites public comment on the proposed rules it publishes in the **Federal Register**. In HUD's view, the issuance of a particular due process determination is not a rule, and is not subject to part 10's notice and comment rulemaking requirements. HUD's due process determinations are not discretionary ''policy'' determinations permitting public housing authorities to bypass the grievance process; rather, a due process determination is an application of an existing regulation to the law of a specific jurisdiction. In accordance with HUD's function as defined by federal law, HUD determines whether the State or local law governing local eviction procedures are consistent with the elements of due process as further defined in § 966.53(c).

Up to this time, all HUD due process determinations have been issued by letter to the governor of each affected State. The HUD determinations were not published as regulations through notice and comment rulemaking under part 10 because HUD did not view them to be rules within the meaning of part 10. However, in its recent decision in *Yesler Terrace Community Council* v. *Cisneros*, the Ninth Circuit held that the due process determination for the State of Washington was a rule under part 10, and that the part 10 notice and comment rulemaking procedures therefore applied.

Although the decision in the *Yesler* case only concerns due process determinations for the State of Washington, HUD recognizes that Ninth Circuit courts are bound by the precedent established by this case. For this reason, public housing authorities in the States comprising the Ninth Circuit cannot rely on the HUD due process determinations issued for those States.

In addition, even for jurisdictions outside the Ninth Circuit, the decision in the *Yesler* case will inevitably lead to dispute and litigation as to the ability of public housing authorities to bypass the administrative grievance process pursuant to a HUD due process determination. In and out of the Ninth Circuit therefore, the *Yesler* decision will inevitably impede the efforts of housing authorities to speedily evict tenants engaged in serious criminal activities.

To remedy this serious situation, HUD proposes to amend 24 CFR part 10 to state unambiguously and explicitly that the part 10 notice and comment rulemaking procedures do not apply to a public housing due process determination. Since the *Yesler* decision was explicitly based on the court's reading of the HUD part 10 regulation, the proposed rule would remove the legal and practical uncertainties proceeding from this decision.

In addition, this rule would amend HUD's public housing lease and grievance regulations to confirm that HUD is not required to utilize part 10's notice and comment procedures for the issuance of due process determinations. This proposed rule would also provide that for guidance of the public, HUD will publish in the **Federal Register** a notice listing the judicial eviction procedures for which HUD has issued a due process determination. HUD will make available for public inspection and copying, a copy of the legal analysis on which the due process determinations are based.

II. Eviction by Administrative Action

The rule currently provides that the PHA may evict the tenant ''only by bringing a court action'' (24 CFR 966.4(l)(4)). HUD proposes to amend the rule by providing that the PHA may also elect to evict the tenant by bringing an administrative action. The PHA may evict without bringing a court action if the law of the jurisdiction permits eviction by administrative action, after a due process administrative hearing, but does not require a court determination of the rights and liabilities of the parties. (Proposed 24 CFR 966.4(l)(4)(ii)).

This amendment is intended to avoid the necessity for duplicative administrative and judicial hearings where State or local law allows a PHA to evict a tenant after a due process administrative hearing, but does not require a court hearing or court process to carry out the eviction. The proposed rule would provide that in order to evict without bringing a court action, the PHA must afford the tenant the opportunity for a pre-eviction hearing in accordance with the PHA grievance procedure. The right to a hearing under the grievance procedure as defined by Federal statute and regulation grants a tenant the opportunity for a due process administrative hearing.

The Department is informed that under Hawaii State law, the Hawaii Housing Authority may evict a tenant after providing a due process administrative hearing. Hawaii State law does not require the Authority to bring a judicial action for eviction of a tenant. However, under HUD's current rule, the Authority may ''only'' evict the tenant by bringing a judicial action. Thus the Authority must both provide the opportunity for an administrative hearing in accordance with Hawaii law, and then bring a separate judicial action for eviction of the tenant in accordance with the HUD rule.

HUD's current rule was intended to assure that public housing tenants may not be evicted without the opportunity for a fair and full hearing, and to preclude ''self-help'' eviction by the PHA landlord, without the opportunity for such a hearing. HUD believes that the administrative hearing required by Hawaii law, and the law of any other State with analogous procedures, can protect the due process rights of the tenant. Consequently, the Department is amending the regulation to permit eviction without judicial action to determine the rights of the parties. Such eviction is only allowed as permitted by local law, and where the PHA provides the opportunity for a pre-eviction hearing under the PHA grievance procedures.

III. Regulatory Reinvention

Consistent with Executive Order 12866, and President Clinton's memorandum of March 4, 1995 to all Federal Departments and Agencies on the subject of Regulatory Reinvention, the Department is reviewing all its regulations to determine whether certain regulations can be eliminated, streamlined or consolidated with other regulations. As part of this review, this proposed rule, at the final rule stage, may undergo revisions in accordance with the President's regulatory reform initiatives. In addition to comments on the substance of these regulations, the Department welcomes comments on how this proposed rule may be made more understandable and less burdensome.

IV. Other Matters

A. Impact on the Environment

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies contained and procedures contained in this proposed rule relate only to HUD administrative procedures and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

B. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this proposed rule would 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.

The policies contained in this proposed rule merely require that HUD determine whether pre-eviction court hearings required by the local jurisdiction provide the basic elements of due process as further defined by HUD regulation. Those housing authorities situated in jurisdictions for which HUD has made such a due process determination are permitted to bypass HUD-mandated administrative hearings and to rely exclusively on the local courts.

This proposed rule would provide that HUD is not required to use 24 CFR part 10's notice and comment procedures for the issuance of due process determinations. This proposed rule would effect no changes in the current relationships between the Federal government, the States and their political subdivisions.

C. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this proposed rule will not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under this order. No significant change in existing HUD policies or programs will result from promulgation of this proposed rule, as those policies and programs relate to family concerns.

D. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605 (b)) has reviewed and approved this proposed rule, and in so doing certifies that this proposed rule will not have a significant impact on a substantial number of small entities. This proposed rule would merely provide for HUD's issuance of due process determinations without public notice and comment, and would not have any meaningful economic impact on any entity.

E. Regulatory Agenda

This proposed rule was listed as item 1370 in HUD's Semiannual Agenda of Regulations published on May 8, 1995 (60 FR 23368, 23375) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

F. Executive Order 12866

This proposed rule was reviewed by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review. Any changes made to the proposed rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the Office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh St., S.W., Washington, DC, 20410.

List of Subjects

24 CFR Part 10

Administrative practice and procedure.

24 CFR Part 966

Grant programs—housing and community development, Public housing.

Accordingly, 24 CFR parts 10 and 966 are proposed to be amended as follows:

PART 10—RULEMAKING: POLICY AND PROCEDURES

1. The authority citation for part 10 would be revised to read as follows:

Authority: 42 U.S.C. 3535(d).

2. Section 10.3 would be amended by adding a new paragraph (c) to read as follows:

§ 10.3 Applicability.

* * * * *

(c) This part is not applicable to a determination by HUD under 24 CFR part 966 (public housing) or 24 CFR part 905 (Indian housing) that the law of a jurisdiction requires that, prior to eviction, a tenant be given a hearing in court which provides the basic elements of due process (''due process determination'').

PART 966—LEASE AND GRIEVANCE PROCEDURES

3. The authority citation for part 966 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437d, 1437d(k), (1), and (n), and 3535(d).

4. In § 966.4, paragraph (l)(4) would be revised, to read as follows:

§ 966.4 Lease requirements.

* * * * *

(l) * * *

(4) *How tenant is evicted.* The PHA may evict the tenant from the unit either:

(i) By bringing a court action, or;

(ii) By bringing an administrative action if law of the jurisdiction permits eviction by administrative action, after a due process administrative hearing, and without a court determination of the rights and liabilities of the parties. In order to evict without bringing a court action, the PHA must afford the tenant the opportunity for a pre-eviction hearing in accordance with the PHA grievance procedure.

* * * * *

5. In § 966.51, paragraph (a)(2) would be amended by redesignating paragraph (a)(2)(ii) as paragraph (a)(2)(iv) and by adding new paragraphs (a)(2)(ii) and (a)(2)(iii), to read as follows:

§ 966.51 Applicability.

(a) * * *

(2) * * *

(ii) The issuance of a due process determination by HUD is not subject to 24 CFR part 10, and HUD is not required to use notice and comment rulemaking procedures in considering or issuing a due process determination.

(iii) For guidance of the public, HUD will publish in the **Federal Register** a notice listing the judicial eviction procedures for which HUD has issued a due process determination. HUD will make available for public inspection and copying a copy of the legal analysis on which the determinations are based.

* * * * *

Dated: February 14, 1995.

Henry G. Cisneros,

Secretary.

[FR Doc. 95–12461 Filed 5–19–95; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 8121]

RIN 1512–AA07

Puget Sound Viticultural Area (94F–019P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF), has received a petition for the establishment of a viticultural area in the State of Washington to be known as ''Puget Sound.'' This proposal is the result of a petition submitted by Gerard and Jo Ann Bentryn, Owners-Winemakers of Bainbridge Island Vineyards.

DATES: Written comments must be received by July 6, 1995.

ADDRESSES: Send written comments to: Chief, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 812). Copies of the petition,

the proposed regulations, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF–60 [44 56692] which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25a(e)(2), Title 27, CFR, outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (US.G.S.) maps of the largest applicable scale, and;

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the proposed boundaries prominently marked.

Petition

ATF has received a petition from Gerard and Jo Ann Bentryn of Bainbridge Island Vineyards & Winery in Bainbridge Island, Washington, proposing to establish a new viticultural area within the State of Washington to be known as ''Puget Sound.'' Puget Sound (or the ''Sound'') is an inlet of the Pacific Ocean in northwestern Washington, extending about 100 miles south from Admiralty Inlet and Juan de Fuca Strait to Olympia. The proposed viticultural area lies within the land basin surrounding the Sound. Eight letters of support from wineries and vineyards located within the proposed area were included with the petition. These letters of support were from: Mount Baker Vineyards, Whidbey Island Winery, Lopez Island Vineyards Inc., E.B. Foote Winery, Blue Apple Vineyard, Molly's Vineyard, Coolen Wine Cellar, and Johnson Creek Winery/ Alice's Restaurant.

The proposed Puget Sound viticultural area is located in the northwestern portion of Washington State. The entire Puget Sound watershed contains 13,100 square miles of land, 150 square miles of fresh water, and 2,500 square miles of saltwater. The proposed Puget Sound viticultural area contains approximately 55% of the watershed's land area and water or 7,150 square miles of land and 1,500 square miles of water for a total area of 8,650 square miles. It has a maximum length of 190 miles from north to south and 60 miles from east to west, although it is most often less than 45 miles wide.

Evidence That the Name of the Area is Locally or Nationally Known

The name ''Puget Sound'' was established in 1791 by Captain George Vancouver when he named, explored, and mapped the area while in service to the British Admiralty. His maps and those of subsequent explorers, settlers and government agencies show the Puget Sound area with the countryside drained by rivers flowing into Puget Sound. Numerous references exist indicating the general use of the name ''Puget Sound'' to refer to the petitioned area. The petitioners included copies of title pages of various publications, guide and tour book references, public telephone book listings, and Federal and State agency maps, to illustrate the use of the name. They also submitted an excerpt from, ''Touring the Washington Wine Country,'' 1993, published by the Washington Wine Commission. This publication discusses grape growing in western Washington and states that, ''[t]he expansive Puget Sound basin offers a temperate climate that rarely suffers from prolonged freezing weather in the winter and quite often enjoys a long and warm summer growing season.''

Historical or Current Evidence That the Boundaries of the Viticultural Area Are as Specified in the Petition

The proposed viticultural area is located on the land mass surrounding Puget Sound and know as the Puget Sound basin. The petitioners explained that there are no exacting and commonly understood boundaries for the basin. The basin boundaries, for example, can extend up to the crests of the Olympic and Cascade mountain ranges to include the entire watershed. However, individuals in western Washington State commonly refer to the lowland areas surrounding the Sound as the Puget Sound basin. It is these lowland areas that the petitioners feel are suited for viticulture.

The petitioners stated that, ''Puget Sound has boulders determined absolutely by the forces of nature, and recognized by common cultural use. We merely used those public roads that most closely fit within those natural boundaries of terminal moraine [accumulation of boundaries, stones, or other debris carried and deposited at the edges of the farthest reaches of a glacier's advance], rainfall lines (isohyets), and temperature to draw enforceable borders.'' [definition added] The petitioners also state that, ''[t]he proposed viticultural area is smaller than the basin because not all of the basin is suitable for viticulture. Areas with elevations greater than 600 feet are generally too wet or too cold in this region so they have been excluded.''

Evidence Relating to the Geographical Features (Climate, Soil, Elevation, Physical Features, etc.) Which Distinguish Viticultural Features of the Proposed Area From Surrounding Areas

Climate

The climate of Puget Sound is well differentiated from that of surrounding areas. The Olympic Mountains to the west and the Cascade Mountains to the east protect the region from the cool wet influence of the Pacific Ocean and the extreme summer and winter temperatures of eastern Washington. The Strait of Juan de Fuca and associated waterways separate Puget Sound from the cooler summer areas to the north. Foothills to the south of the proposed Puget Sound viticultural area are the limit of the area influenced by the moderating effect of the waters of the Sound. Both summer and winter

temperatures are significantly cooler in the hills and mountains to the west, south, and east.

The western, eastern and southern boundaries of the proposed Puget Sound viticultural area closely follow the line formed by a growing season of 180 days and the 60 inch isohyet of annual precipitation. All areas within the proposed viticultural area below 600 feet in elevation have a 180 day or longer growing season with 60 inches or less of annual rainfall, and 15 inches or less of rainfall in the months of April to October (inclusive).

Areas outside of, but adjacent to, the proposed viticultural area to the west, south, and east have a growing season of generally less than 180 days, with more than 60 inches of annual rainfall, and more than 15 inches of rainfall in the months of April to October (inclusive). Examples of weather recording stations surrounding the Puget Sound region are as follows: To the west is Forks, with a growing season of 175 days and an annual precipitation of 118 inches (38 inches April to October). To the southeast is Paradise Ranger Station (Mount Rainier National Park), with a growing season of 50 days and an annual precipitation of 106 inches (39 inches April to October). To the east is Diablo Dam with a growing season of 170 days and an annual precipitation of 72 inches (23 inches from April to October). To the northeast is Heather Meadows Recreational Area (Mt. Baker National Forest) with a growing season of 150 days and an annual precipitation of 110 inches (44 inches from April to October).

The northerly border of the proposed viticultural area closely conforms to the temperature boundary of areas experiencing a mean high temperature in the warmest month (July) of 72 degrees Fahrenheit or greater. Cool air from the Pacific Ocean moves east through the Strait of Juan de Fuca during the growing season limiting the reliable ripening of winegrapes in the areas west of the Elwha River and outside the line formed by the western boundaries of Clallam, San Juan, and Whatcom Counties and the northern boundary of Whatcom County.

Example of areas to the northwest of the proposed viticultural area with mean high temperatures in the warmest month which are lower than 72 degrees Fahrenheit are: Forks, Washington, 71 degrees F; Clallum Bay, Washington, 67 degrees F; Victoria, British Columbia, 68 degrees F; and Sidney, British Columbia, 67 degrees F.

Degree Days

Total degree days as measured by the scale developed by Winkler and Amerine of the University of California (Davis) range between 1300 at the northern border, to 2200 in the south. Typical readings are: Friday Harbor 1380, Blaine 1480, Sequim 1310, Port Townsend 1480, Mt. Vernon 1530, Coupeville 1360, Monroe 1820, Bothell 1520, Kent 1940, Seattle (U of W) 2160, Bremerton 1810, Vashon 1730, Grapeview 2010, Puyallup 1770, Tacoma 1940, and Olympia 2160. There is a significant temperature variation from north to south. According to the petitioner, this temperature variation is within a range that will allow the same types of grapes to be grown throughout the proposed area.

Rainfall

Rainfall in the proposed Puget Sound viticultural area is substantially less than in surrounding areas. It ranges from 17 inches annually in the north to 60 inches in the south. Typical amounts are: Friday Harbor 28″, Blaine 35″, Sequim 17″, Port Townsend 18″, Mt. Vernon 32″, Coupeville 18″, Monroe 47″, Bothell 40″, Kent 38″, Seattle (U of W) 35″, Bremerton 39″, Vashon 47″, Grapeview 53″, Puyallup 41″, Tacoma 37″, and Olympia 52″. Growing season rainfall ranges from 8 inches in the north to 15 inches in the south. Outside of the proposed boundaries, the rainfall ranges from 70 to 220 inches annually.

Overall, the proposed Puget Sound viticultural area can be characterized as having a growing season of over 180 days, annual degree day averages between 1300 and 2200, and annual rainfall of 60 inches or less.

Soils

Soils in the proposed Puget Sound viticultural area are completely unlike those of the surrounding upland areas in that they are the result of the advance and withdrawal of the Vashon glaciation. This most recent glaciation (10,000 years ago) coincided at its limits with the eastern, southern, and southwestern boundaries of the proposed viticultural area. The resultant soils are primarily silty to sandy topsoils with scattered small to moderate rounded stones. This is typical of post glacial soils in lowland areas. Areas outside the proposed viticultural area to the west, south and east, were not covered by ice during the Vashon glaciation. Consequently, soils in surrounding areas have entirely different origins and genesis. The primary impact on viticultural conditions by the glaciation of the proposed Puget Sound viticultural area was the development of a semi-permeable cemented subsoil at depths generally from one to ten feet. This subsoil was created by the pressure of one to three thousand feet of overlying ice. The subsoil acts as a storage vehicle for winter rains and allows deep rooted vines to survive the late-summer soil water deficit without irrigation. The surrounding areas which were not glaciated do not share this comparative advantage. The semi-permeable cemented subsoil is the most significant soil factor relative to viticulture in the area.

Topography and Geographical Features

The Puget Sound basin is a large lowland surrounding bodies of salt water called in government reports ''Puget Sound'' or ''Puget Sound and Adjacent Waters.'' These waters comprise Puget Sound, a long, wide ocean inlet. The basin is cut by many rivers flowing into the Sound. Low rolling hills formed by the deposit and erosion of advancing and retreating glaciers are cut by ravines and stream channels. The dominating natural features are the sound itself and the surrounding mountains. The Olympic mountain range forms the western boundary of the Puget Sound basin. These mountains intercept moist maritime Pacific air and account for the relatively low annual precipitation. The Cascade mountain range forms the eastern boundary of the Puget Sound basin. These mountains protect the basin from the extremely cold winters and hot summers of eastern Washington. Elevations in the basin are primarily between sea-level and 1,000 feet. Isolated hills of up to 4,000 feet occur primarily in the northeast but none of the existing vineyards is above 600 feet in elevation.

Viticulture

The petitioners state that neither vinifera nor labrusca vines are native to the area; however, they are now grown throughout the basin. In 1872, Lambert Evans established a vineyard on Stretch Island in southern Puget Sound. He sold the fruit in Seattle. In the 1890's a viticulturalist from the east coast named Adam Eckert brought new grape varieties and planted more vineyards on the island. The first bonded winery in Washington State was established there in 1933 by Charles Somers. Known as the St. Charles Winery, it reached a capacity of 100,000 gallons. Viticulture spread throughout the Puget Sound basin as evidenced by the annual reports of the Washington State Department of Agriculture. These

primarily labrusca plantings were gradually supplanted in most of the basin by vinifera plantings from the 1950's to the present. The Washington State Department of Agriculture report entitled, ''Washington Agriculture,'' 1960, reported 2 small areas of grape cultivation outside of Yakima Valley; one of them being ''in western Washington in Kitsap county. There along the shores of Puget Sound, grapes have grown satisfactorily for many years.'' The 1993 publication, ''Touring the Washington Wine Country,'' which is published by the Washington Wine Commission states that, ''Small vineyards flourish on Puget Sound's islands . . .'' There are now over 50 acres of vineyards in the basin and 25 bonded wineries.

Proposed Boundaries

The boundaries of the proposed Puget Sound viticultural area may be found on four 1:250,000 scale U.S.G.S. maps titled: Hoquiam, Washington (1974); Seattle, Washington (1974); Wenatchee, Washington (1971); Victoria, B.C., Can., Wash., U.S. (1974); one 1:25,000 scale map titled: Auburn, Washington (1983); and three 1:24,000 scale maps titled: Buckley, Washington (1993); Cumberland, Washington (1993); and Enumclaw, Washington (1993).

Public Participation—Written Comments

ATF requests comments from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

ATF will not recognize any submitted material as confidential and comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Comments may be submitted by facsimile transmission to (202) 927–8602, provided the comments: (1) are legible; (2) are 8½″ × 11″ in size, (3) contain a written signature, and (4) are three pages or less in length. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of three pages will not be accepted. Receipt of FAX transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

Any person who desires an opportunity to comment orally at a public hearing on the proposed regulation should submit his or her request, in writing, to the Director within the 45-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 C.F.R. Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Regulatory Flexibility Act

It is hereby certified that this proposed regulation will not have a significant impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that region.

Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have significant secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this executive order.

Drafting Information

The principal author of this document is David W. Brokaw, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco, and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

Par. 2. Subpart C is amended by adding § 9.151 to read as follows:

§ 9.151 Puget Sound.

(a) *Name.* The name of the viticultural area described in this section is ''Puget Sound.''

(b) *Approved maps.* The appropriate maps for determining the boundary of the Puget Sound viticultural area are four 1:250,000 scale U.S.G.S. topographical maps, one 1:25,000 scale topographic map, and three 1:24,000 scale topographic maps. They are titled:

(1) Hoquiam, Washington, 1958 revised 1974 (1:250,000).

(2) Seattle, Washington, 1958 revised 1974 (1:250,000).

(3) Wenatchee, Washington, 1957 revised 1971 (1:250,000).

(4) Victoria, B.C., Can., Wash., U.S., 1957 revised 1974 (1:250,000).

(5) Auburn, Washington, 1983 (1:25,000).

(6) Buckley, Washington, 1993 (1:24,000).

(7) Cumberland, Washington, 1993 (1:24,000).

(8) Enumclaw, Washington, 1993 (1:24,000).

(c) *Boundary.* The Puget Sound viticultural area is located in the State of Washington. The boundaries of the Puget Sound viticultural area, using landmarks and points of reference found on appropriate U.S.G.S. maps, follow.

(1) Beginning where the Whatcom county line comes closest to an unnamed secondary road (referred to in the petition as Silver Lake Road) on the U.S.G.S. map ''Victoria,'' T41N/R6E;

(2) Then south along Silver Lake Road approximately 5.5 miles to its intersection with State Highway 542, T39N/R5E;

(3) Then west and then southwest along State Highway 542 approximately 11 miles to its intersection with State Highway 9, T38N/R5E;

(4) Then south along State Highway 9 approximately 44 miles to its intersection with an unnamed secondary road (referred to in the petition as Burn Road) at the town of Arlington, T31N/R5E;

(5) Then south, southeast along Burn Road approximately 11 miles to its intersection with State Highway 92, T30N/R6E;

(6) Then south along State Highway 92 approximately 3 miles to its intersection with an unnamed light duty road (referred to in the petition as Machias Hartford Road), T29N/R6E;

(7) Then south along Machias Hartford Road approximately 4 miles to its intersection with an unnamed secondary road (referred to in the petition as Lake Roesiger Road), on the U.S.G.S. map ''Wenatchee,'' T29N/R7E;

(8) Then east along Lake Roesiger Road approximately 3.5 miles to its intersection with an unnamed secondary road (referred to in the petition as Woods Creek Road), T29N/R7E;

(9) Then south along Woods Creek Road approximately 10.5 miles to its intersection with U.S. Highway 2 in the town of Monroe, T27N/R7E;

(10) Then west along U.S. Highway 2 approximately ½ mile to its intersection with State Highway 203, T27N/R6E;

(11) Then south along State Highway 203 approximately 24 miles to its intersection with an unnamed secondary road (referred to in the petition as Preston-Fall City Road), at the town of Fall City, T24N/R7E;

(12) Then southwest along Preston-Fall City Road approximately 4 miles to its intersection with Interstate Highway 90 at the town of Preston, T24N/R7E;

(13) Then east along Interstate Highway 90 approximately 3 miles to its intersection with State Highway 18, T23N/R7E;

(14) Then southwest along State Highway 18 approximately 7 miles to its intersection with an unnamed secondary road (referred to in the petition as 276th Avenue SE), T23N/R6E;

(15) Then south along 276th Avenue SE approximately 5 miles to its intersection with State Highway 516 at the town of Georgetown, T22N/R6E;

(16) Then west along State Highway 516 approximately 2 miles to its intersection with State Highway 169 at the town of Summit on the U.S.G.S. map, ''Seattle,'' (shown in greater detail on the U.S.G.S. map, ''Auburn''), T22N/R6E;

(17) Then south along State Highway 169 approximately 11.5 miles to its intersection with State Highway 410 at the town of Enumclaw on the U.S.G.S. map, ''Wenatchee,'' (shown in greater detail on the U.S.G.S. map, ''Enumclaw''), T20N/R6E;

(18) Then southwest approximately 5 miles along State Highway 410 until its intersection with State Highway 165 on the U.S.G.S. map, ''Seattle,'' (shown in greater detail on the U.S.G.S. map, ''Buckley''), T19N/R6E;

(19) Then southwest on State Highway 165 until its intersection with State Highway 162 at the town of Cascade Junction on the U.S.G.S. map, ''Seattle'' (shown in greater detail on the U.S.G.S. Map, ''Buckley''), T19N/R6E;

(20) Then southwest along State Highway 162 approximately 8 miles to its intersection with an unnamed secondary road (referred to in the petition as Orville Road E.), T19N/R5E;

(21) Then south along Orville Road E., approximately 8 miles to its intersection with the CMSTP&P railroad at the town of Kapowsin, on the U.S.G.S. map, ''Hoquiam,'' T17N/R5E;

(22) Then south along the CMSTP&P railroad approximately 17 miles to where it crosses the Pierce County line at the town of Elbe, T15N/R5E;

(23) Then west along the Pierce County line approximately 1 mile to the eastern tip of Thurston County, T15N/R5E;

(24) Then west along the Thurston County line approximately 38 miles to where it crosses Interstate Highway 5, T15N/R2W;

(25) Then north along Interstate Highway 5 approximately 18 miles to its intersection with U.S. Highway 101 at the town of Tumwater on the U.S.G.S. map ''Seattle,'' T18N/R2W;

(26) Then northwest along U.S. Highway 101 approximately 18 miles to its intersection with State Highway 3 at the town of Shelton, T20N/R3W;

(27) Then northeast along State Highway 3 approximately 24 miles to where it crosses the Kitsap County line, T23N/R1W;

(28) Then north along the Kitsap County line approximately 3 miles to the point where it turns west, T23N/R1W;

(29) Then west along the Kitsap County line approximately 11 miles to the point where it turns north, T23N/R3W;

(30) Then continuing west across Hood Canal approximately 1 mile to join with U.S. Highway 101 just south of the mouth of an unnamed creek (referred to in the petition as Jorsted Creek), T23N/R3W;

(31) Then north along U.S. Highway 101 approximately 40 miles to the point where it turns west at the town of Gardiner on the U.S.G.S. map ''Victoria,'' T30N/R2W;

(32) Then west along U.S. Highway 101 approximately 32 miles to where it crosses the Elwha River, T30N/R7W;

(33) Then north along the Elwha River approximately 6 miles to its mouth, T31N/R7W;

(34) Then continuing north across the Strait of Juan de Fuca approximately 5 miles to the Clallam County line, T32N/R7W;

(35) Then northeast along the Clallam County line approximately 14 miles to the southwestern tip of San Juan County, T32N/R4W;

(36) Then northeast along the San Juan County line approximately 51 miles to the northern tip of San Juan County, T38N/R3W;

(37) Then northwest along the Whatcom County line approximately 19 miles to the western tip of Whatcom County, T41N/R5W;

(38) Then east along the Whatcom County line approximately 58 miles to the beginning.

Signed: May 3, 1995.

Daniel R. Black,

Acting Director.

[FR Doc. 95–12410 Filed 5–19–95; 8:45 am]

BILLING CODE 4810–31–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[IN001; FRL–5209–6]

Clean Air Act Proposed Interim Approval of Operating Permits Program; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: The EPA proposes interim approval of the operating permits program submitted by Indiana for the purpose of complying with Federal requirements which mandate that States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by June 21, 1995. Comments should be addressed to the contact indicated below.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois 60604. Please

contact Sam Portanova at (312) 886–3189 to arrange a time if inspection of the submittal is desired.

FOR FURTHER INFORMATION CONTACT: Sam Portanova, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3189.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

As required under Title V of the Clean Air Act (''the Act'') as amended (1990), EPA has promulgated regulations 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 State operating permits programs (see 57 FR 32250 (July 21, 1992)). These regulations are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires States to develop, and submit to 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 programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. 40 CFR 70.4(e)(2), however, allows the Administrator to extend the review period of a State's submittal if the State's submission is materially altered during the 1-year review period. This additional review period may not extend beyond 1 year following receipt of the revised submission.

The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993, date, or by the end of an interim program, it must establish and implement a Federal program.

II. Proposed Action and Implications

A. Analysis of State Submission

The EPA is proposing to grant interim approval to the operating permits program submitted by Indiana on August 10, 1994. Indiana's program substantially meets the requirements of part 70; however, certain issues must be addressed in the State's submittal before EPA can grant full approval. This notice will outline the corrections necessary for full approval.

For more detailed information on the analysis of the State's submission, please refer to the part 70 Operating Permits Program Review Checklist and technical support document (TSD) included with the docket of this interim approval.

1. Support Materials

An August 5, 1994, letter from Kathy Prosser, Commissioner of the Indiana Department of Environmental Management (IDEM), to Valdas V. Adamkus, Regional Administrator of EPA Region 5, accompanying the State's submittal, names the IDEM as the state agency responsible for the administration of Indiana's Title V operating permit program throughout the entire state.

The Indiana Title V submittal contains all the elements required by 40 CFR 70.4(b). Also included in the State's submittal is a narrative description of the State's program summarizing how the State will meet the requirements of part 70 and a legal opinion from Pamela Carter, Attorney General of the State of Indiana, certifying that the legal authority exists for the State to administer and enforce the Title V program.

The State's Title V program regulations are found in the Indiana Administrative Code (IAC) under 326 IAC 2–7. Although the Indiana Title V submittal contains regulations other than 326 IAC 2–7, this notice is only taking action on 326 IAC 2–7. Supporting legislative authority is found in the Indiana Code (IC) under IC 4–21, IC 5–14, IC 13–1, IC 13–6, and IC 13–7.

2. Regulations and Program Implementation

a. Applicability

The Indiana program meets the requirements of 40 CFR 70.2 and 70.3 for applicability in 326 IAC 2–7–2. Please refer to the TSD, included with the docket of this interim approval, for more information regarding the language in 326 IAC 2–7–2.

b. Permit Applications

The Indiana program, in 326 IAC 2–7–4, substantially meets the requirements of 40 CFR 70.5 for permit applications. The Indiana program submittal also includes complete permit application forms.

A deficiency in the State's permit application requirements exists, however, concerning insignificant activities, which are defined in 326 IAC 2–7–1(20). The following are the insignificant activity threshold levels for the Indiana program:

5 pounds per hour (lb/hr) or 25 pounds per day (lb/day) of particulate matter (PM);
10 lb/hr or 50 lb/day of sulfur dioxide (SO_2);
5 lb/hr or 25 lb/day of nitrogen oxides (NO_X);
3 lb/hr or 15 lb/day of volatile organic compounds (VOC);
25 lb/day of carbon monoxide (CO);
0.6 tons per year (tpy) or 3.29 lb/day of lead or lead compounds measured as elemental lead.

A source must meet both emission levels (i.e., lb/hr and lb/day) to qualify for the exemption. These levels equal a maximum potential of 2.74 tpy of VOC, 4.56 tpy of CO, NO_X, and PM, and 9.13 tpy of SO_2. In addition, 326 IAC 2–1–1(b)(1)(H) exempts modifications to major sources of hazardous air pollutants (HAP) which will increase allowable emissions by less than 4 tpy for one HAP or 10 tpy of any combination of HAPs from the Title V program.

EPA is granting full approval to the VOC, CO, NO_X, and PM insignificant activity levels. EPA is granting interim approval to the SO_2 and HAP insignificant activity levels. If EPA's concerns for the SO_2 and HAP levels are addressed in the State's final regulations before final action on this notice, then EPA can fully approve Indiana's SO_2 and HAP insignificant activities. Alternatively, if the State does not address EPA's concerns before final action on this notice, then EPA's final action will include an interim approval on this issue. The rationale for the interim approval status is provided in the TSD included with the docket of this interim approval.

c. Permit Issuance, Renewal, Reopenings and Revisions

The Indiana program meets the requirements of 40 CFR 70.7 and 70.8 for permit issuance, renewal, reopenings, and public participation and the requirements of 40 CFR 70.4(b)(12) for operational flexibility. Please refer to the TSD, included with the docket of this interim approval, for more information regarding the language in 326 IAC 2–7–11 for administrative permit amendments.

An interim approval issue exists, however, with respect to the State's threshold levels for group processing of permits. The Indiana program's threshold level for minor permit modification (MPM) group processing eligibility is not as stringent as the part 70 threshold level. According to 326 IAC 2–7–12(c)(1)(B), Indiana's thresholds are:

PM = 5 lb/hr or 25 lb/day (4.56 tpy)
SO_2 = 10 lb/hr or 50 lb/day (9.13 tpy)
NO_X = 5 lb/hr or 25 lb/day (4.56 tpy)
VOC = 3 lb/hr or 15 lb/day (2.74 tpy)

CO = 25 lb/hr or 125 lb/day (22.81 tpy)
Lead = 0.6 tpy
HAP = 4 tpy of one HAP/10 tpy of any combination of HAPs

40 CFR 70.7(e)(3)(i) states that the threshold for allowing group processing of permit modifications are modifications that collectively emit: 10 percent of the emissions allowed by the permit for the unit for which the change is requested; or 20 percent of the applicable definition of major source; or 5 tons per year; whichever is least. EPA is proposing interim approval for the Indiana threshold levels. To obtain full approval, Indiana must establish a group processing threshold consistent with 40 CFR 70.7(e)(3)(i) or demonstrate that an alternative threshold would alleviate severe administrative burden and would result in trivial environmental impact. If EPA's concerns are addressed by a change in the State's final regulations or by a State demonstration before final action on this notice, then EPA can fully approve the State's group processing threshold levels. Alternatively, if the State does not address EPA's concerns before final action on this notice, then EPA's final action will include an interim approval on this issue.

d. Permit Content

Another major component of Indiana's program concerns the contents of a Title V permit. The program substantially meets the requirements of 40 CFR 70.6. A Title V permit will incorporate applicable requirements of existing State Implementation Plans (SIP), as well as any future applicable requirements promulgated by EPA. Authority exists in 326 IAC 2–7–13 to develop general permits covering numerous similar sources, except for sources subject to the Acid Rain Program. These general permits are targeted for future development.

326 IAC 2–7–5(1)(F) states that emission limitations applicable to start-up, shutdown and emergency bypasses shall be addressed on a case-by-case basis in the permit. Sources that request these limitations must do so in their Title V permit application. In response to EPA's concern that such a provision could be interpreted to enable the State to issue a permit which would violate a SIP requirement, Indiana has provided assurance that it will issue only those permits that comply with all applicable requirements of the Indiana SIP. See letter of April 28, 1995, from Kathy Prosser, Commissioner of the Indiana Department of Environmental Management, to Valdas Adamkus, Regional Administrator, EPA, Region 5.

Another component of permit content is the length of time in which a source must notify the permitting authority to report a deviation from a permit condition. Part 70 of the operating permits regulations requires prompt reporting of deviations from the permit requirements. 40 CFR 70.6(a)(3)(iii)(B) requires the permitting authority to define ''prompt'' in relation to the degree and type of deviation likely to occur and the applicable requirements. Although the permit program regulations should define ''prompt'' for purposes of administrative efficiency and clarity, an acceptable alternative is to define the term in each individual permit. Prompt reporting, however, must be more frequent than the semiannual reporting requirement, given this is a distinct reporting obligation under 40 CFR 70.6(a)(3)(iii)(A). Indiana addresses the issue of prompt reporting in 326 IAC 2–7–5(3)(C)(ii). Because Indiana did not actually define ''prompt,'' EPA may veto permits that do not contain sufficiently prompt reporting requirements for deviations. EPA and Indiana will address the appropriate definition of ''prompt'' in the Implementation Agreement that will be developed for the Indiana program.

e. Public and EPA Comment Periods

326 IAC 2–7–18 provides for the public comment period for a draft permit and the EPA review of a proposed permit to occur concurrently. EPA will receive a copy of a draft permit when it is issued for a 30-day comment period for the public and affected States.

If comments are received, but the State does not change the permit, the State will notify EPA and send to EPA a signed copy of the draft permit that will then be the proposed permit. EPA has up to 15 days after the receipt of the proposed permit to notify the State if it wishes to have a full 45-day review period for the proposed permit. Otherwise, EPA's comment period ends 45 days after it first receives the draft permit. Please refer to the TSD, included with the docket of this interim approval, for more information regarding Indiana's public comment procedures.

f. Enforcement

The Indiana program meets the enforcement authority requirements of 40 CFR 70.11. The Indiana statute addresses these requirements in IC 13–7–5, 13–7–11, 13–7–12, and 13–7–13. The Indiana Attorney General's legal opinion certifies that the Indiana statue adequately meets the requirements of 40 CFR 70.11.

3. Permit Fee Demonstration

According to 326 IAC 2–7–19, Indiana will charge part 70 sources a $1500 flat fee plus $33 per ton of actual emissions of each regulated pollutant. If the source emits over 100 tpy of both VOC and NO_X and is located in Lake or Porter County, it shall not pay more than $200,000 in Title V fees. All other sources shall not pay more than $150,000. Sources will have to pay 50 percent of this amount in 1994 and 75 percent of this amount in 1995. The dollar amounts will be adjusted by the Consumer Price Index beginning in 1996. Indiana has demonstrated in the Title V program submittal that its fee schedule will collect adequate fees to satisfy the EPA presumptive minimum amount beginning in 1996.

Indiana's fee schedule for 1995 will be $24.75 per ton of emissions plus a $1,125 flat fee per source. This is below the EPA presumptive minimum fee amount. Indiana's program, however, will be in effect for only a portion of 1995 and Indiana has demonstrated that it will provide enough of the 1995 fee schedule for the post-program approval period to meet the EPA presumptive minimum amount. Please refer to the TSD, included with the docket of this interim approval, for more information regarding the State's fee demonstration.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and/or Commitments for Section 112 Implementation

Indiana has demonstrated in its Title V program submittal adequate legal authority to implement and enforce all section 112 requirements through Title V permits. This legal authority is contained in Indiana's enabling legislation and in regulatory provisions defining ''applicable requirements'' and stating that the permit must incorporate all applicable requirements. EPA has determined that this legal authority is sufficient to allow Indiana to issue permits that assure compliance with all section 112 requirements.

The EPA is accepting the above legal authority as an adequate demonstration that Indiana is able to carry out all section 112 activities relative to Title V sources. For further rationale on this interpretation, please refer to the TSD accompanying this rulemaking and the April 13, 1993, guidance memorandum titled ''Title V Program Approval Criteria for section 112 activities,'' signed by John Seitz, Director of the Office of Air Quality Planning and Standards.

b. Implementation of section 112(g) Upon Program Approval

As a condition of approval of the Title V program, Indiana is required to implement section 112(g) of the Act. Indiana has promulgated a ''MACT Rule'' in 326 IAC 2–1–3.3. The purpose of this regulation is to provide Indiana the necessary mechanism to implement section 112(g). 326 IAC 2–1–3.3(e) states that permit conditions necessary to implement the provisions of 326 IAC 2–1–3.3 shall be established in 326 IAC 2–1–3. 326 IAC 2–1–3 is the Indiana NSR construction permit regulation, which has been approved into the Indiana SIP. 326 IAC 2–1–3.3 applies to new or reconstructed sources emitting greater than 10 tpy of a HAP or 25 tpy of any combination of HAPs. The regulation also applies to modifications to HAP sources which emit 4 tpy of one HAP or 10 tpy of any combination of HAPs.

According to the **Federal Register** notice published on February 14, 1995, 60 FR 8333, the requirements of section 112(g) will not become effective until after EPA has promulgated a regulation addressing that provision. The **Federal Register** notice sets forth in detail the rationale for this interpretation. At the time of Indiana's program submittal and EPA's subsequent review period, EPA has not promulgated a federal regulation containing the specific requirements of section 112(g).

The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal regulation so as to allow States time to adopt regulations implementing the Federal regulation, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Indiana must be able to implement section 112(g) during the period between promulgation of the Federal section 112(g) regulation and adoption of implementing State regulations. Imposition of case-by-case determinations of maximum achievable control technology (MACT) or offsets under section 112(g) will require the use of a mechanism for establishing federally enforceable restrictions on a source-specific basis.

For this reason, EPA is proposing approval of Indiana's MACT regulation (326 IAC 2–1–3.3) under the authority of Title V and part 70 solely for the purpose of implementing section 112(g) during the transition period between promulgation of the section 112(g) regulation and adoption by Indiana of regulations implementing the provisions of section 112(g). However, since the approval is for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) regulation that sources are not subject to the requirements of the regulation until State regulations are adopted. The EPA is limiting the duration of this proposal to 18 months following promulgation by EPA of the section 112(g) regulation. Once promulgated by EPA, the 112(g) regulation will serve as the mechanism for establishing federally enforceable case-by-case MACT emission limits for HAPs. EPA is interpreting Indiana's legal authority and commitment (Enclosure H, page 33 of the Indiana program submittal) to mean that, upon promulgation of the section 112(g) regulation, the State will expeditiously adopt regulations consistent with the provisions of 112(g).

Although section 112(l) generally provides authority for approval of State air toxics programs, Title V and section 112(g) provide authority for this limited approval because of the direct linkage between implementation of section 112(g) and Title V. The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purposes of section 110 or any other provision under the Act.

c. Program for Delegation of Section 112 Standards as Promulgated

The requirements for a Title V program approval, specified in 40 CFR 70.4(b), also encompass section 112(l)(5) requirements for approval of a State program for delegation of section 112(d), (f), or (h) standards as promulgated by EPA 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 part 70. Therefore, the EPA is proposing to grant approval, under section 112(l)(5) and 40 CFR 63.91, of Indiana's program for receiving delegation of section 112(d), (f), or (h) standards that are unchanged from the Federal standards as promulgated. This program approval applies to both existing and future standards, but is limited to sources covered by the part 70 program.

Indiana has informed EPA that it intends to accept delegation of section 112(d), (f), or (h) standards through rule adoption. The details of this delegation mechanism will be set forth in a Memorandum of Agreement between Indiana and EPA expected to be completed prior to approval of Indiana's section 112(l) program for delegations.

d. Limiting HAP Emissions Through a FESOP Program

At the time of the publication of this **Federal Register** notice, USEPA has not approved a FESOP regulation which would establish federally enforceable limits on sources' potential to emit. If USEPA approves the Indiana FESOP regulation, Indiana will have the ability to place federally enforceable limits on HAPs in addition to criteria pollutants. The federal enforceability of HAP limits will be addressed in any future SIP approving the FESOP program.

e. Title IV

Indiana's program contains adequate authority to issue permits which reflect the requirements of Title IV and its implementing regulations. 326 IAC 21–1–1 incorporates by reference 40 CFR parts 72, 75, 76, 77, and 78. Indiana's program submittal contains a commitment to revise its regulations as necessary to accommodate federal revisions and additions to Title IV and the Acid Rain regulations once they are promulgated.

B. Options for Approval/Disapproval and Implications

The EPA is proposing to grant interim approval to the operating permits program submitted by Indiana on August 10, 1994. If this interim approval is promulgated, the State must make the following changes to receive full approval: (1) The State must amend its insignificant activities levels for SO_2 and HAPs to levels which assure that large sources are included in Title V review and (2) the State must revise its emissions threshold level for MPM group processing eligibility to be consistent with the 40 CFR 70.7(e)(3)(i)(B) threshold level or the State may demonstrate that an alternative to the 40 CFR 70.7(e)(3)(i)(B) level is acceptable. Indiana's program is not fully approvable because of the deficiencies mentioned above. The program, however, substantially meets the requirements of part 70 because Indiana's regulations and legislation comply with all other part 70 requirements. If EPA's concerns on the issues mentioned above are addressed before final action on this notice, then EPA can fully approve Indiana's program. Alternatively, if the State does not address EPA's concerns on these issues before final action on this notice, then EPA's final action will remain an interim approval of the Indiana program.

This interim approval, which may not be renewed, extends for a period of up to 2 years. During the interim approval period, the State is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal permits program in the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the 3-year time period for processing the initial permit applications. Because the interim approval automatically expires 2 years after promulgation of a final interim approval, the State may submit its interim corrections at any time. However, the State may not submit its corrections any later than 18 months after promulgation of final interim approval. The EPA will then have 6 months to promulgate a final action.

C. Federal Oversight and Sanctions

Where EPA grants interim approval, it would extend for 2 years following the effective date of final interim approval, and could not be renewed. During the interim approval period, the State would not be subject to sanctions and EPA would not be obligated to promulgate, administer, and enforce a Federal permits program for the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval as does the 3-year time period for processing the initial permit applications.

State failure to timely correct the deficiencies which are the basis for an interim approval or EPA disapproval of a submitted corrective program will start an 18-month clock for the mandatory imposition of section 179(b) sanctions. Each of these occasions starts a separate sanctions clock and time is not accumulated from one clock to another. Section 179(b) of the Act mandates the impositions of the following sanctions: (1) 2 to 1 emission offsets for new construction in nonattainment areas and (2) restriction on federal funding of highway projects. The offset sanction would be imposed 18 months after a sanctions clock is started and the highway sanction would be imposed 6 months after the offset sanction.

Following final interim approval, if the State failed to submit a complete corrective program for full approval by 6 months before expiration of the interim approval, EPA would start the sanctions clock. If the State then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would be required to apply the first section 179(b) sanction, which would remain in effect until EPA determined that the State had submitted a complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of the State, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the State had come into compliance. In any case, if, 6 months after the application of the first sanction, the State still had not submitted a corrective program that EPA found complete, the second sanction would be required.

If, following final interim approval, EPA were to disapprove the State's complete corrective program, EPA would be required to apply the first section 179(b) sanction on the date 18 months after the effective date of the disapproval, unless, prior to that date, the State had submitted a revised program and EPA had determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of the State, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the State had come into compliance, In all cases, if, 6 months after EPA applied the first sanction, the State had not submitted a revised program that EPA had determined corrected the deficiencies that prompted disapproval, the second sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if a State has not timely submitted a complete corrective program or EPA had disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to a State program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for that State upon interim approval expiration.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the State's submittal and other information relied upon for the proposed interim 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, EPA in the development of this proposed rulemaking. 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 rulemaking process, and

(2) To serve as the record in case of judicial review. The EPA will consider any comments received by June 21, 1995.

B. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

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 regulation on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the regulation 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.

Operating permits program approvals under section 502 of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal operating permits program 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 Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of State action.

The Act forbids EPA to base its actions concerning operating permits programs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct 1976); 42 U.S.C. 7410(a)(2).

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 budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local or tribal governments in the aggregate; or to the private sector of $100 million or more. Under section 205, EPA must select the most cost-

effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the proposed approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. sections 7401–7671q.

Dated: May 9, 1995.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 95–12474 Filed 5–19–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF ENERGY

48 CFR Part 970

RIN 1991–AA63

Acquisition Regulation; Technology Transfer Activities of Department of Energy (DOE) Management and Operating Contractors

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) today proposes an amendment to codify DOE's implementation of its technology transfer mission for DOE laboratories (including weapon production facilities) operated by management and operating contractors. The National Competitiveness Technology Transfer Act of 1989 required that technology transfer be established as a mission of each Government-owned laboratory operated under contract by a non-Federal entity. The National Defense Authorization Act for Fiscal Year 1994 expanded the Stevenson-Wydler Technology Innovation Act of 1980 definition of laboratory to include weapon production facilities of the Department of Energy that are operated for national security purposes and are engaged in the production, maintenance, testing, or dismantlement of a nuclear weapon or its components. DOE is proposing to amend the Department of Energy Acquisition Regulation to specify that each new award for or renewal of an existing management and operating contract for the operation of a DOE laboratory or weapon production facility shall have technology transfer as a mission.

DATES: Written comments must be received by July 21, 1995.

ADDRESSES: Comments should be addressed to: Howard K. Mitchell, Policy Analyst, Office of Policy (HR–51), Office of the Deputy Assistant Secretary for Procurement and Assistance Management, Washington, D.C., 20585, (202) 586–8190.

FOR FURTHER INFORMATION CONTACT: Howard K. Mitchell, (202) 586–8190.

SUPPLEMENTARY INFORMATION:

I. Background
II. Section by Section Analysis of the Proposed Rule
III. Procedural Requirements
A. Regulatory Review Under Executive Order 12866
B. Review Under Executive Order 12612
C. Review Under Executive Order 12778
D. Review Under the Regulatory Flexibility Act
E. Review Under the Paperwork Reduction Act
F. Review Under the National Environmental Policy Act (NEPA)
IV. Public Comments
V. Public Hearing

I. Background

Under Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), the Secretary of Energy is authorized to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in the position. Accordingly, the Department of Energy Acquisition Regulation was promulgated with an effective date of April 1, 1984, (49 FR 11922, March 28, 1984), 48 CFR chapter 9. With this rule, DOE is proposing an addition amending part 970 of the Department of Energy Acquisition Regulation to codify DOE's implementation of its technology transfer mission for DOE laboratories and weapon production facilities operated by management and operating contractors.

Technology advancement is a key component in the growth of the United States industrial economy, and a strong industrial base is an essential element of national security. Further, there is a continuing need to enhance United States competitiveness in both domestic and international markets. DOE laboratories and weapon production facilities, operated by DOE management and operating contractors, have developed outstanding capabilities in a wide variety of advanced technologies and are staffed with scientists, engineers, technicians and other personnel associated with those technologies. The deployment of these resources to work with the private sector through cooperative efforts, consistent with the laboratory's or facility's program mission assignments, can make a substantial contribution to the competitive posture of United States industry.

In recognition of such capabilities, Congress enacted the National Competitiveness Technology Transfer Act of 1989. This Act extended to Government-owned contractor-operated laboratories the same authority to enter into cooperative research and development agreements (CRADAs) which the Federal Technology Transfer Act of 1986 had given to Government-owned Government-operated laboratories and also provided for the protection from dissemination of certain types of information generated under CRADAs. Section 3133(d) of the Act required, by April 30, 1990, each agency which had contracted with a non-Federal entity to operate a Government-owned laboratory to propose for inclusion in that laboratory's operating contract, appropriate contract provisions to implement the requirements of the Act. The National Competitiveness Technology Transfer Act of 1989, as amended by Sections 3134 and 3160 of the National Defense Authorization Act for Fiscal Year 1994, established technology transfer as a mission for Government-owned, contractor-operated laboratories as well as for weapon production facilities. It also authorized such laboratories and weapon facilities to negotiate and award CRADAs with other Federal agencies, State and local governments, industrial organizations, public and private foundations, nonprofit organizations and other persons for the purposes of transferring technology and conducting research and development. Additionally, Sec. 3133(a)(7) of the Act allows certain types of information generated under CRADAs to be protected from disclosure under the Freedom of Information Act for a period of up to five years.

The promulgation and use of a final version of a technology transfer contract clause for DOE laboratories and weapon production facilities operated by

management and operating contractors, which is proposed in this rulemaking, will minimize unnecessary differences in policies and procedural requirements among various laboratories and weapon production facilities. This is expected to benefit the prospective CRADA or other industrial participants by improving both the speed and certainty of the technology transfer process.

The clause requires that the availability of technology transfer opportunities be well publicized with enough general detail to quickly attract private sector participants with the capabilities to fully exploit the technology's commercial applications while benefitting the U.S. economy. It requires that all aspects of the technology transfer program are handled to avoid real or perceived conflict of interest and that commercially valuable data, including marketing and financial data, are appropriately handled and protected. As required by the Act, the proposed rule requires that all new awards for or extensions of existing DOE laboratory or weapon production facility management and operating contracts will have technology transfer as a laboratory or facility mission.

II. Section-by-Section Analysis

A detailed list of additions and changes follows.

1. The authority citation for part 970 is revised to add a reference to the authorities provided by the National Competitiveness Technology Transfer Act of 1989, as amended by Sections 3134 and 3160 of Public Law 103–160.

2. The clause for a laboratory or weapon production facility management and operating contract is added as a new section 970.5204–X, Technology Transfer Mission.

3. A new subpart 970.73, Technology Transfer, and a new section thereunder, 970.7310, General, are added to summarize the DOE technology transfer mission and its conduct in DOE owned-facilities. Two additional new sections, 970.7320, Policy, and 970.7330, Contract Clause, are added to describe the circumstances when technology transfer is to be made a contract requirement of a management and operating contract for the operation of a laboratory or weapon production facility and the clause reference to be used in a solicitation and contract award.

III. Procedural Requirements

A. Regulatory Review Under Executive Order 12866

Today's regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Review Under Executive Order 12612

Executive Order 12612 (52 FR 41285, October 30, 1987) requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's proposed rule, when finalized, will revise certain policy and procedural requirements. However, DOE has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional functions of the States.

C. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's proposal meets the requirements of sections 2(a) and (b) of Executive Order 12778.

D. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This proposed rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences, such as changed construction rates. DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

E. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this proposed rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

F. Review Under the National Environmental Policy Act (NEPA)

DOE has concluded that promulgation of this rule falls into a class of actions (categorical exclusion A5) that are categorically excluded from NEPA review because they would not individually or cumulatively have significant impact on the human environment, as determined by the Department's regulations (10 CFR Part 1021, Subpart D) implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321, 4331–4335, 4341–4347 (1976)). Therefore, this rule does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

IV. Public Comments

Interested persons are invited to participate by submitting data, views, or arguments with respect to the proposed Department of Energy Acquisition Regulation amendments set forth in this notice. Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. All comments received will be available for public inspection in the DOE Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received by the date indicated in the **DATES** section of this notice and all other relevant information in the record will be carefully assessed and fully considered prior to publication of the proposed amendment as a final rule. Any information considered to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information

and to treat it according to our determination (See 10 CFR 1004.11).

V. Public Hearing

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have substantial impact on the nation's economy or a large number of individuals or businesses. Therefore, pursuant to Pub. L. 95–91, the DOE Organization Act, and the Administrative Procedure Act (5 U.S.C. 553), the Department does not plan to hold a public hearing on this proposed rule.

List of Subjects in 48 CFR Part 970

Government procurement.

Issued in Washington, DC on May 17, 1995.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set forth in the preamble 48 CFR Part 970 is proposed to be amended as set forth below:

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

1. The authority citation for Part 970 is revised to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), Sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), Sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420), Sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99–145 (42 U.S.C. 7256a), as amended; and Sec. 3131, 3132, 3133, and 3157 of the National Competitiveness Technology Transfer Act of 1989, Pub. L. 101–189 (15 U.S.C. 3710 et seq.), and as amended by Sec. 3134 and 3160 of Pub. L. 103–160.

2. Section 970.5204–X, Technology Transfer Mission, is added to read as follows:

970.5204–X Technology transfer mission.

As prescribed in subpart 970.73, insert the following clause:

Technology Transfer Mission (Xxx, 1995)

This clause has as its purpose implementation of the National Competitiveness Technology Transfer Act of 1989 (Sections 3131, 3132, 3133, and 3157 of Pub. L. 101–189 and as amended by Pub. L. 103–160, Sections 3134 and 3160). The Contractor shall conduct technology transfer activities with a purpose of providing benefit from Federal research to U.S. industrial competitiveness.

(a) *Authority.* (1) In order to ensure the full use of the results of research and development efforts of, and the capabilities of, the Laboratory, technology transfer, including Cooperative Research and Development Agreements (CRADAs), is established as a mission of the Laboratory consistent with the policy, principles and purposes of Sections 11(a)(1) and 12(g) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a); Section 3132(b) of Pub. L. 101–189, Sections 3134 and 3160 of P.L. 103–160, and of Chapter 38 of the Patent Laws (35 U.S.C. 200 et seq.); Section 152 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2182); Section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908); and Executive Order 12591 of April 10, 1987.

(2) In pursuing the technology transfer mission, the Contractor is authorized to conduct activities including but not limited to: identifying and protecting Intellectual Property made, created or acquired at or by the Laboratory; negotiating licensing agreements and assignments for Intellectual Property made, created or acquired at or by the Laboratory that the Contractor controls or owns; bailments; negotiating all aspects of and entering into CRADAs; providing technical consulting and personnel exchanges; conducting science education activities and reimbursable Work for Others (WFO); providing information exchanges; and making available laboratory or weapon production user facilities. It is fully expected that the Contractor shall use all of the mechanisms available to it to accomplish this technology transfer mission, including, but not limited to, CRADAs, user facilities, WFO, science education activities, consulting, personnel, assignments, and licensing in accordance with this clause.

(b) *Definitions.* (1) *Contractor's Laboratory Director* means the individual who has supervision over all or substantially all of the Contractor's operations at the Laboratory.

(2) *Intellectual Property* means patents, trademarks, copyrights, mask works, protected CRADA information, and other forms of comparable property rights protected by Federal Law and other foreign counterparts.

(3) *Cooperative Research and Development Agreement (CRADA)* means any agreement entered into between the Contractor as operator of the Laboratory, and one or more parties including at least one non-Federal party under which the Government, through its laboratory, provides personnel, services, facilities, equipment, intellectual property, or other resources with or without reimbursement (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, intellectual property, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the Laboratory; except that such term does not include a procurement contract, grant, or cooperative agreement as those terms are used in sections 6303, 6304, and 6305 of Title 31 of the United States Code.

(4) *Joint Work Statement (JWS)* means a proposal for a CRADA prepared by the Contractor, signed by the Contractor's Laboratory Director or designee which describes the following:

(i) Purpose;

(ii) Scope of Work which delineates the rights and responsibilities of the Government, the Contractor and Third Parties, one of which must be a non-Federal party;

(iii) Schedule for the work; and

(iv) Cost and resource contributions of the parties associated with the work and the schedule.

(5) *Assignment* means any agreement by which the Contractor transfers ownership of Laboratory Intellectual Property, subject to the Government's retained rights.

(6) *Laboratory Biological Materials* means biological materials capable of replication or reproduction, such as plasmids, deoxyribonucleic acid molecules, ribonucleic acid molecules, living organisms of any sort and their progeny, including viruses, prokaryote and eukaryote cell lines, transgenic plants and animals, and any derivatives or modifications thereof or products produced through their use or associated biological products, made under this contract by Laboratory employees or through the use of Laboratory research facilities.

(7) *Bailment* means any agreement in which the Contractor permits the commercial or non-commercial transfer of custody, access or use of Laboratory Biological Materials for a specified purpose of technology transfer or research and development, including without limitation evaluation, and without transferring ownership to the bailee.

(c) *Allowable Costs.* (1) The Contractor shall establish and carry out its technology transfer efforts through appropriate organizational elements consistent with the requirements for an Office of Research and Technology Applications (ORTA) pursuant to paragraphs (b) and (c) of Section 11 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710). The costs associated with the conduct of technology transfer through the ORTA including activities associated with obtaining, maintaining, licensing, and assigning Intellectual Property rights, increasing the potential for the transfer of technology, and the widespread notice of technology transfer opportunities, shall be deemed allowable provided that such costs meet the other requirements of the allowable costs provisions of this Contract. In addition to any separately designated funds, these costs in any fiscal year shall not exceed an amount equal to 0.5 percent of the operating funds included in the Federal research and development budget (including Work For Others) of the Laboratory for that fiscal year without written approval of the Contracting Officer.

(2) The Contractor's participation in litigation to enforce or defend Intellectual Property claims incurred in its technology transfer efforts shall be as provided in the clause entitled ''Litigation and Claims'' of this Contract.

(d) *Conflicts of Interest—Technology Transfer.* The Contractor shall have implementing procedures that seek to avoid employee and organizational conflicts of interest, or the appearance of conflicts of interest, in the conduct of its technology

transfer activities. Such implementing procedures shall be provided to the Contracting Officer for review and approval within sixty (60) days after execution of this contract. The Contracting Officer shall have thirty (30) days thereafter to approve or require specific changes to such procedures. Such implementing procedures shall include procedures to:

(1) Inform employees of and require conformance with standards of conduct and integrity in connection with the CRADA activity in accordance with the provisions of paragraph (n)(5) of this clause;

(2) Review and approve employee activities so as to avoid conflicts of interest arising from commercial utilization activities relating to Contractor-developed Intellectual Property;

(3) Conduct work performed using royalties so as to avoid interference with or adverse effects on ongoing DOE projects and programs;

(4) Conduct activities relating to commercial utilization of Contractor-developed Intellectual Property so as to avoid interference with or adverse effects on user facility or WFO activities of the Contractor;

(5) Conduct DOE-funded projects and programs so as to avoid the appearance of conflicts of interest or actual conflicts of interest with non-Government funded work;

(6) Notify the Contracting Officer with respect to any new work to be performed or proposed to be performed under the Contract for DOE or other Federal agencies where the new work or proposal involves Intellectual Property in which the Contractor has obtained or intends to request or elect title;

(7) Except as provided elsewhere in this Contract, obtain the approval of the Contracting Officer for any licensing of or assignment of title to Intellectual Property rights by the Contractor to any business or corporate affiliate of the Contractor;

(8) Obtain the approval of the Contracting Officer prior to any assignment, exclusive licensing, or option for exclusive licensing, of Intellectual Property to any person who has been a Laboratory employee within the previous two years or to the company in which he or she is a principal; and

(9) Notify non-Federal sponsors of WFO activities, or non-Federal users of user facilities, of any relevant Intellectual Property interest of the Contractor prior to execution of WFOs or user agreements.

(10) Notify DOE prior to evaluating a proposal submitted by a third party or DOE, when the subject matter of the proposal involves an elected or waived subject invention or one in which the Contractor intends to elect to retain title.

(e) *Fairness of Opportunity.* In conducting its technology transfer activities, the Contractor shall prepare procedures and take all reasonable measures to ensure widespread notice of availability of technologies suited for transfer and opportunities for exclusive licensing and joint research arrangements. The requirement to widely disseminate the availability of technology transfer opportunities does not apply to a specific application originated outside of the Laboratory and by entities other than the Contractor.

(f) *U.S. Industrial Competitiveness.* (1) In the interest of enhancing U.S. Industrial Competitiveness, the Contractor shall, in its licensing and assignments of Intellectual Property, give preference in such a manner as to enhance the accrual of economic and technological benefits to the U.S. domestic economy. The Contractor shall consider the following factors in all of its licensing and assignment decisions:

(i) Whether any resulting design and development will be performed in the United States and whether resulting products, embodying parts, including components thereof, will be substantially manufactured in the United States; or

(ii) (A) Whether the proposed licensee or assignee has a business unit located in the United States and whether significant economic and technical benefits will flow to the United States as a result of the license or assignment agreement; and

(B) In licensing any entity subject to the control of a foreign company or government, whether such foreign government permits United States agencies, organizations or other persons to enter into cooperative research and development agreements and licensing agreements, and has policies to protect United States Intellectual Property rights.

(2) If the Contractor determines that neither of the conditions in paragraphs (f)(1) (i) or (ii) of this clause are likely to be fulfilled, the Contractor, prior to entering into such an agreement, must obtain the approval of the Contracting Officer. The Contracting Officer shall act on any such requests for approval within thirty (30) days.

(3) The Contractor agrees to be bound by the provisions of 35 U.S.C. 204.

(g) *Indemnity—Product Liability.* In entering into written technology transfer agreements, including but not limited to, research and development agreements, licenses, assignments and CRADAs, the Contractor agrees to include in such agreements a requirement that the U.S. Government and the Contractor, except for any negligent acts or omissions of the Contractor, be indemnified for all damages, costs, and expenses, including attorneys' fees, arising from personal injury or property damage occurring as a result of the making, using or selling of a product, process or service by or on behalf of the Participant, its assignees or licensees which was derived from the work performed under the agreement. The Contractor shall identify and obtain the approval of the Contracting Officer for any proposed exceptions to this requirement such as where State or local law expressly prohibit the Participant from providing indemnification or where the research results will be placed in the public domain.

(h) *Disposition of Income.* (1) Royalties or other income earned or retained by the Contractor as a result of performance of authorized technology transfer activities herein shall be used by the Contractor for scientific research, development, technology transfer, and education at the Laboratory, consistent with the research and development mission and objectives of the Laboratory and subject to Section 12(b)(5) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(b)(5)) and Chapter 38 of the Patent Laws (35 U.S.C. 200 et seq.) as amended through the effective date of this contract award or modification. If the amounts of such royalties and income received during any fiscal year exceed 5 percent of the Laboratory's budget for that fiscal year, 75 percent of such excess amounts shall be paid to the Treasury of the United States, and the remaining amount of such excess shall be used by the Contractor for the purposes as described above in this paragraph. Any inventions arising out of such scientific research and development activities shall be deemed to be ''Subject Inventions'' under the Contract.

(2) The Contractor shall include as a part of its annual Laboratory Institutional Plan or other such annual document a plan setting out those uses to which royalties and other income received as a result of performance of authorized technology transfer activities herein will be applied at the Laboratory, and at the end of the year, provide a separate accounting for how the funds were actually used. Under no circumstances shall these royalties and income be used for an illegal augmentation of funds furnished by the U.S. Government.

(3) The Contractor shall establish subject to the approval of the Contracting Officer a policy for making awards or sharing of royalties with Contractor employees, other coinventors and coauthors, including Federal employee coinventors when deemed appropriate by the Contracting Officer.

(i) *Transfer to Successor Contractor* In the event of termination or upon the expiration of this Contract, any unexpended balance of income received for use at the Laboratory shall be transferred, at the Contracting Officer's request, to a successor contractor, or in the absence of a successor contractor, to such other entity as designated by the Contracting Officer. The Contractor shall transfer title, as one package, to the extent the Contractor retains title, in all patents and patent applications, licenses, accounts containing royalty revenues from such license agreements, including equity positions in third party entities, and other Intellectual Property rights which arose at the Laboratory, to the successor contractor or to the Government as directed by the Contracting Officer.

(j) *Technology Transfer Affecting the National Security.* (1) The Contractor shall notify and obtain the approval of the Contracting Officer, prior to entering into any technology transfer arrangement, when such technology or any part of such technology is classified or sensitive under Section 148 of the Atomic Energy Act (42 U.S.C. 2168). Such notification shall include sufficient information to enable DOE to determine the extent that commercialization of such technology would enhance or diminish security interests of the United States, or diminish communications within DOE's nuclear weapon production complex. DOE shall use its best efforts to complete its determination within sixty (60) days of the Contractor's notification, and provision of any supporting information, and DOE shall promptly notify the Contractor as to whether the technology is transferable.

(2) The Contractor shall include in all of its technology transfer agreements with third parties, including, but not limited to, CRADAs, licensing agreements and assignments, notice to such third parties that the export of goods and/or Technical Data from the United States may require some form of export control license or other authority from the U.S. Government and that failure to obtain such export control license may result in criminal liability under U.S. laws.

(3) For other than fundamental research as defined in National Security Decision Directive 189, the Contractor is responsible to conduct internal export control reviews and assure that technology is transferred in accordance with applicable law.

(k) *Records.* The Contractor shall maintain records of its technology transfer activities in a manner and to the extent satisfactory to the DOE and specifically including, but not limited to, the licensing agreements, assignments and the records required to implement the requirements of paragraphs (e), (f), and (h) of this clause and shall provide reports to the Contracting Officer to enable DOE to maintain the reporting requirements of Section 12(c)(6) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(6)). Such reports shall be made annually in a format to be agreed upon between the Contractor and DOE and in such a format which will serve to adequately inform DOE of the Contractor's technology transfer activities while protecting any data not subject to disclosure under the Rights in Technical Data clause and paragraph (n) of this clause. Such records shall be made available in accordance with the clauses of this Contract pertaining to inspection, audit and examination of records.

(l) *Reports to Congress.* To facilitate DOE's reporting to Congress, the Contractor is required to submit annually to DOE a technology transfer plan for conducting its technology transfer function for the upcoming year, including plans for securing Intellectual Property rights in Laboratory innovations with commercial promise and plans for managing such innovations so as to benefit the competitiveness of United States industry. This plan shall be provided to the Contracting Officer on or before October 1st of each year.

(m) *Oversight and Appraisal.* The Contractor is responsible for developing and implementing effective internal controls for all technology transfer activities consistent with the audit and record requirements of this Contract. Laboratory Contractor performance in implementing the technology transfer mission and the effectiveness of the Contractor's procedures will be evaluated by the Contracting Officer as part of the annual appraisal process, with input from the cognizant Secretarial Officer or program office.

(n) *Technology Transfer Through Cooperative Research and Development Agreements.* Upon approval of the Contracting Officer and as provided in a DOE approved Joint Work Statement (JWS), the Laboratory Director or his designee may enter into CRADAs on behalf of the DOE subject to the requirements set forth herein.

(1) *Review and Approval of CRADAs.* (i) Except as otherwise directed in writing by the Contracting Officer, each JWS shall be submitted to the Contracting Officer for approval. The Contractor's Laboratory Director or designee shall provide a program mission impact statement and shall include an impact statement regarding related Intellectual Property rights known by the Contractor to be owned by the Government to assist the Contracting Officer in his approval determination.

(ii) The Contractor shall also include (specific to the proposed CRADA), a statement of compliance with the Fairness of Opportunity requirements of paragraph (e) of this clause.

(iii) Within ninety (90) days after submission of a JWS, the Contracting Officer shall approve, disapprove or request modification to the JWS. If a modification is required, the Contracting Officer shall approve or disapprove any resubmission of the JWS within thirty (30) days of its resubmission, or ninety (90) days from the date of the original submission, whichever is later. The Contracting Officer shall provide a written explanation to the Contractor's Laboratory Director or designee of any disapproval or requirement for modification of a JWS.

(iv) Upon approval of a JWS, the Contractor's Laboratory Director or designee may submit a CRADA, based upon the approved JWS, to the Contracting Officer. The Contracting Officer, within thirty (30) days of receipt of the CRADA, shall approve or request modification of the CRADA. If the Contracting Officer requests a modification of the CRADA, an explanation of such request shall be provided to the Laboratory Director or designee.

(v) Except as otherwise directed in writing by the Contracting Officer, the Contractor shall not enter into, or begin work under, a CRADA until approval of the CRADA has been granted by the Contracting Officer. The Contractor may submit its proposed CRADA to the Contracting Officer at the time of submitting its proposed JWS or any time thereafter. However, the Contracting Officer is not obligated to respond under paragraph (n)(1)(iv) of this clause until within thirty (30) days after approval of the JWS or thirty (30) days after submittal of the CRADA, whichever is later.

(2) *Selection of Participants* The Contractor's Laboratory Director or designee in deciding what CRADA to enter into shall:

(i) Give special consideration to small business firms, and consortia involving small business firms;

(ii) Give preference to business units located in the United States which agree that products or processes embodying Intellectual Property will be substantially manufactured or practiced in the United States and, in the case of any industrial organization or other person subject to the control of a foreign company or government, take into consideration whether or not such foreign government permits United States agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements;

(iii) Provide Fairness of Opportunity in accordance with the requirements of paragraph (e) of this clause; and

(iv) Give consideration to the Conflicts of Interest requirements of paragraph (d) of this clause.

(3) *Withholding of Data*

(i) Data that is first produced as a result of research and development activities conducted under a CRADA and that would be a trade secret or commercial or financial data that would be privileged or confidential, if such data had been obtained from a non-Federal third party, may be protected from disclosure under the Freedom of Information Act as provided in the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(7)) for a period as agreed in the CRADA of up to five (5) years from the time the data is first produced. The DOE shall cooperate with the Contractor in protecting such data.

(ii) Unless otherwise expressly approved by the Contracting Officer in advance for a specific CRADA, the Contractor agrees, at the request of the Contracting Officer, to transmit such data to other DOE facilities for use by DOE or its Contractors by or on behalf of the Government. When data protected pursuant to paragraph (n)(3)(i) of this clause is so transferred, the Contractor shall clearly mark the data with a legend setting out the restrictions against private use and further dissemination, along with the expiration date of such restrictions.

(iii) In addition to its authority to license Intellectual Property, the Contractor may enter into licensing agreements with third parties for data developed by the Contractor under a CRADA subject to other provisions of this Contract. However, the Contractor shall neither use the protection against dissemination nor the licensing of data as an alternative to the submittal of invention disclosures which include data protected pursuant to paragraph (n)(3)(i) of this clause.

(4) *Work For Others and User Facility Programs.* (i) WFO and User Facility Agreements (UFAs) are not CRADAs and will be available for use by the Contractor in addition to CRADAs for achieving utilization of employee expertise and unique facilities for maximizing technology transfer. The Contractor agrees to inform prospective CRADA participants, which are intending to substantially pay full cost recovery for the effort under a proposed CRADA, of the availability of alternative forms of agreements, i.e., WFO and UFA, and of the Class Patent Waiver provisions associated therewith.

(ii) Where the Contractor believes that the transfer of technology to the U. S. domestic economy will benefit from, or other equity considerations dictate, an arrangement other than the Class Waiver of patent rights to the sponsor in WFO and UFAs, a request may be made to the Contracting Officer for an exception to the Class Waivers.

(iii) Rights to inventions made under agreements other than funding agreements with third parties shall be governed by the appropriate provisions incorporated, with DOE approval, in such agreements, and the provisions in such agreements take precedence over any disposition of rights

contained in this Contract. Disposition of rights under any such agreement shall be in accordance with any DOE class waiver (including Work for Others and User Class Waivers) or individually negotiated waiver which applies to the agreement.

(5) *Conflicts of Interest.* (i) Except as provided in paragraph (n)(5)(iii) of this clause, the Contractor shall assure that no employee of the Contractor shall have a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA, if, to such employee's knowledge:

(A) Such employee, or the spouse, child, parent, sibling, or partner of such employee, or an organization (other than the Contractor) in which such employee serves as an officer, director, trustee, partner, or employee—

(*1*) Holds financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA;

(*2*) Receives a gift or gratuity from any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA; or

(B) A financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA, is held by any person or organization with whom such employee is negotiating or has any arrangement concerning prospective employment.

(ii) The Contractor shall require that each employee of the Contractor who has a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA certify through the Contractor to the Contracting Officer that the circumstances described in paragraph (n)(5)(i) of this clause do not apply to that employee.

(iii) The requirements of paragraphs (n)(5)(i) and (n)(5)(ii) of this clause shall not apply in a case where the Contracting Officer is advised by the Contractor in advance of the participation of an employee described in those paragraphs in the preparation, negotiation or approval of a CRADA of the nature of and extent of any financial interest described in paragraph (n)(5)(i) of this clause, and the Contracting Officer determines that such financial interest is not so substantial as to be considered likely to affect the integrity of the Contractor employee's participation in the process of preparing, negotiating, or approving the CRADA.

(o) *Technology Transfer in Other Cost-Sharing Agreements.* In conducting research and development activities in cost-shared agreements not covered by paragraph (n) of this clause, the Contractor, with prior written permission of the Contracting Officer, may provide for the withholding of data produced thereunder in accordance with the applicable provisions of paragraph (n)(3) of this clause.

(End of clause)

Alternate I (Xxx 1995). As prescribed in 970.7330(b), add the following definition under paragraph (b) and new paragraph (p):

(b)(8) *Privately funded technology transfer* means the prosecuting, maintaining, licensing, and marketing of inventions which are not owned by the Government (and not related to CRADAs) when such activities are conducted entirely without the use of Government funds.

(p) Nothing in paragraphs (c) Allowable Costs, (e) Fairness of Opportunity, (f) U.S. Industrial Competitiveness, (g) Indemnity—Product Liability, (h) Disposition of Income, and (i) Transfer to Successor Contractor above are intended to apply to the contractor's privately funded technology transfer activities if such privately funded activities are addressed elsewhere in the contract.

Alternate II (Xxx 1995). As prescribed in 970.7330(c), the phrase ''weapon production facility'' may be substituted wherever the word ''laboratory'' appears in the clause.

3. A new subpart 970.73, Technology Transfer, consisting of sections 970.7310, 970.7320, and 970.7330, is added to read as follows:

Subpart 970.73 Technology Transfer

Secs.
970.7310 General.
970.7320 Policy.
970.7330 Contract Clause.

Subpart 970.73—Technology Transfer

970.7310 General.

This subpart prescribes policies and procedures for implementing the National Competitiveness Technology Transfer Act of 1989. The Act required that technology transfer be established as a mission of each Government-owned laboratory operated under contract by a non-Federal entity. The National Defense Authorization Act for Fiscal Year 1994 expanded the definition of laboratory to include weapon production facilities that are operated for national security purposes and are engaged in the production, maintenance, testing, or dismantlement of a nuclear weapon or its components.

970.7320 Policy.

All new awards for or extensions of existing DOE laboratory or weapon production facility management and operating contracts shall have technology transfer, including authorization to award Cooperative Research and Development Agreements (CRADAs), as a laboratory or facility mission under Section 11(a)(1) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended. A management and operating contractor for a facility not deemed to be a laboratory or weapon production facility may be authorized on a case-by-case basis to support the DOE technology transfer mission including, but not limited to, participating in CRADAs awarded by DOE laboratories and weapon production facilities.

970.7330 Contract clause.

(a) The contracting officer shall insert the clause at 970.5204–X, Technology transfer mission, in each solicitation for a new or an extension of an existing laboratory or weapon production facility management and operating contract.

(b) If the contractor is a nonprofit organization or small business eligible under 35 U.S.C. 200 *et seq.*, to receive title to any inventions under the contract and proposes to fund at private expense the maintaining, licensing, and marketing of the inventions, the contracting officer shall use the basic clause with its Alternate I.

(c) The contracting officer may substitute the Alternate II phrase ''weapon production facility'' wherever the word ''laboratory'' appears in the clause where the facility is operated for national security purposes and engaged in the production, maintenance, testing, or dismantlement of a nuclear weapon or its components.

[FR Doc. 95–12849 Filed 5–19–95; 8:45 am]
BILLING CODE 6450–01–P

Notices

Federal Register
Vol. 60, No. 98
Monday, May 22, 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

Charlie Tyson Project; Idaho Panhandle National Forests, St. Maries Ranger District, Benewah County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Correction of the May 10, 1995—Notice of Intent, 60 FR 24829.

A Notice of Intent to prepare an Environmental Impact Statement (EIS) for the Charlie Tyson Projects was inadvertently published on May 10, 1995 (60 FR 24829). This is an error; this notice was published on March 31, 1994 (Vol. 59, No. 62, 15153) and since that time the Draft has been published and the Ranger district is now (May 15, 1995) in the process of mailing out the Final EIS and Record of Decision.

Dated: May 16, 1995.

Bradley J. Burmark,

Acting District Ranger.

[FR Doc. 95–12504 Filed 5–19–95; 8:45 am]

BILLING CODE 3410–11–M

Blue Mountains Natural Resources Institute (BMNRI), Board of Directors

AGENCY: Pacific Northwest Research Station, USDA.

ACTION: Notice of meeting.

SUMMARY: The Blue Mountains Natural Resources Institute Board of Directors will meet on June 8, 1995 at Eastern Oregon State College, Hoke Hall, Room 309, 1410 L Avenue in La Grande, Oregon. The meeting will begin at 9:00 a.m. and continue until 5:00 p.m. Agenda items to be covered include: (1) Review status as a Federal Advisory Committee; (2) presentation of Federal Advisory Committee Act guidelines and responsibilities; (3) report of research and outreach activities; (4) review mission and goals of the BMNRI and discuss how to most effectively reach these goals; and (5) open public forum. All Blue Mountains Natural Resources Institute Board Meetings are open to the public. Interested citizens are encouraged to attend. Members of the public who wish to make a brief oral presentation at the meeting should contact John Tanaka, BMNRI, 1401 Gekeler Lane, La Grande, OR 97850, 503–963–7122, no later than 5:00 p.m. June 7, 1995 to have time reserved on the agenda.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to John Tanaka, Deputy Director, Blue Mountains Natural Resources Institute, 1401 Gekeler Lane, La Grande, Oregon 97850, 503–963–7122.

Dated: May 11, 1995.

Gary Daterman,

Program Manager.

[FR Doc. 95–12408 Filed 5–19–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Export Administration

[Docket Number AB1–89]

Final Decision and Order Affirming in Part Order of the Administrative Law Judge

In the Matter of: Town & Country Plastic, Inc., Respondent.

Before me for decision is the appeal of the Office of Antiboycott Compliance (OAC) from the decision and order of the Administrative Law Judge (ALJ). The ALJ dismissed as unproven OAC's charge that Town & Country Plastics, Inc. (T&C), violated § 769.2(d)(1)(iv) of the Export Administration Regulations (15 CFR 769.2(d)(1)(iv)) (the ''Regulations'').

I. Jurisdictional Issues

T&C questions my jurisdiction to entertain the appeal, alleging that the appeal was not timely filed and properly served. After having reviewed the administrative record, I have concluded that I have jurisdiction to entertain the appeal and that the decision of the ALJ should be affirmed in part, as set forth below.

a. Timeliness

The threshold question is whether OAC's appeal was timely filed and properly served. Section 788.22(b) of the Regulations (15 CFR 788.22(b)) requires the filing of appeals within 30 days of the date on which the order appealed from was served. Applying this rule literally in this case, the appeal should have been filed on or before October 21, 1990, which happened to be a Sunday. T&C correctly points out that there is nothing in the rules explicitly extending the time for filing documents when the last day falls on a Sunday. On the other hand, OAC refers to the Federal Rules of Civil Procedure where Rule 6 provides that, when the last day allowed for filing a document falls on a Sunday, the document may be filed up until the close of business on the next business day. OAC did file its appeal on Monday, October 22, 1990.

I have concluded that the procedural rules relating to antiboycott appeals should be construed in conjunction with the Federal Rules of Civil Procedure. Accordingly, I find that the appeal was timely filed.

b. Service

T&C also argues that OAC failed to serve the appeal in accordance with the rules. In support of its argument, T&C points out that Section 788.6(a) of the Regulations (15 CFR 788.6(a)) requires that all papers served in the administrative proceedings shall be simultaneously served on other parties. While OAC appended a certificate of service to its appeal stating that it had caused a copy of the appeal to be mailed to T&C on October 22, 1990, the envelope in which the appeal was received by T&C was postmarked October 23, 1990, one day later than the last day the appeal could be filed. OAC responds that on October 22, 1990, it did cause the appeal to be mailed in accordance with customary departmental mailing procedures in which all mailings first go to the Department's centralized mailing room, and it cannot control when a mailing will be actually postmarked by the Post Office.

I have concluded that OAC did serve the appeal in a timely fashion. In my opinion, it is sufficient that the appeal was mailed in accordance with standard departmental mailing procedures on the day when the service was required to be accomplished.

II. Furnishing Information

This brings me to the substantive issues. T&C is charged with one violation of Section 769.2(d)(1)(iv) of the Regulations which provides:

> No United States person may furnish or knowingly agree to furnish information concerning his or any other person's past, present, or proposed business relationships with any other person who is known or believed to be restricted from having any business relationship with or in a boycotting country.

In order to establish that T&C violated the Regulations as alleged, OAC must establish that T&C: (1) Is a United States person, (2) who, in connection with its activities in United States commerce, (3) provided information concerning its business relationships with another person known or believed to be restricted from having any business relationship with or in a boycotting country, and (4) with intent to comply with, further, or support an unsanctioned foreign boycott.

The ALJ found that OAC established the first two elements and neither party contests those findings. (Initial Decision and Order, at 15–6.) Accordingly, I affirm that portion of the ALJ's finding.

However, the ALJ found that OAC had not met its burden with regard to elements three and four listed above. This Final Decision and Order addresses the latter two issues.

The record shows that T&C sold some tanks late in 1984 to a distributor in the United States. The distributor thereafter exported the tanks to Saudi Arabia, but there is nothing in the record to indicate that T&C knew that the tanks were to be ultimately exported to Saudi Arabia at the time of the sale to the distributor.

The distributor wrote to T&C in early 1986 advising that its client was experiencing difficulty in clearing T&C tanks through Saudi Arabian customs because of confusion resulting from the similarity between T&C's name and another name, Town and Country York, Inc. (TCY). The letter read in part as follows:

> A little more than one year ago we purchased some tanks from you.
>
> Our client is having trouble clearing these goods as the Customs Department of Saudi Arabia is confusing your name with another company. The other company's name is Town & Country York, Inc.
>
> Would you be good enough, if possible, to send us a letter certifying that Town and [sic] [1] Country Plastics, Inc. is not the same as Town and Country York, Inc., if this is the case.

Agency Exhibit 1.

[1] (The *sic* refers to the use of ''and'' in the correspondence instead of the ampersand which appears in Respondent's corporate name.

T&C responded to the distributor as follows:

> Town & Country Plastics, Incorporated is not associated or related to a company by the name of Town and Country York, Incorporated. Our company is sometimes confused with other companies. We hope this confusion is resolved for you.

Agency Exhibit 2, Hearing Transcript (''Transcript''), at 18–9.

It is this response that OAC charges constitutes a violation of the regulation.

a. Intent element

Both the statutory and regulatory language established intent as an element of the violation charged.

Section 8(a)(1) of the Export Administration Act provides in part:

> [T]he President shall issue regulations prohibiting any United States person, with respect to his activities in the interstate or foreign commerce of the United States, from taking or knowingly agreeing to take any of the following actions with intent to comply with, further, or support any boycott fostered or imposed by a foreign country against a country which is friendly to the United States.* * *

50 U.S.C. app. § 2407.

The regulations provided in pertinent part:

* * * * *

> (2) A United States person has the intent to comply with, further, or support an unsanctioned foreign boycott when such a boycott is at least one of the reasons for that person's decision to take a particular prohibited action. So long as that is at least one of the reasons for that person's action, a violation occurs regardless of whether the prohibited action is also taken for non-boycott reasons. Stated differently, the fact that such action was taken for legitimate business reasons does not remove that action from the scope of this part if compliance with an unsanctioned foreign boycott was also a reason for the action.
>
> (3) Intent is a necessary element of any violation of this part. It is not sufficient that one take action that is specifically prohibited by this part. It is essential that one take such action with intent to comply with, further, or support a foreign boycott. Accordingly, a person who inadvertently, without boycott intent, takes a prohibited action, does not commit any violation.
>
> (4) Intent in this context means the reason or purpose for one's behavior. It does not mean that one has to agree with the boycott in question or desire that it succeed or that it be furthered or supported. But it does mean that the reason why a particular action was taken must be established.

* * * * *

> (7) In seeking to determine whether the requisite intent exists, all available evidence will be examined.

Section 769.1(e), 15 CFR 769(e).

To demonstrate evidence of intent, OAC relies on T&C's distributor's letter plus T&C's prior experience in 1984 with respect to a different transaction.

In May of 1984, T&C received an express package from the Saudi Arabia Israel Boycott Office. The transmittal letter therein explained that the accompanying ''boycott questionnaire'' was received from ''Saudi Arabian Customs Authorities.'' The top left corner of the ''questionnaire'' shows that it was issued from the Saudi Regional Israel Boycott Office. (Transcript, at 89–92; Agency Exhibit 5.)

Concerning that incident, T&C's president testified that he was offended by the questionnaire and that, not knowing the applicable Regulations, went to considerable effort to learn what action should be taken. Upon determining the correct procedure, T&C filed a Report of Request for Restrictive Trade Practice or Boycott, Form ITA–621P with OAC. (Initial Decision, at 8–9; Transcript, at 94–95; Agency Exhibit 5.) (Transcript, at 37–8.)

OAC asserts that T&C's experience rendered it sufficiently aware of the antiboycott provisions of the Regulations that T&C would or should have recognized a boycott request thereafter. T&C answers that it did not respond to the 1984 inquiry; that it reported the request to OAC on its own initiative, and that it and the 1986 incident do not relate in any fashion to one another. (Transcript, at 38.)

The legislative history provides some guidance regarding analysis of the circumstances or context in which a request is received:

> Intent to comply with a boycott could be presumed, subject to rebuttal, where from all the circumstances it is reasonably clear that the information is sought for boycott enforcement purposes * * *. On the other hand where the information is sought in a context which does not make it reasonably clear that the purpose is boycott related, no illegal intent should be presumed.
>
> S. Rep. No. 95–104, 95th Cong., 1st Sess. 40 (1978), quoted in *Briggs & Stratton* v. *Baldrige,* 539 F.Supp. 1307, 1313–1314 (E.D. Wis. 1982), *aff'd,* 728 F.2d 915 (7th Cir.) *cert. denied,* 469 U.S. 826 (1984).

Initial Decision and Order, at 14–15.

Referring to the regulatory language, OAC has consistently argued throughout this proceeding that boycott-related intent does not have to be the only or principal reason behind an allegedly prohibited response. A showing that the boycott played some part in T&C's decision to provide the response is enough, according to OAC. While I agree with that interpretation of the regulatory language and believe it to be an appropriate standard or measure of proof, I concur with the ALJ in this case that additional evidence is necessary to

show that the response in issue was provided with the intent to comply with, further, or support an unsanctioned foreign boycott.

The evidentiary record in this case shows that it is not reasonably clear that T&C's purpose in responding was boycott related. The legislative history excerpted above notes that, in such circumstances, illegal intent should not be inferred or presumed. OAC's witness testified that the fact that the inquiry originated from Saudi Arabian Customs would in his experience suggest that the inquiry was probably boycott related, but he could not testify from personal knowledge that the specific inquiry in question was, in fact, boycott related. (Transcript at 13–16.)

By contrast, T&C's witness testified that the inquiry was simply viewed as a routine name clarification request, and it did not occur to T&C that the inquiry might be boycott-related.

(Transcript, at 96–98, 106–7.)

> There is the fact, as I mentioned earlier, that there were literally dozens of requests that we get each year that people calling up wanting to know if we are Town and Country Diner, Town and Country Realty, Town and Country Hairdressers, whether we are Town and Country Chevrolet. It is spelled in different ways. Sometimes it is T-o-w-n-e. At one time we had a competitor in the tank business who was our main supplier who had the name of County Plastics. There was some confusion to that being somewhat similar to Town and Country Plastics.

Transcript, at 107.

In resolving the question of whether T&C acted with the requisite intent in favor of T&C, the ALJ relied heavily on the credibility of the T&C testimony. While not absolutely binding on me, the ALJ's findings regarding credibility are entitled to great weight. *Todd Pacific Shipyards* v. *Director, OWCP*, 913 F.2d 1426, 1432 (9th Cir. 1990); *Carrier Corp.* v. *N.L.R.B.*, 768 F. 2d 778, 782 (6th Cir. 1985). *See, Universal Camera Corp.* v. *N.L.R.B.*, 340 U.S. 474 (1951).

The Administrative Law Judge distinguished the two incidents, noting:

> [T]he present case differs significantly from the events in 1984. In 1984, the inquiry was issued from the Saudi Regional Israel Boycott Office, a division of the Saudi Customs (Agency Ex. 5). *Both the office of origin and the content of the questionnaire affirmatively indicated a boycott relationship*. By comparison, the 1986 inquiry referred only to the Saudi Arabia Customs Service and *the single inquiry referenced only a confusion of names.* The evidence presented by Respondent establishes that such confusion was routine because of the frequency of the Town & Country prefix in the title of many businesses. At the hearing many pages from the nearby New York telephone directory were introduced which show a great proliferation of the name ''Town & Country'' among businesses, and Respondent Mr. Mermel testified of frequent confusion by mail and telephone respecting the name (Emphasis added).

Initial Decision and Order, at 12–13.

T&C's witness testified that he was concerned with preserving the company's trademark in circumstances where companies constantly confuse T&C with similarly named entities. He stated that he specifically thought the reference to Saudi Customs had something to do with billing for duties, as he frequently encountered similar problems with the U.S. Customs Service. He averred that he would never have answered the inquiry had he suspected it to be boycott-related, as demonstrated by his conduct in reporting the 1984 incident that clearly was boycott-related to the Department of Commerce and in *not answering the inquiry.* The witness also testified concerning profound personal and family reasons for not wanting to do anything to comply with such unsanctioned boycott.

(Transcript, at 92–98; Initial Decision, at 8–10.)

OAC has failed to advance reasons sufficient for discounting the credibility attributed to the T&C testimony by the ALJ.

Accordingly, I AFFIRM the ALJ's finding that OAC did not meet its burden of proof on the intent element.

b. Knowledge Element

The ALJ also based his decision on a separate finding that OAC had failed to meet its burden of proof on another element of the violation charged. Specifically, the ALJ found that OAC failed to meet its burden of proof regarding a showing that T&C knew or believed that TCY was restricted from having any business relationship in a boycotting country, hereafter referred to as the ''knowledge element''. OAC argues that the ALJ misconstrued the nature of the proof required on the knowledge element.

Having decided that the ALJ should be affirmed on account of his decision relative to the intent element, however, it is unnecessary to resolve the controversy regarding the knowledge element. Accordingly, I have decided not to address that issue in this case. Should a later case turn on that issue, however, this office will not treat the ALJ's decision in this case as a precedent and will resolve the issue on the merits as presented in any later case.

Based on review of the administrative record and for the reasons stated above, the order of the ALJ dismissing the charge against T&C is hereby affirmed in part.

Dated: May 16, 1995.

William A. Reinsch,

Under Secretary for Export Administration.

[FR Doc. 95–12497 Filed 5–19–95; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Docket 23–95]

Proposed Foreign-Trade Zone—Ocala/Marion County, Florida; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Economic Development Council, Inc. (of Ocala/Marion County) (a Florida non-profit corporation), to establish a general-purpose foreign-trade zone at sites in Ocala and Marion County, Florida. Designation of the Ocala Regional Airport as a Customs user fee airport is being requested under a separate application to the U.S. Customs Service. The FTZ application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on May 15, 1995. The applicant is authorized to make the proposal under Section 288.36, Florida Statutes Annotated (1993).

The proposed zone would consist of 5 sites (3,634 acres) in Ocala/Marion County: *Site 1* (Ocala Regional Airport complex—1,532 acres)—1770 SW 60th Avenue, Ocala; *Site 2* (Ocala Airport Commerce Center—92 acres)—intersection of SW 60th Avenue and Highway 40, Ocala; *Site 3* (Oaks Industrial Center—225 acres)—Highway 40, 1 mile west of I–75, Ocala; *Site 4* (Dunnellon/Marion County Airport and Commerce Center—1,706 acres)—15072 SW 111th St, Dunnellon, Marion County; and, Site 5 (Silver Springs Shores Industrial Park—79 acres)—County Road 464, Marion County. Site 1 is owned and operated by the City of Ocala. Sites 2, 3 and 5 are privately owned, and Site 4 is owned and operated by the Marion County Commission.

The application contains evidence of the need for zone services in the Ocala/Marion County area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of such items as laboratory equipment, water meters, flow measuring instruments, furniture and electronic products. Specific manufacturing approvals are not being sought at this

time. Requests would be made to the Board on a case-by-case basis.

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

As part of the investigation, the Commerce examiner will hold a public hearing on June 15, 1995 at 9:00 a.m., City Council Chambers, Second Floor of City Hall, 151 SE Osceola Avenue, Ocala, Florida.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 21, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to [75 days from date of publication]).

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

Ocala Regional Library, Reference Section, 15 SE Osceola Avenue, Ocala, Florida 34471.

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

Dated: May 15, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–12498 Filed 5–19–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–485–804, A–791–803]

Initiation of Antidumping Duty Investigations: Circular Welded Non-Alloy Steel Pipe From Romania and South Africa

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 22, 1995.

FOR FURTHER INFORMATION CONTACT: John Beck at (202) 482–3464 or Jennifer Stagner at (202) 482–1673, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

INITIATION OF INVESTIGATIONS:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA).

The Petitions

On April 26, 1995, the Department of Commerce (the Department) received two petitions filed in proper form by Allied Tube and Conduit Corporation, Sawhill Tubular Division, LTV Steel Tubular Products Company, Sharon Tube Company, Laclede Steel Company, Wheatland Tube Company, and Century Tube Corporation (the petitioners), seven U.S. producers of circular welded non-alloy steel pipe. A supplement to the petitions was filed on May 8, 1995.

In accordance with section 732(b) of the Act, the petitioners allege that imports of circular welded non-alloy steel pipe from Romania and South Africa are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, a U.S. industry.

The petitioners state that they have standing to file the petitions because they are interested parties, as defined under section 771(9)(C) of the Act.

Determination of Industry Support for the Petitions

Section 732(c)(4)(A) of the Act requires the Department to determine, prior to the initiation of an investigation, that a minimum percentage of the domestic industry supports an antidumping petition. A petition meets these minimum requirements if (1) the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product; and (2) the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

A review of the production data provided in the petitions and other information readily available to the Department indicates that the petitioners account for more than 25 percent of the total production of the domestic like product and for more than 50 percent of that produced by companies expressing support for, or opposition to, the petitions. The Department received no expressions of opposition to the petitions from any interested party. Accordingly, the Department determines that these petitions are supported by the domestic industry.

Scope of the Investigations

For purposes of these investigations, circular welded non-alloy steel pipes (standard pipes) are all pipes and tubes, of circular cross-section, not more than 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), end finish (plain end, bevelled end, threaded, or threaded and coupled), or industry specification (ASTM, proprietary, or other) used in, or intended for use in, standard or structural pipe applications.

The scope specifically includes, but is not limited to, all pipe produced to the ASTM A–53, ASTM A–120, ASTM A–135, ASTM A–795, and BS–1387 specifications. It also includes any pipe multiple-stencilled or multiple-certified to one of the above-listed specifications and to any other specification such as API–5L and API–5L X–42 specifications. Pipe produced to proprietary specifications, the API–5L, the API–5L X–42, or to any other non-listed specification is included within the scope of these investigations if used or intended for use in a standard pipe application, regardless of the *Harmonized Tariff Schedule of the United States* (*HTSUS*) category into which it was classified.

Standard pipe uses include the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may carry liquids at elevated temperatures but may not be subject to the application of external heat. Standard or structural pipe uses also include load-bearing applications in construction and residential and industrial fence systems. Standard pipe uses also include shells for the production of finished conduit and pipe used for the production of scaffolding.

These investigations do not cover: API line pipe that is used in oil or gas pipelines; mechanical tubing, whether or not cold-drawn, that enters the United States classified under *HTSUS* 7306.30.10 or 7306.30.50; tube and pipe hollows for redrawing that enter the United States classified under *HTSUS* 7306.30.50.35; and finished electrical conduit that enters the United States classified under *HTSUS* 7306.30.50.28. The investigation does cover conduit

shells that enter the United States classified under *HTSUS* 7306.30.50 including *HTSUS* 7306.30.50.28.

The scope of these investigations also covers pipe used for the production of scaffolding, but does not cover finished scaffolding. Pipe produced to the API specifications for oil country tubular goods (API 5CT) is not covered by the scope of these investigations, unless also certified to a listed standard pipe specification and used or intended for use in a standard pipe application.

The merchandise under investigation is currently classifiable under items 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90 of the *HTSUS*. Although the *HTSUS* subheadings are provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

Although the Department is including end-use language in the scope for purposes of initiation, the Department intends to further consider its appropriateness. The Department currently is conducting a scope inquiry with respect to the antidumping duty orders on certain circular welded non-alloy steel pipe from Brazil, the Republic of Korea, Mexico, and Venezuela (see Preliminary Affirmative Determination of Scope Inquiry on Antidumping Duty Orders on Certain Circular Welded Non-Alloy Steel Pipe From Brazil, the Republic of Korea, Mexico, and Venezuela (59 FR 1929, January 13, 1994)). The final determination of that scope inquiry will affect the scope determination in these investigations.

The Department invites comments from interested parties addressing ''end-use'' as a scope criterion. Parties interested in commenting on the scope of these investigations should submit their comments no later than close of business June 30, 1995. Rebuttal comments will be accepted no later than close of business July 7, 1995.

Export Price and Normal Value

Romania

The petitioners based export price on the reported customs value for circular welded non-alloy steel pipe imported into the United States from Romania during the fourth quarter of 1994. This information was specific to standard pipe and not to a basket category of merchandise. The petitioners made adjustments to the price for foreign inland freight.

The petitioners assert that Romania is a non-market economy (NME) within the meaning of section 771(18) of the Act. Accordingly, the normal value of the product should be based on the producers' factors of production, valued in a surrogate market economy country. In previous investigations, the Department has determined that Romania is an NME, and section 771(18)(C)(i) of the Act provides that the presumption of NME status continues for the initiation of this investigation. See, e.g., Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from Romania 57 FR 42957 (September 17, 1992) (Standard Pipe from Romania). In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of Romania's NME status and the granting of separate rates to individual exporters. See, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the PRC 59 FR 22585 (May 2, 1994).

In accordance with section 773(c)(3) of the Act, the petitioners based the Romanian producers' factors of production (*e.g.*, raw materials, labor, energy) on adjusted data from the public version of the information on the record in Standard Pipe from Romania. For the valuation of certain factors (steel coil, labor, electricity, water, and methane), the petitioners used surrogate information from Colombia pursuant to section 773(c)(4) of the Act. The petitioners contend that Colombia is the most appropriate surrogate country because it is similar to Romania in terms of per-capita gross national product trends and population levels and is a significant producer of steel pipe.

To value certain other minor factors, the petitioners used information from Thailand because they could not obtain information from Colombia. The petitioners used public surrogate information from Thailand that was used in Standard Pipe from Romania because this information was reasonably available to them. Where necessary, these values were adjusted for inflation.

Based on a comparison of the export price to normal value, the calculated dumping margin based on public information is 39.58 percent.

South Africa

The petitioners based export price on the reported customs value for circular welded non-alloy steel pipe imported into the United States from South Africa during the fourth quarter of 1994. This information was specific to standard pipe and not to a basket category of merchandise. The petitioners made no adjustments for foreign movement charges and other selling expenses.

The petitioners based normal value on actual home market price quotations from a South African distributor provided by a market researcher. The petitioners converted the unit price quotes in South African rand to U.S. dollars using the average exchange rate for the fourth quarter of 1994 and then adjusted the dollar unit price, where appropriate, for standard and early payment discounts.

Based on comparisons of export price to normal value, the calculated dumping margins for circular welded non-alloy steel pipe from South Africa range from 107.87 percent to 127.81 percent.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of circular welded non-alloy steel pipe from Romania and South Africa are being, or likely to be, sold at less than fair value. If it becomes necessary at a later date to consider these petitions as a source of facts available under section 776 of the Act, we may review further the calculations.

Initiation of Investigations

We have examined the petitions on circular welded non-alloy steel pipe and have found that they meet the requirements of section 732 of the Act, including the requirements concerning allegations of the material injury or threat of material injury to the domestic producers of a domestic like product by reason of the complained-of imports, allegedly sold at less than fair value. Therefore, we are initiating antidumping duty investigations to determine whether imports of circular welded non-alloy steel pipe from Romania and South Africa are being, or are likely to be, sold in the United States at less than fair value. Unless extended, we will make our preliminary determinations by October 5, 1995.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, copies of the public versions of the petitions have been provided to the representatives of the governments of Romania and South Africa. We will attempt to provide copies of the public versions of the petitions to all the exporters named in the petitions.

International Trade Commission (ITC) Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine by June 12, 1995, whether there is a reasonable indication that imports of circular welded non-alloy steel pipe from Romania and South Africa are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination on either investigation will result in the respective investigation being terminated; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Susan G. Esserman,

Assistant Secretary for Import Administration.

Dated: May 16, 1995.

[FR Doc. 95–12499 Filed 5–19–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–557–806]

Extruded Rubber Thread From Malaysia; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on extruded rubber thread from Malaysia. We preliminarily determine the net bounty or grant to be 1.00 percent *ad valorem* for all manufacturers and exporters of Malaysian extruded rubber thread for the period January 1, 1993 through December 31, 1993. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service to assess countervailing duties as indicated above. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 22, 1995.

FOR FURTHER INFORMATION CONTACT: Judy Kornfeld or Richard Herring, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 25, 1992, the Department published in the **Federal Register** (57 FR 38472) the countervailing duty order on extruded rubber thread from Malaysia. On August 3, 1994, the Department published a notice of ''Opportunity to Request an Administrative Review'' (59 FR 39543) of this countervailing duty order. We received a timely request for review from respondents Heveafil Sdn. Bhd.(Heveafil), Filmax Sdn. Bhd.(Filmax), Rubberflex Sdn. Bhd.(Rubberflex), Filati Lastex Elastofibre Sdn. Bhd.(Filati), and Rubfil Sdn. Bhd.(Rubfil).

We initiated the review, covering the period January 1, 1993 through December 31, 1993, on September 16, 1994 (59 FR 47609). The review covers 5 manufacturers/exporters of the subject merchandise and 12 programs.

Applicable Statute and Regulations

The Department is conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994. However, references to the Department's Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989) (*Proposed Regulations*), are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the Proposed Regulations were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. See 60 FR 80 (Jan. 3, 1995).

Scope of Review

Imports covered by this review are shipments of extruded rubber thread from Malaysia. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inch or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter. Such merchandise was classifiable under item number 4007.00.00 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Calculation Methodology for Assessment and Deposit Purposes

We calculated the net bounty or grant on a country-wide basis by first calculating the bounty or grant rate for each company subject to the administrtative review. We then weight-averaged the rate received by each company, including those with *de minimis* and zero rates, using as the weight its share of total Malaysian exports to the United States of subject merchandise. We then summed the individual companies' weighted-average rates to determine the bounty or grant rate from all programs benefitting exports of subject merchandise to the United States.

Since the country-wide rate calculated using this methodology was above *de minimis*, as defined by 19 CFR 355.7 (1994), we proceeded to the next step and examined the net bounty or grant rate calculated for each company to determine whether individual company rates differed significantly from the weighted-average country-wide rate, pursuant to 19 CFR 355.22(d)(3). In calculating the individual company rates described above, only one rate was calculated for Heaveafil and Filmax because Heveafil and Filmax are related parties.

None of the companies had net bounty or grant rates which were significantly different pursuant to 19 CFR 355.22(d)(3). Therefore, all companies are assigned the country-wide rate.

Analysis of Programs

I. Programs Conferring Subsidies

A. Export Credit Refinancing (ECR) Program

The ECR program was established in order to promote: (1) Exports of manufactured goods and agricultural food products that have significant value-added and high local content, (2) greater domestic linkages in export industries, and (3) easy access to credit facilities. In order to accomplish this, the Bank Negara Malaysia, the central bank of Malaysia, provides order-based and pre- and post-shipment financing of exports through commercial banks for periods of up to 120 and 180 days, respectively, and certificate of performance (CP)-based pre-shipment financing. Order-based financing is provided for specific sales to specific markets. CP-based financing is a line of credit based on the previous 12 months'

export performance, and cannot be tied to specific sales in specific markets.

The Department determined that this program was countervailable in Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Extruded Rubber Thread From Malaysia (57 FR 38472; August 25, 1992) (Malaysian Rubber Thread Final Determination) and Extruded Rubber Thread From Malaysia; Final Results of Countervailing Duty Administrative Review (60 FR 17515; April 6, 1995) (Final Results of First Review) because receipt of loans under this program was contingent upon export performance and the loans were provided at preferential interest rates. Heveafil, Filmax and Rubberflex used pre-shipment ECR loans. Filati and Rubfil used post-shipment ECR loans.

In order to determine whether these loans were provided at preferential rates, we compared the interest rate charged to a benchmark interest rate. As a benchmark for short-term loans, it is our practice to select the predominant source of short-term financing in the country as our benchmark for short-term loans. See section 355.44(b)(3) of the Department's Proposed Regulations. In Malaysia, term loans and overdrafts offered by commercial banks are the most predominant form of short-term financing. The average interest rates for these types of financing, however, are not individually available. Therefore, we have used as our benchmark for ECR loans the average commercial bank lending rate as an estimate of these predominant short-term lending rates. This rate is referred to by banks as the base lending rate (BLR). Commercial banks then add a 1 to 2 percent spread to the BLR. Therefore, to determine the commercial benchmark, we used the average of the commercial BLR rates as published by Bank Negara, the central bank of Malaysia, plus an average spread of 1.5 percent. (*See* Final Results of First Review.)

Based on a comparison of the ECR rates and the benchmark rate, we find that ECR loans continue to be provided at preferential interest rates. To calculate the benefit from ECR loans on which interest was paid in 1993, we used our short-term loan methodology which has been applied consistently in previous determinations and the previous administrative review in this case. (See Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Butt-Weld Pipe Fittings from Thailand (55 FR 1695; January 18, 1990); the Malaysian Rubber Thread Final Determination (57 FR 38474; August 27, 1992); and the Final Results of First Review (60 FR 17515; April 6, 1995). See also section 355.44(b)(3) of the Proposed Regulations. Because the post-shipment ECR loans were shipment-specific, we included in our calculations only those loans used to finance exports of extruded rubber thread to the United States. Because the pre-shipment loans were not shipment-specific, we included all loans on which interest was paid during the review period.

To calculate the benefit, we compared the amount of interest actually paid on these loans during the review period with the amount that would have been paid at the benchmark rate of 10.53 percent. The difference between those amounts is the benefit. We then divided total interest savings by total exports, in the case of pre-shipment loans, because they applied to all exports, or by exports to the United States, in the case of post-shipment loans, because they applied to specific shipments of exports to the United States. On this basis, we preliminarily determine the net bounty or grant from pre-shipment loans to be 0.45 percent for all manufacturers or exporters, and from post-shipment loans, we preliminarily determine the rate to be 0.27 percent for all manufacturers and exporters in Malaysia of extruded rubber thread.

B. Pioneer Status

Pioneer status is a tax incentive offered to promote investment in the manufacturing, tourist, and agricultural sectors. Pioneer status was first introduced under the Pioneer Industries (Relief from Income Tax) Ordinance, 1958. This ordinance was replaced by the Investment Incentives Act (IIA) in 1968, which was subsequently replaced by the Promotion of Investment Act (PIA) of 1986. Under the IIA and the PIA, the Minister of International Trade and Industry may determine products or activities to be pioneer products or activities.

Companies petition for pioneer status for products or activities that have already been approved and listed as pioneer products. Once a company receives pioneer status, its profits from the designated product or activity are exempt from the corporate income tax and the dividend tax for a period of five years, with the possibility of an extension for an additional five years. The five-year extension was abolished effective October 1, 1991. Furthermore, the computation of capital allowances, which are normally deducted against the adjusted taxable income, is postponed to the post-tax holiday period.

In evaluating a project for pioneer status, the Malaysian Industrial Development Authority (MIDA) will consider whether:

(1) The product is being produced on a commercial scale suitable to the economic requirement or development of the country,

(2) There are prospects for further development, and

(3) The product or activity meets the national and strategic requirements of Malaysia.

Specifically, MIDA officials consider 12 essential criteria to evaluate whether a particular company should receive pioneer status. Two of these 12 criteria specifically address the export potential of the proposed product or activity. Nevertheless, companies that produce only for the domestic market may also receive pioneer status. Furthermore, some companies may be rejected even though their export potential is high. Under certain conditions, however, companies must agree to an export commitment (i.e., they must agree to export a certain percentage of their production) to receive pioneer status. Furthermore, an export requirement may sometimes be applied to certain industries after it is determined that the domestic market is saturated and will no longer support additional producers.

Considering the implications of this criterion, the Department views the pioneer program as a two-faceted program. The first facet comprises those instances where one or more of the 12 criteria applies, including favorable prospects for export, but where the export criteria do not carry preponderant weight. The Department found this facet of the program not countervailable in the *Malaysian Rubber Thread Final Determination.*

In cases where pioneer status is conferred on a company because it has been determined that the domestic market is saturated and will no longer support additional producers and because that company agrees to export a certain percentage of its production, the program conveys an export subsidy, regardless of the other ''neutral'' criteria the company is required to meet. This is because the company is clearly being approved due to the fact it will export and because receipt of benefits becomes contingent on export performance. In the investigation of this case (see Malaysian Rubber Thread Final Determination), we determined that pioneer status was granted to Rubberflex based on its obligation to export. Therefore, we found the program countervailable with respect to that company. *See also* Final Results of First Review. Rubberflex continues to hold pioneer status and claimed pioneer income during this review period.

Filmax, Filati, and Rubfil also held pioneer status. However, these companies experienced a tax loss during the period of review and, therefore, did not benefit from this program.

To calculate the benefit, we determined the tax savings from this program during the review period and divided that by total exports. On this basis, we determine the net bounty or grant from this program to be 0.28 percent *ad valorem* during the reveiw period.

II. Programs Preliminarily Determined Not To Be Used

We also examined the following programs and preliminarily determine that the exporters of extruded rubber thread did not use them with respect to exports of the subject merchandise to the United States during the review period:

- Investment Tax Allowance.
- Abatement of Five Percent of Taxable Income Due to Location in a Promoted Industrial Area.
- Allowance of a Percentage of Net Taxable Income Based on the f.o.b. Value of Export Sales.
- Double Deduction of Export Credit Insurance Payments.
- Abatement of Taxable Income of Five Percent of Adjusted Income of Companies Due to Capital Participation and Employment Policy Adherence.
- Preferential Financing for Bumiputras.
- Abatement of Income Tax Based on the Ratio of Export Sales to Total Sales.
- Industrial Building Allowance.
- Double Deduction for Export Promotion Expenses.

III. Program Preliminarily Found to be Terminated Abatement of Five Percent of the Value of Indigenous Malaysian Materials Used in Exports

This program was terminated effective January 1, 1993, and provided no residual benefits to manufacturers and exporters in Malaysia of extruded rubber thread. *See Final Results of First Review*.

Preliminary Results of Review

For the period January 1, 1993, through December 31, 1993, we preliminarily determine that the net bounty or grant to be 1.00 percent *ad valorem*.

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to assess countervailing duties at 1.00 percent of the f.o.b. invoice price on shipments of the subject merchandise exported on or after January 1, 1993, and on or before December 31, 1993.

The Department also intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 1.00 percent for all firms on shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Parties to this proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under section 355.38(c), are due.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: May 15, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–12500 Filed 5–19–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–614–503]

Lamb Meat From New Zealand; Final Results of Countervailing Duty Administrative Review and Revocation of Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review and revocation of countervailing duty order.

SUMMARY: On March 1, 1995, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on lamb meat from New Zealand for the period April 1, 1992, through March 31, 1993. We have completed this review and determine the net subsidy to be 0.0013 percent *ad valorem* for all companies. In accordance with 19 CFR 355.7, any rate less than 0.5 percent *ad valorem* is *de minimis*. We will instruct the U.S. Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise as indicated above. In addition, because the requirements for revocation of the order have been met by the Government of New Zealand (GONZ) pursuant to 19 CFR 355.25(a)(1), the Department is revoking the countervailing duty order.

EFFECTIVE DATE: May 22, 1995.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill at the Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 1995, the Department published in the **Federal Register** (60 FR 11072) the preliminary results of its administrative review of the countervailing duty order on lamb meat from New Zealand and intent to revoke the countervailing duty order. We invited interested parties to comment on the preliminary results and intent to revoke. We received no comments.

The review covered the period April 1, 1992, through March 31, 1993. The review involved 9 companies and the following programs which we verified have been terminated:

(1) Livestock Incentive Scheme (LIS)
(2) Regional Development Suspensory Loan Scheme (RDSL)
(3) Expert Assistance Grant Scheme (EAGS)
(4) The Export Market Development Taxation Incentive (EMDTI)
(5) Export Suspensory Loan Scheme (ESLS)
(6) Export Programme Grant Scheme (EPGS / Export Programme Suspensory Loan Scheme (EPSLS)

Scope of Review

Imports covered by this review are shipments of lamb meat, other than prepared, preserved, or processed, from

New Zealand. This merchandise is currently classifiable under item numbers 0204.10.0000, 0204.22.2000, 0204.23.2000, 0204.30.0000, 0204.42.2000, and 0204.43.2000 of the Harmonized Tariff Schedule (HTS). The HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Revocation of the Countervailing Duty Order

According to 19 CFR 355.25(b), a government meets the minimum threshold requirement for revocation of an order if, in requesting the third consecutive administrative review of the order, the government submits a certification that the government has abolished all subsidy programs for the subject merchandise for a period of three consecutive years, and that the government will not reinstate the abolished programs or substitute other countervailable programs. Under 19 CFR 355.25(a)(1)(i), the Department must have also found that there was no net subsidy for the subject merchandise in the two consecutive administrative reviews prior to the year in which the government requests revocation, and in the third consecutive administrative review, the Department must also determine that there is no net subsidy. If the foregoing threshold requirements are met, and the Department determines in the review during which revocation has been requested that the government has eliminated all subsidies on the subject merchandise for the third consecutive year, and is not likely to substitute or replace formerly countervailable programs with new subsidies, then the Department will revoke the order.

Based upon certification by the GONZ, as well as the Department's administrative determinations, we have determined that the GONZ has abolished all subsidy programs for lamb meat for a period of three consecutive years. In addition, the GONZ has certified that it will not reinstate the abolished programs or substitute other countervailable programs. We therefore determine that there is no likelihood that the GONZ will substitute or replace formerly countervailable programs with new subsidies. Accordingly, we are revoking the countervailing duty order.

Calculation Methodology for Assessment and Cash Deposit Purposes

We calculated the bounty or grant from the LIS, (the only terminated program with residual benefits), on a country-wide basis by treating the loan amounts forgiven in prior years as grants and allocated those amounts over five years, the average useful life of breeding stock. This methodology is described in § 355.49(g) of *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments* (51 FR 23366, 233385; May 31, 1989). Because the 1988 grant under this program was allocated over five years, we find that a benefit was conferred during the review period; however, this is the last year of the five-year benefit stream and no further benefits will be provided under these LIS loans. The discount rate chosen was the average interest rate on overdrafts during the year in which the loans were forgiven.

The methodology and discount rate are the same used in previous administrative reviews (*see* e.g. *Lamb Meat from New Zealand; Preliminary Results of Countervailing Duty Administrative Review* (56 FR 27243; June 13, 1991) and *Lamb Meat from New Zealand; Final Results of Countervailing Duty Administrative Review* (56 FR 38423; August 13, 1991). We added the value of the benefits from the grants and multiplied the results by a factor determined to represent the value of lamb meat as a percentage of the total value of all livestock production. We then divided that result by the total value of lamb meat production during the review period. The country-wide rate calculated using this methodology was *de minimis,* as defined by 19 CFR § 355.7.

Final Results of Review

For the period April 1, 1992, through March 31, 1993, we determine the net subsidy to be 0.0013 percent *ad valorem* for all companies. In accordance with 19 CFR § 355.7, any rate less than 0.5 percent *ad valorem* is *de minimis.*

Therefore, the Department will instruct the U.S. Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after April 1, 1992, and before March 31, 1993; in addition, the Department will instruct the U.S. Customs Service to refund with interest any deposits of estimated duties on such entries.

We have determined that the GONZ has met the requirements for revocation of the countervailing duty order pursuant to 19 CFR § 355.25(a)(1) and 19 CFR § 355.25(b)(1). Therefore, the Department will instruct the U.S. Customs Service to terminate suspension of liquidation on entries of the subject merchandise and to liquidate, without regard to countervailing duties, such merchandise exported on or after April 1, 1993, the first day after the period reviewed herein. We will also instruct the Customs Service to refund any deposits of estimated duties on such entries.

Administrative Protective Order (APO)

This notice serves as the only reminder to parties subject to APO of their responsibilities concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)), 19 CFR 355.22, and 19 CFR 355.25.

Dated: May 15, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–1250 Filed 5–19–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[Docket Number 950503125–5125–01]

RIN 0648–XX19

Announcement of Opportunities for Research Funding in the National Estuarine Research Reserve System for Fiscal Year 1996

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: The Sanctuaries and Reserves Division of the Office of Ocean and Coastal Resource Management is soliciting proposals for funding research within the National Estuarine Research Reserve System. The focus of funding for the upcoming annual grant period is the restoration of estuarine and estuarine-like ecosystems. This notice sets forth funding priorities, selection criteria, and procedures for proposal submission.

DATES: All pre-proposals must be postmarked no later than July 14, 1995. Notification regarding the disposition of the pre-proposals will be issued on or about September 1, 1995. Final proposals must be postmarked no later than November 1, 1995.

ADDRESSES: Dr. Dwight Trueblood, Research Coordinator, Sanctuaries and Reserves Division, NOAA/Office of

Ocean and Coastal Resource Management, 1305 East-West Highway, N/ORM2, SSMC4, 12th Floor, Silver Spring, MD 20910, Attn: FY96 NERRS Research. Phone: 301–713–3145 ext. 174 Fax: 301–713–0404. See Appendix I for National Estuarine Research Reserve addresses.

FOR FURTHER INFORMATION CONTACT: For further information on research opportunities under the National Estuarine Research Reserve System, contact the on-site personnel listed in Appendix I or the Research Coordinator of the Sanctuaries and Reserves Division (see Addresses above).

SUPPLEMENTARY INFORMATION:

I. Authority and Background

Section 315 of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1461, establishes the National Estuarine Research Reserve System (NERRS). 16 U.S.C. 1461(e)(1)(B) authorizes the Secretary of Commerce to make grants to any coastal state or public or private person for purposes of supporting research and monitoring within a national estuarine reserve that are consistent with the research guidelines developed under subsection (c). This program is listed in the Catalog of Federal Domestic Assistance (CFDA) under ''Coastal Zone Management Estuarine Research Reserve,'' Number 11.420.

II. Information on Established National Estuarine Research Reserves

The NERRS consists of estuarine areas of the United States which are designated, developed, and managed for research and educational purposes. Each National Estuarine Research Reserve (Reserve) within the NERRS is chosen to reflect regional differences and to include a variety of ecosystem types in accordance with the classification scheme of the national program as presented in 15 CFR part 921.

Each Reserve is suited to support a wide range of beneficial uses of ecological, economic, recreational, and aesthetic value which are dependent upon maintenance of a healthy ecosystem. Each site provides habitat for a wide range of ecologically and commercially important species of fish, shellfish, birds, and other aquatic and terrestrial wildlife. Each Reserve has been designed to ensure its effectiveness as a conservation unit and as a site for long-term research and monitoring. As part of a national system, the Reserves collectively provide an excellent opportunity to address research questions and estuarine management issues of national significance. For a detailed description of the sites, contact individual site Managers and/or Research Coordinators. The on-site contacts and addresses of the National Estuarine Research Reserves are provide in Appendix I.

III. Availability of Funds

Funds are expected to be available on a competitive basis to any public or private university, qualified public or private institution, individual, or coastal state (including Great Lakes States, Puerto Rico, Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands) to conduct research within National Estuarine Research Reserves. Because NOAA has substantial involvement in the research, NEERS research funds are normally awarded through a cooperative agreement. NOAA may be involved in the project in the following manner:

The Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management, reserves the right to immediately halt activity on this project if it becomes obvious that the project is not fulfilling the mission of the National Estuarine Research Reserve System goals. While day-to-day management is the responsibility of the Principal Investigators, frequent guidance and direction is provided by the Federal Government for the successful conduct of this project. Non-compliance with a Federally approved management plan may result in immediate halting of the project.

SRD generally will review and approve each stage of work before the next begins to assure quality scientific progression and results that will produce viable information on which to form valid, productive coastal management decisions.

Managers, Research Coordinators, and all other staff at NERRS sites are ineligible to submit competitive research proposals under this Announcement. In FY92 through FY95, SRD provided funding in the amount of approximately $700,000, each year, for research in the NERRS. The approximate range of annual funding per successful project in recent years has been between $40,000 and $70,000. In FY96, it is expected that approximately $300,000 will be available for funding new one-year projects at similar levels. Federal funds requested must be matched by the applicant by at least 30% of the TOTAL cost, not the Federal share, of the project. For example, if the total project cost is $10,000, the Federal share is $7,000, the non-Federal match is $3,000.

The required match must be with cash or the value of goods and services directly benefiting the project in accordance with 15 CFR part 24, ''Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments,'' and OMB Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.'' It is anticipated that projects receiving funding under this announcement will begin in the spring/summer of 1996. Earliest anticipated start date is May 1, 1996.

IV. Purpose and Priorities

Research funds are used to support management-related projects that will: Enhance scientific understanding of Reserve environments; provide information needed by Reserve Managers and coastal zone decision makers; and improve public awareness of estuaries and estuarine management issues. Research projects may be oriented to specific Reserves; however, projects that involve or benefit more than one Reserve in the national system will be given higher priority.

The primary research objective for the NERRS is *the study of the causes and effects of natural and anthropogenically-induced change in the ecology of estuarine and estuarine-like ecosystems.* All research funded through SRD should be designed to provide information of significant value to the development and implementation of resource management policy governing the U.S. coastal zone, for which NOAA's Office of Ocean and Coastal Resource Management has management and regulatory responsibilities. Beginning in FY93, SRD established a series of two-year research priority categories to serve as foci for the SRD competitive research program. The FY95–96 research priority, which is the subject of this notice, is habitat restoration.

Research proposals for FY 96 should be designed to answer some aspect(s) of the following broad management-oriented question: *What are the most appropriate methods, experimental designs, models and/or evaluative criteria for restoring estuarine and estuarine-like ecosystems?* While this theme is the primary funding priority for SRD in FY95/96, consideration may also be given to projects of special merit that address other significant coastal management issues (e.g., non-profit source pollution) on a regional or national scale. The availability of funding for such projects of special merit will, however, be extremely limited, and will be determined after the primary research priority has been addressed.

Research proposals submitted in response to this announcement must: Address coastal management issues identified as having regional or national significance; relate them to the National Research Priority described in this announcement; and be conducted (at least partially) within one or more designated NERRS sites. In general, research projects are funded for a duration of either one or two years. Multiple year projects will always be initiated in the first year of a two-year priority; one-year projects may be submitted in either year of a two-year priority. Therefore, proposals submitted under this announcement for FY96 funding must be of one-year duration.

The research topic and the Reserve must be carefully chosen to ensure that the resource management issues of primary concern to the Reserve and the NERRS are addressed. Thus, it is critical that all prospective researchers contact the appropriate Reserve manager or research coordinator (see Appendix I) before submitting a proposal responding to this announcement.

V. Guidelines for Proposal Preparation, Proposal Review and Evaluation, and Reporting Requirements

Applicants for SRD research funds must follow the guidelines presented herein when preparing pre-proposals and proposals for research in Reserves. Pre-proposals and proposals not following these guidelines will be returned to the applicant without further review.

Proposals for research in the NERRS are solicited annually for award the following fiscal year. Proposal due dates and other pertinent information are contained in this announcement of research opportunities. All proposals sent to SRD must cite and reference this **Federal Register** notice (i.e., docket number). *Proposers must submit an original and two (2) copies of each proposal and all supporting documents (curricula vitae, literature referenced, etc.).*

Each proposal will be reviewed only as a one-year project. *Applicants whose pre-proposals are approved for further review must submit an original and two (2) copies of their full proposals as well.*

A. Pre-proposals

Pre-proposals are required and will be used by SRD to evaluate the applicability of the research plan with regard to the goals of this announcement. Pre-proposals may not exceed *six (6) double-spaced pages* (in a font no smaller than 12-point courier) including the abstract, introduction, objectives, statement of hypothesis, brief methods description, and discussion of anticipated results and benefits. A discussion of coordination with other research in progress or proposed is encouraged. Each pre-proposal must include a cover page which clearly identifies: The principal investigator(s) name(s), address(es) and telephone number(s); proposal title; name of institution providing matching funds, amount of Federal funds requested and amount of match; requested start date (month); site(s) where research is to be conducted; and whether the project is special merit (i.e., other than habitat restoration). Curricula vitae (not to exceed 4 pages each) for each researcher and a detailed budget showing matching funds must be included. The 6 double-spaced page limit does not include budget and budget description, cover page, curriculum vitae, literature cited section, or any tables or figures. No Federal forms need be submitted with a pre-proposal. The pre-proposal and additional sections should be submitted to Dr. Dwight Trueblood at the address provided in the Addresses section. Receipt of all pre-proposals will be acknowledged and a copy sent to the appropriate Reserve staff. All pre-proposals will be reviewed by SRD research staff, the SRD Headquarters Regional Managers staff, and the relevant Reserve Manager, Research Coordinator, and their research advisory committees, where applicable. Pre-proposals will be rated using the criteria listed in section C below, ''Proposal Review and Evaluation.'' Applicants whose research projects are selected for further consideration will be requested to submit a full proposal. Applicants whose projects are eliminated at this point will be notified.

Incomplete pre-proposals will be returned to the Principal Investigator without further review.

B. Full Proposals

Full proposals may be submitted only by those individuals requested to do so following review of pre-proposals. Unsolicited full proposals will be returned without review. One (1) original and two (2) copies of the proposal *(Including all forms, curricula vitae, etc.)* must be submitted to the same address as the preposals. The proposal may not exceed *30 double-spaced pages,* (in a font no smaller than 12-point courier) excluding Federal forms, table of contents, title page, literature cited, curricula vitae, budget, and figures and tables. *Incomplete proposals will be returned without further review.*

An Application Kit will be sent to those individuals who are requested to submit full proposals. This kit will include all required Federal forms, with instructions, as well as SRD guidelines for content and format of the full proposal.

C. Proposal Review and Evaluation

Pre-proposals will be reviewed as outlined in Section A, ''Pre-proposals,'' above. All full proposals will be reviewed by: SRD research staff; outside peer reviews who are acknowledged experts in the particular field represented by the proposal; and an outside panel of experts. Each full proposal is also forwarded to the appropriate SRD Regional, State Coastal Zone Management, and Reserve staffs for comments. Verbatim copies of all peer reviews, excluding the name of the reviewer, will be sent to the applicant. Applicants will have two weeks to address and rebut peer reviews. These rebuttals will be considered by SRD when final funding decisions are made. All recommendations for funding by SRD must be approved by the NOAA Grants Management Division before awards are made.

In order to provide for the fair and equitable selection of the most meritorious research projects for support, SRD has established specific criteria for their review and evaluation. These criteria will be applied to all research proposal in accordance with the SRD Research Priorities set forth in this announcement. The criteria used in both pre-proposal and full proposal review process are listed below, together with the elements that constitute each criterion and their relative weights (in parentheses):

1. *Scientific Merit (40%).* This criterion is used to evaluate whether the objectives of the proposal are: Important to the field; consistent with the stated national research priorities; and likely to improve the scientific understanding of estuarine processes within the Reserve(s) as well as in other similar estuaries.

2. *Technical Approach (40%).* This criterion is used to assess: The technical feasibility of the proposed effort; the reasonableness of the hypotheses; the degree to which the proposed timeline is realistics; the appropriateness and scientific validity of the proposed analytical methods; the degree to which the proposal demonstrates an understanding of the Reserve environment and management needs; the current state of knowledge in the particular field of research interest; and the total research requirements.

3. *Qualifications of P.I. and Key Personnel (10%).* This criterion relates to the experience and past performance

of the principal investigator and key personnel, their familiarity with the geographic area of the proposed study, and their publication record.

4. *Institutional Support and Capabilities (5%).* This criterion relates to the extent of *the applicant institution's* support for and commitment to the proposed research and what facilities, equipment, and other resources are available to the principal investigator and key personnel *from his/her institution* for use in accomplishing the proposed work.

5. *Budget (5%).* This criterion is used to determine whether the budget is a realistic and reasonable for accomplishing the proposed tasks.

The external science panel will review and rank the proposals based solely on the technical criteria above. The panel will submit its rankings to SRD. In making final funding decisions among qualified proposals ranked highly by the above technical criteria, SRD will also take into consideration the following programmatic policy factors:

Utility to Reserve Management and to Regional Coastal Management Issues. This criterion is used to assess the likelihood that results of this research will support the management of the affected Reserve(s) and will enhance wise coastal resource management within the region(s) of study.

Relevance to National Research Priorities and Utility to National Coastal Management Issues. This criterion is used to assess the relationship between the objectives of the proposed project and the National Research Priorities established by NOAA, and to assess the likelihood that results of this research will be important to national coastal management issues across the NERR System and coastal states.

Consequently, proposals ranked highest on technical criteria will not necessarily receive funding from SRD. Final funding decisions will be made by the Chief of the Sanctuaries and Reserves Division, based upon review panel rankings and programmatic considerations.

VI. Other Requirements

Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards.

All non-profit and for-profit applicants are subject to a name-check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either: (1) The delinquent account is paid in full; (2) A negotiated repayment schedule is established and at least one payment is received; or (3) Other arrangements satisfactory to the Department of Commerce are made.

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding. In addition, any recipients who are past due for submitting acceptable final reports under any previous SRD-funded research will be ineligible to be considered for new awards until final reports are received, reviewed and deemed acceptable by SRD.

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

If an application is selected for funding, the Department of Commerce (DOC) has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC. However, funding priority will be given to the second year of multi-year proposals upon satisfactory completion of the first year of research.

Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matter; Drug-Free Workplace Requirements and Lobbying,''and the following explanations are hereby provided:

1. Nonprocurement Debarment and Suspension. Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, ''Nonprocurement Debarment and Suspension,'' and the related section of the certification form prescribed above applies;

2. Drug-Free Workplace. Grantees (as defined at 15 CFR part 26, Section 605) are subject to 15 CFR part 26, subpart F, ''Governmentwide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

3. Anti-Lobbying. Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on the use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form which applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

4. Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

5. Lower Tier Certifications. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying,'' and disclosure form SF–LLL ''Disclosure of Lobbying Activities.'' The original form CD–512 is intended for the use of recipients. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-Made Equipment or Products: Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program should be American-made to the extent feasible.

Indirect Costs: The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Preaward Activities: If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover preaward costs.

VII. Classification

This notice has been determined to be ''not significant'' for purposes of E.O. 12866.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Administrative Order 216–6.

This notice does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

This notice contains a collection of information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648–0121.

(Federal Domestic Assistance Catalog Number 11.420 Coastal Zone Management Estuarine Research Reserves)

Dated: April 27, 1995.

W. Stanley Wilson,

Assistant Administrator, Ocean Services and Coastal Zone Management.

Appendix I. NERRS On-Site Staff

Alabama

Mr. L.G. Adams, Acting Manager, Weeks Bay National Estuarine Research Service, 10936–B, U.S. Highway 98, Fairhope, AL 36532, (334) 928–9792

California

Mr. Steve Kimple, Manager, Dr. Andrew DeVogelaere, Research Coordinator, Elkhorn Slough National Estuarine Research Reserve, 1700 Elkhorn Road, Watsonville, CA 95076, (408) 728–2822

Ms. Joanne Kerbavaz, Manager, Tijuana River National Estuarine Research Reserve, 301 Caspian Way, Imperial Beach, CA 92032, (619) 575–3613

Delaware

Ms. Sarah Cooksey, Manager, Dr. Bill Meredith, Research Coordinator, Delaware NERR, Department of Natural Resources and Environmental Control, Division of Parks and Recreation, P.O. Box 1401, Dover, DE 19903, (302) 739–3451 (Cooksey), (302) 739–3493 (Meredith)

Florida

Mr. Woodard Miley II, Manager, Mr. Lee Edmiston, Research Coordinator, Apalachicola River National Estuarine Research Reserve, 261 7th Street, Apalachicola, FL 32320, (904) 653–8063

Mr. Gary Lytton, Manager, Mr. Todd Hopkins, Research Coordinator, Rookery Bay National Estuarine Research Reserve, 10 Shell Island Road, Naples, FL 33942, (813) 775–8845

Georgia

Mr. Buddy Sullivan, Manager, Dr. Stuart Stevens, Research Coordinator, Sapelo Island National Estuarine Research Reserve, Department of National Resources, P.O. Box 15, Sapelo Island, GA 31327, (912) 485–2251 (Sullivan), (912) 264–7218 (Stevens)

Hawaii

Mr. William Stormont, Manager, Waimanu Valley National Estuarine Research Reserve, Department of Land and Natural Resources, Division of Forestry and Wildlife, 1151 Punchbowl Street, Honolulu, HI 96813, (808) 587–0051

Note: The State of Hawaii has requested that Waimanu Valley NERR be formally removed from the NERRS. This may affect future research resources and opportunities at this site.

Maine

Mr. James List, Manager, Dr. Michele Dionne, Research Coordinator, Wells National Estuarine Research Reserve, RR #2, Box 806, Wells, ME 04090, (207) 646–1555

Maryland

Ms. Mary Ellen Dore, Manager, Mr. David Nemazie, Research Coordinator, Chesapeake Bay National Estuarine Research Reserve in Maryland, Dept. of Natural Resources, Tawes State Office Building, B–3, 580 Taylor Avenue, Annapolis, MD 21401, (410) 974–3382 (Dore), (410) 228–9250 (Nemazie)

Massachusetts

Ms. Christine Gault, Manager, Dr. Richard Crawford, Research Coordinator, Waquoit Bay National Estuarine Research Reserve, Dept. of Environmental Management, P.O. Box 3092, Waquoit, MA 02536, (508) 457–0495

New Hampshire

Mr. Peter Wellenberger, Manager, Great Bay National Estuarine Research Reserve, New Hampshire Fish and Game Department, 37 Concord Road, Durham, NH 03824, (603) 868–1095

New York

Ms. Elizabeth Blair, Manager, Mr. Chuck Nieder, Research Coordinator, Hudson River National Estuarine Research Reserve, New York State Department of Environmental Conservation, c/o Bard College Field Station, Annandale-on-Hudson, NY 12504, (914) 758–5193

North Carolina

Dr. John Taggart, Manager, Dr. Steve Ross, Research Coordinator, North Carolina National Estuarine Research Reserve, University of North Carolina at Wilmington, 7205 Wrightsville Avenue, Wilmington, NC 28403, (910) 256–3721 (Taggart), (910) 395–3905 (Ross)

Ohio

Mr. Eugene Wright, Manager, Dr. David Klarer, Research Coordinator, Old Woman Creek National Estuarine Research Reserve, 2514 Cleveland Road, East, Huron, OH 44839, (419) 433–4601

Oregon

Mr. Michael Graybill, Manager, Dr. Steve Rumrill, Research Coordinator, South Slough National Estuarine Research Reserve, P.O. Box 5417, Charleston, OR 97420, (503) 888–5558

Puerto Rico

Ms. Carmen Gonzalez, Manager, Jobos Bay National Estuarine Research Reserve, Dept. of Natural Resources, Call Box B, Aguirre, PR 00704, (809) 853–4617

Rhode Island

Mr. Al Beck, Manager, Narragansett Bay National Estuarine Research Reserve, Dept. of Environmental Management, Box 151, Prudence Island, RI 02872, (401) 683–5061

South Carolina

Mr. Michael D. McKenzie, Manager, Dr. Elizabeth Wenner, Research Coordinator, Ashepoo-Combahee-Edisto (ACE) Basin, South Carolina Wildlife and Marine Resources Department, P.O. Box 12559, Charleston, SC 29412, (803) 762–5052 (McKenzie), (803) 736–5050 (Wenner)

Dr. Dennis Allen, Manager, Dr. Joe Schubauer-Berigan, Research Coordinator, North Inlet-Winyah Bay, Baruch Marine Field Laboratory, P.O. Box 1630, Georgetown, SC 29442, (803) 546–3623

Virginia

Dr. Maurice P. Lynch, Manager, Dr. Jeffrey Shields, Research Coordinator, Chesapeake Bay National Estuarine Research Reserve in Virginia, Virginia Institute of Marine Science, College of William and Mary, P.O. Box 1347, Gloucester Point, VA 23062, (804) 642–7135

Washington

Mr. Terry Stevens, Manager, Dr. Douglas Bulthuis, Research Coordinator, Padilla Bay National Estuarine Research Reserve, 1043 Bayview-Edison Road, Mt. Vernon, WA 98273, (360) 428–1558

[FR Doc. 95–12510 Filed 5–19–95; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 051595L]

Endangered Species; Permits

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

ACTION: Issuance of permit 956 (P45S), modification 1 to permit 911 (P560), modification 1 to permit 946 (P770#68), and an amendment to permit 914 (P770#67).

SUMMARY: Notice is hereby given that NMFS has issued a permit, modifications to permits, and an amendment to a permit authorizing takes of listed species for the purpose of scientific research, subject to certain conditions set forth therein, to the Northwest Biological Science Center of the National Biological Service (NBS), Oregon State University (OSU), and the Coastal Zone and Estuarine Studies Division (CZESD) of the Northwest Fisheries Science Center, NMFS.

ADDRESSES: The applications and related documents are available for

review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301-713-1401); and

Environmental and Technical Services Division, F/NWO3, NMFS, 525 NE Oregon Street, Portland, OR 97232–4169 (503–230–5400).

SUPPLEMENTARY INFORMATION: Permit 956, modification 1 to permit 911, modification 1 to permit 946, and the amendment of permit 914 were issued under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–222).

Notice was published on March 20, 1995 (60 FR 14735) that an application had been filed by NBS (P45S) for a permit to take listed species. NBS requested authorization to take juvenile, listed, artificially-propagated, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) as part of a study designed to provide managers with data on the distribution, abundance, movement, and habitat use of the anadromous fish that migrate through Lower Granite Reservoir. The study will provide detailed information on the response of migrating smolts to environmental changes that attend proposed reservoir drawdown and other river regulation scenarios. Project objectives and sampling plans will accomodate listed species recovery needs and constraints. Permit 956 was issued to NBS on May 8, 1995. The duration of the permit is 4 years and it expires on September 30, 1999.

Notice was published on January 30, 1995 (60 FR 5624) that an application had been filed by OSU (P560) for modification 1 to permit 911. Permit 911 authorizes a take of juvenile, listed, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with a study that is investigating the potential effects of climate change on thermal complexity and biotic integrity of streams, with emphasis on the seasonal intrusion of non-native coolwater and warmwater fish species into the historic habitats of native salmonids. The research will document seasonal thermal habitat utilization of indigenous and non-native fishes, interactions between and within species, and model the effects of climate change on groundwater-influenced thermal habitats. OSU requested an increase in the 1995 take authorized in permit 911 because they encountered larger juvenile fish densities in 1994 than were expected. Modification 1 to permit 911 was issued on May 10, 1995. Modification 1 is valid for the duration of the permit, which expires on September 30, 1995.

On May 12, 1995, modification 1 to permit 946 was issued to CZESD (P770#68). Permit 946 authorizes a take of adult and juvenile Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*), juvenile Snake River fall chinook salmon (*Oncorhynchus tshawytscha*), and juvenile Snake River sockeye salmon (*Oncorhynchus nerka*) associated with six studies. The studies are investigating the migration timing and relative survival of transported and inriver juvenile chinook salmon migrating down the Columbia and Snake Rivers to the ocean and the effectiveness of fish guidance devices and other bypass system components being considered for installation at four Snake and Columbia River hydroelectric dams for the purpose of improving anadromous fish passage past these dams during juvenile outmigration.

CZESD requested an increase in the take of juvenile, listed, naturally-produced, spring/summer chinook salmon for 1995 only. CZESD requested the modification because the number of wild fish in the 1995 juvenile outmigration appears to be higher than expected. This could be due to a greater overwinter survival of parr. However, it is apparent that a high percentage of hatchery fish (possibly 20 percent or more) are indistinquishable from, and are being recorded as, wild fish during the research due to poor or missing fin clips. Modification 1 to Permit 946 is valid for 1995 only. Permit 946 expires on December 31, 1999.

On May 11, 1995, an amendment to permit 914 was issued to CZESD (P770#67). Permit 914 authorizes a take of juvenile, listed, naturally-produced and artificially-propagated Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) and juvenile, listed, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) associated with a study investigating the incidence of gas bubble disease in selected aquatic biota of the Columbia River Basin during episodes of high spill volumes at Ice Harbor Dam on the Snake River and Bonneville Dam on the Columbia River in the Pacific Northwest.

NMFS issued an amendment to Permit 914 to allow the Columbia River Inter-tribal Fish Commission (CRITFC) to act as an agent of CZESD in performing the research activities for which a take of listed species is authorized by the permit. In addition, the amendment allows the collection of listed fish at Lower Monumental Reservoir on the Snake River in Washington. The amendment will be valid until a separate ESA section 10 permit is issued to CRITFC, which is expected to occur in June 1995. Permit 914 expires on December 31, 1998.

Issuance of these permit actions, as required by the ESA, was based on a finding that such actions: (1) Were applied for in good faith, (2) will not operate to the disadvantage of the listed species that are the subject of the permits, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA and the NMFS regulations governing listed species permits.

Dated: May 16,1995.

Russell J. Bellmer,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–12451 Filed 5–19–95; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Grant a Limited Exclusive Patent License

Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces its intention to grant Specialty Cable Corporation, a corporation of the State of Connecticut, a limited exclusive license under United States Patent No. 5,304,739 filed in the name of Reja B. Klug et al. for a ''High Energy Coaxial Cable For Use In Pulsed High Energy Systems''.

The license described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within sixty (60) days from the date of publication of this Notice. Copies of the patent application(s) may be obtained, on request, from the same addressee.

All communications concerning this Notice should be sent to: Mr. Samuel B. Smith, Jr., Chief, Intellectual Property Branch, Commercial Litigation Division, Air Force Legal Services Agency, AFLSA/JACNP, 1501 Wilson Blvd. Suite 805, Arlington, VA 22209–2403, Telephone No. (703) 696–9050.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–12482 Filed 5–19–95; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 5 and 6 June 1995.

Time of Meeting: 1200–1700, 5 June 1995; 0800–1700, 6 June 1995.

Place: Atlanta, GA.

Agenda: The Army Science Board's Logistics and Sustainability Subgroup will meet for discussions focused on current doctrine, missions, functions, force structures and modules, and technologies reference ''Army Logistical Support to Operations Other Than War.'' These meetings will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of these meetings. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board,

[FR Doc. 95–12483 Filed 5–19–95; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

To Prepare a Supplemental Environmental Impact Statement (SEIS) For the Proposed Rio Grande Floodway, San Acacia to Bosque del Apache, Socorro County, New Mexico

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a Supplemental Environmental Impact Statement (SEIS).

SUMMARY:

1. Proposed Action

The purpose of the study is to reevaluate the plan of flood protection authorized by the Flood Control Act of 1948 (Public Law 858) for the proposed Rio Grande Floodway, San Acacia to Bosque del Apache, Socorro County, New Mexico, in light of newly listed endangered species and changes in levee design parameters. The proposed action is to provide increased flood protection from San Acacia to Elephant Butte Reservoir, New Mexico. The proposed action is to replace the existing west bank embankment along the Rio Grande with a structurally competent levee capable of containing high volume, short duration flows up to the design discharge of 51,000 cubic feet per second (cfs) decreasing to 39,000 cfs at the downstream project terminus, as well as low volume, long duration flows. Coincident objectives are the preservation, conservation, and enhancement of biological, recreational, social, cultural and aesthetic values.

2. Alternatives Considered

Alternatives developed and evaluated during previous studies consisted of levee reconstruction (50-, 100-, and 200-year flood frequency levels and the Standard Project Flood), flood and sediment control dams, local levees, watershed land treatment, floodproofing and zoning, intermittent levee replacement, and no action.

This reevaluation involves evaluation of project effects on newly listed endangered species and changes in levee design parameters to accommodate low volume, long duration floods in addition to the previous design for high volume, short duration floods, and possible changes in levee alignment.

3. Public Involvement Process

Coordination is ongoing with both public and private entities having jurisdiction or an interest in land and resources in the middle Rio Grande valley of New Mexico. These entities include the general public, local governments, the U.S. Bureau of Reclamation, the U.S. Fish and Wildlife Service, the New Mexico Department of Game and Fish, and the Interstate Stream Commission. A fully coordinated final environmental impact statement (EIS) addressing the previous recommendation to construct flood and sediment control dams on the Rio Puerco and Rio Salado was filed with the Council on Environmental Quality in 1977. An early public meeting was held in the city of Socorro in 1979. A supplemental EIS evaluating the effects of the alternative to rehabilitate the existing levee system was filed with the Council on Environmental Quality in 1992. Coordination will continue throughout development of the SEIS through scoping letters, meetings and field visits, and if requested, scoping meetings. All interested parties including Federal, state, and public entities will be invited to submit comments on the draft SEIS when it is circulated for review.

The planning effort is being coordinated with the U.S. Bureau of Reclamation (Bureau) as a cooperating agency in the NEPA process. The Bureau was authorized to develop and implement a comprehensive plan for flood control and water conservation under the Flood Control Acts of 1948 and 1950. The plan includes river channel maintenance activities throughout the middle Rio Grande and construction of the Low Flow Conveyance Channel (LFCC) from San Acacia to Elephant Butte Reservoir, designed to transmit river flows through a critical water-loss area. The proposed levee rehabilitation project parallels the LFCC for most of the project area. Close coordination between the Corps and the Bureau will be maintained throughout project planning.

The planning effort is also being coordinated with the U.S. Fish and Wildlife Service pursuant to the requirements of the Fish and Wildlife Coordination Act of 1972 and the Endangered Species Act of 1973, as amended. Consultation with the Advisory Council on Historic Preservation and the New Mexico State Historic Preservation Officer is ongoing pursuant to the National Historic Preservation Act of 1966.

4. Significant Issues to be Analyzed

Significant issues to be analyzed in the development of the SEIS include the effect of the recommended plan on endangered species, floodplain development, water quality, riparian biological systems, wildlife refuge objectives, endangered species, social welfare, human safety, cultural resources, and aesthetic qualities. Development and implementation of mitigation measures will be undertaken for any unavoidable effects

5. Public Review

The estimated date that the draft Limited Reevaluation Report will be completed and the draft SEIS circulated for public review is February, 1996.

6. Further Information

Questions or comments regarding the study and the supplemental EIS may be directed to: Denise Smith, USAED, Albuquerque, P.O. Box 1580, Albuquerque, New Mexico 87103, Phone: (505) 766–6569.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–12485 Filed 5–19–95; 8:45 am]

BILLING CODE 3710–KK–M

Availability of Vint Hill Farms Station

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army, in accordance with the Base Closure

Community Redevelopment and Homeless Assistance Act of 1994, announces that the property listed below, at Vint Hill Farms Station Military Reservation, located approximately eight miles north of Warrenton, just east of Route 29 on Route 215, has been determined surplus. While most of the property is scheduled to be vacated by September 30, 1997, some of the property may become available sooner. This is the opportunity for state and local governments, representatives of the homeless, and other interested parties to submit their notices of interest.

DATES: Proposals for using the property should be submitted as soon as possible.

FOR FURTHER INFORMATION CONTACT: Mr. Owen Bludau, Executive Director, Vint Hill Task Force, 26B John Marshall Street, Warrenton, Virginia 22186, telephone: 703–347–6965, Fax 703–349–2304.

SUPPLEMENTARY INFORMATION: The Task Force will coordinate the various interests in the property and develop a reuse plan and strategy for it. A summary of the property is as follows:

94 Family Housing Facilities.
6 Temporary Lodging Facilities.
27 Community Support Facilities.
56 Administrative Support Facilities.
4 Training/Education Facilities.
7 Communications Facilities.
2 Medical Facilities.
18 Recreation Facilities.
57 Storage Facilities.
12 Maintenance Facilities.
33 Utility Support Facilities.
Recreational land, which includes tennis and handball courts, pools, softball fields, helipad, playground, skeet field, and shuffleboards.
Approximately 1,279,952 SF of Building Space
Approximately 700 acres of land, 435 acres of which are undeveloped.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–12484 Filed 5–19–95; 8:45 am]

BILLING CODE 3719–41–M

Department of the Navy

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet June 6-7, 1995, from 9:00 a.m. to 4:00 p.m., on each day at 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to conduct executive level discussions about the task force final report. The matters being discussed constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Timothy J. Galpin, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, VA 22302-0268, Phone: (703) 756-1205.

Dated: May 9, 1995

M. D. Schetszle,

LT, JAGC, USN, Alternate Federal Register Liaison Officer.

[FR Doc. 95–12412 Filed 5–19–95; 8:45 am]

BILLING CODE 3810–FF–F

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet June 20-21, 1995, from 9:00 a.m. to 4:00 p.m. on each day. The meeting will be held at the Applied Physics Laboratory, JHU, Johns Hopkins Road, Laurel, MD. These sessions will be closed to the public.

The purpose of this meeting is to conduct discussions on strategies for an uncertain future to include information warfare, reserve structure and mobilization, and the changing strategic environment. Additionally, the panel members will discuss and synthesize recommendations and conclusions which will appear in the final report. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Timothy J. Galpin, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, VA 22302-0268, Phone: (703) 756-1205.

Dated: May 15, 1995

L. R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–12438 Filed 5–19–95; 8:45 am]

BILLING CODE 3810–FF–F

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet June 13, 1995, from 2:00 p.m. to 3:30 p.m., in Room 4E630, The Pentagon, Arlington, Virginia. This session will be closed to the public.

The purpose of this meeting is to conduct executive level discussions about the task force final report. The matters being discussed constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Timothy J. Galpin, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, VA 22302-0268, Phone: (703) 756-1205.

Dated: May 15, 1995

L. R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–12437 Filed 5–19–95; 8:45 am]

BILLING CODE 3810–FF–F

DEPARTMENT OF EDUCATION

National Board of the Fund for the Improvement of Postsecondary Education; Meeting

AGENCY: National Board of the Fund for the Improvement of Postsecondary Education, Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required

under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: June 9, 1995, from 9 a.m. to 11:30 a.m. (closed); and from 11:30 a.m. to 5 p.m. (open).

ADDRESSES: Quality Hotel-Capitol Hill, 415 New Jersey Avenue, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Charles Karelis, Director, Fund for the Improvement of Postsecondary Education (FIPSE), 7th & D Streets SW., Washington, DC 20202. Telephone: (202) 708–5750.

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education (National Board) is established under Section 1003 of the Higher Education Act of 1965, as amended (20 U.S.C. 1135a–1). The National Board of the Fund is authorized to recommend to the Director of FIPSE and the Assistant Secretary for Postsecondary Education priorities for funding and approval or disapproval of grants submitted to FIPSE.

On June 9, 1995, from 11:30 a.m. to 5:00 p.m. the Board will meet in open session. The proposed agenda for the open portion of the meeting will include a review of the Comprehensive Program priorities, an update on FIPSE targeted competitions, an update on FIPSE's FY 1996 budget, and a review and discussion of priorities introduced at the Leadership Conference held in February, 1995.

On June 9, 1995, from 9:00 a.m. to 11:30 a.m., the meeting will be closed to the public for the purpose of reviewing and recommending grant applications submitted to the Comprehensive Program and the Innovative Projects for Community Service Program. This portion of the meeting will be closed under the authority of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C.A. Appendix 2) and under exemptions (4) and (6) of the Government in the Sunshine Act (Public Law 94–409, 5 U.S.C. 552b(c) (4) and (6)). The review and discussions of the applications and the qualifications of proposed staff to work on these grants are likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential, and to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Records are kept of all Board proceedings, and are available for public inspection at the Office of the Fund for the Improvement of Postsecondary Education, Room 3100, Regional Office Building #3, 7th & D Streets SW., Washington, DC 20202 from the hours of 8 a.m. to 4:30 p.m.

Dated: May 16, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–12454 Filed 5–19–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Intent To Prepare an Environmental Assessment of Decommissioning the Strategic Petroleum Reserve Weeks Island Facility, Iberia Parish, Louisiana

AGENCY: Strategic Petroleum Reserve (SPR), Department of Energy (DOE).

ACTION: Notice of intent to prepare an environmental assessment and to conduct public scoping.

SUMMARY: The Department of Energy (DOE) has determined that, pursuant to the National Environmental Policy Act (NEPA), an Environmental Assessment (EA) should be prepared to assess the potential environmental consequences of decommissioning the Strategic Petroleum Reserve (SPR) Weeks Island Facility in Iberia Parish, Louisiana. A groundwater leak has compromised the containment integrity of the facility, which currently stores 73 million barrels of crude oil underground in a salt dome. In December 1994, DOE concluded that the integrity of the Weeks Island mine cannot be assured and that it is unsuitable for continued crude oil storage. The agency plans to move Weeks Island's crude oil inventory to other SPR storage sites in Louisiana and Texas beginning in October 1995 and then decommission the facility, completing in June 1999. The range of proposed decommissioning actions and associated environmental issues that have been identified are described below. DOE is requesting comments, suggestions, and any information that interested parties may have that would assist the agency in identifying additional alternatives and environmental issues to consider in the EA.

DATES: A public meeting will be held in New Iberia, Louisiana on Thursday, June 8, 1995, at 7 p.m. Speakers may pre-register in writing, by telephone or by facsimile by close of business June 1, 1995. Written comments must be received by June 21, 1995.

ADDRESSES: The meeting will be held at the New Iberia Senior High School auditorium, 1301 East Admiral Doyle Drive, New Iberia, Louisiana. Inquiries, written comments and suggestions, and requests to speak at the scoping meeting, to review the draft EA when it becomes available, and/or to receive the approved EA should be labeled ''Weeks Island EA'' and submitted to Ms. Durinda L. Robinson, Office of Public Affairs (FE–445.2), Department of Energy, 900 Commerce Road East, New Orleans, Louisiana 70123. Requests to speak will also be accepted by telephone at (504) 734–4312 between the hours of 8:00 a.m. and 4:00 p.m. CDT, Monday through Friday, except Federal holidays, or by facsimile, (504) 734–4427.

A transcript of the meeting will be prepared and will be made available for inspection at the following locations:

- New Iberia Public Library, 445 E. Main Street, New Iberia, Louisiana 70560 (ATTN: Ms. Vicki Chrisman)
- Dupre Library, 302 East St. Mary Blvd., U. of Southwestern Louisiana, Lafayette, Louisiana 70504 (ATTN: Ms. Sandy Himel)
- New Orleans Public Library, Louisiana Division, 219 Loyola Avenue, New Orleans, Louisiana 70140
- DynMcDermott Petroleum Operations Co., Technical Library, 800 Commerce Rd. W., Suite 102, New Orleans, Louisiana 70123 (ATTN: Ms. Cindi Nelson)
- Freedom of Information Reading Room, Department of Energy, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585

FOR FURTHER INFORMATION ON THE DOE NEPA PROCESS, CONTACT: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–4.2), Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, telephone (202) 586–4600 or toll-free (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background

The SPR Weeks Island Facility is in Iberia Parish, Louisiana, about 15 miles south of the city of New Iberia. It is a conventional room-and-pillar salt mine in a salt dome that was converted by DOE for the long-term storage of crude oil. It was filled to capacity with 73 million barrels of oil and has been in a standby mode since 1982. The mine and surface property were acquired from the

Morton Salt Company who continues to mine salt adjacent to DOE on the salt dome.

In May 1992, a sinkhole was discovered which was vertically aligned above the southeast boundary of the upper level of the storage chamber. The sinkhole was backfilled with sand and monitored through 1993. An intensive geotechnical investigation was conducted through 1994 which confirmed that a subsurface crevasse extends into the salt formation and that groundwater was leaking into the mine.

In December 1994, DOE concluded that the integrity of the Weeks Island mine cannot be assured and that it is unsuitable for continued crude oil storage. DOE decided to move the oil to other SPR sites in Texas and Louisiana and decommission the facility. As an interim measure, DOE has implemented a groundwater control program which includes freezing the ground around the sinkhole to interdict groundwater flow into the crevasse. In February 1995, DOE determined that in accordance with NEPA and with 10 CFR 1021, DOE NEPA Implementing Procedures, an EA of the decommissioning actions should be prepared to determine whether a Finding of No Significant Impact is supported or an Environmental Impact Statement will be required.

Preliminary Description of Alternatives

1. Proposed Action

The proposed action consists of stabilizing the storage chambers by filling them with brine, sealing off the underground facilities, and decommissioning (i.e., removing from SPR service) the onsite surface facilities and the 36-inch-diameter 67-mile crude oil pipeline to DOE's St. James Terminal in St. James Parish, Louisiana. Project completion is scheduled for June 1999.

- Underground Facilities

DOE would flood the storage chamber, drifts (i.e., connecting tunnels), and manifold room with brine. The Markel mine, an adjacent abandoned Morton salt works which is accessible from Weeks Island mine, would also be flooded unless it is decided to maintain it for inspection of the seal separating Weeks Island from Morton's active mine. The production and service shafts, vent hole, and both fill holes would be plugged in accordance with State regulations. If it is decided to keep the Markel mine accessible for inspections, the production shaft would be kept open for access.

Three alternatives are being considered for obtaining the 80 million barrels of brine that are needed. One alternative is to produce brine by leaching existing DOE salt caverns at the SPR Bayou Choctaw Facility in Iberville Parish, Louisiana, 13 miles southwest of Baton Rouge. The brine would be transported via DOE's 36-inch-diameter, 37-mile crude oil pipeline from Bayou Choctaw to St. James Terminal, thence by DOE's crude oil pipeline from St. James to Weeks Island. Weeks Island brine fill at 200,000 barrels per day would take about 13 months with an additional two months required for oil skimming and recovery.

An alternative that will be assessed is a services contract to produce brine from a new well on Morton property on Weeks Island salt dome. Water for leaching would be obtained from the adjacent Intracoastal Waterway. Construction and operation of temporary water and brine pipelines of up to nominally one mile each would be required. The third alternative is to award a competitive contract for brine from another source. This alternative is unassessable because of its undefined character. If DOE intends to pursue this alternative further, NEPA compliance would be addressed separately under the competitive procurement provisions of 10 CFR 1021.216.

- Surface Facilities

It was suggested at a March 2, 1995, public meeting in New Iberia that the site be donated for salt dome geological research with a special interest in ''post closure'' uses for Louisiana's coastal salt domes where subsidence and other geophysical concerns have occurred subsequent to mineral extraction. The alternative to a DOE-directed donation of the property would be to transfer it to the General Services Administration (GSA). Improvements that could be transferred to GSA include paved roads and parking lots, central plant fencing, fire protection and sanitation systems, and central plant buildings with their associated electrical distribution systems, such as the administration building, control center, laboratory, warehouse, pumphouses, and guard house.

Usable equipment, spare parts and materials would be transferred to other SPR sites. All mechanical and electrical process systems and equipment for crude oil handling would be removed and transferred to other DOE facilities or salvaged. Associated piping, cable, and conduit above and below grade within the fenced perimeter and oily water handling systems would be removed and disposed at an approved facility. Buildings associated with the shafts would be demolished. Surface decommissioning operations are estimated to require 27 months.

- Crude Oil Pipeline

At least part of the Weeks Island-to-St. James crude oil pipeline potentially has value as either a private or a common carrier pipeline because of its interconnection with the commercial crude oil distribution network. If DOE could not sell it, the pipeline would be abandoned in place in accordance with Federal and State regulations.

2. The No Action Alternative

The no action alternative will be assessed to provide a baseline for comparison with the environmental effects of the proposed action. Under the no action alternative, the mine would not be refilled with oil, brine, or other fluid and no other stabilizing actions would be taken. Efforts to control groundwater flow would continue. To the extent that these fail to stop the leak, the mine would be allowed to fill naturally. Actions would be taken as necessary to maintain the mine at acceptable pressure. DOE would staff and maintain the surface facilities in a standby state in perpetuity.

Identification of Environmental Issues

DOE has identified the issues listed below as topics to be addressed in the EA. Public scoping may identify additional issues.

1. Risk of long-term oil contamination of Vermilion Bay and the Gulf of Mexico that could impact the human environment.

2. Risk of contaminating groundwater adjacent to the Gulf of Mexico with residual oil after the mine is filled with brine.

3. Risk of surface subsidence on Morton Salt Company's adjacent mining operations.

4. Brine spill risk in sensitive environments, especially in the Atchafalaya floodway.

5. Potential impacts on the protected Louisiana black bear.

A November 1994 study concluded that the ultimate loss of the site's approximately 100 permanent jobs would have a negligible socioeconomic impact on the region. DOE has not identified any involvement of the project with floodplains or wetlands. As the site is located within the Louisiana Coastal Zone, a determination of consistency with the Louisiana Coastal Resources Program may be required.

Public Scoping Meeting and Invitation To Comment

In the spirit of improving the quality of the agency's decisions, DOE believes that, for the circumstances of this proposed action, it is appropriate to enhance public participation in the EA

process with a public scoping meeting. DOE invites written and oral comments on the scope from all interested parties. Preregistration to speak and written comments should be submitted according to the instructions provided above under **DATES** and **ADDRESSES**. Written and oral comments will be given equal weight in defining the scope of the EA.

A separate registration is required for each speaker. Registrants should confirm the time they are scheduled to speak at the registration desk at the meeting. Persons who have not preregistered may register at the door and will be accommodated on a first-come, first-served basis to the extent time allows. To ensure that as many persons as possible have the opportunity to speak, five minutes will be allotted to each.

Basic procedures for conducting the meeting will be announced by the presiding officer at the start of the meeting. A brief presentation will be made by DOE officials on the proposed action and the EA process. The meeting will not be an evidentiary hearing ; there will be no cross-examination of speakers. However, DOE officials conducting the meeting will be permitted to ask clarifying questions of statements made at the meeting.

Issued in Washington, D.C. on May 17, 1995.

Patricia Fry Godley,

Assistant Secretary for Fossil Energy.

[FR Doc. 95–12490 Filed 5–19–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER95–713–000, et al.]

American Electric Power Service Corporation, et al., Electric Rate and Corporate Regulation Filings

May 12, 1995.

Take notice that the following filings have been made with the Commission:

1. American Electric Power Service Corporation

[Docket No. ER95–713–000]

Take notice that on May 5, 1995, the American Electric Power Service Corporation (AEPSC) amended its filing in the above-referenced Docket to modify the method by which AEPCS will determinate the cost of emission allowances.

A copy of the filing was served upon the parties affected by the amendment and the affected state regulatory commissions.

Comment date: May 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Southern California Edison Company

[Docket Nos. ER95–830–000 ER95–831–000 ER95–832–000]

Take notice that on April 28, 1995, Southern California Edison Company tendered for filing a supplement to its initial filing in the above three dockets.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: May 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. New England Power Company

[Docket No. ER95–992–000]

Take notice that on May 1, 1995, New England Power Company, tendered for filing a transmission contract for service to Louis Dreyfus Electric Power Inc.

Comment date: May 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power & Light Company

[Docket No. ER95–993–000]

Take notice that on May 1, 1995, Florida Power & Light Company (FPL), tendered for filing proposed Service Agreement with the Reedy Creek Improvement District for transmission service under FPL's Transmission Tariff Nos. 2 and 3.

FPL requests that the proposed Service Agreements be permitted to become effective on April 1, 1995, or as soon thereafter as practicable.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: May 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power & Light Company

[Docket No. ER95–994–000]

Take notice that on May 1, 1995, Florida Power & Light Company (FPL), tendered for filing proposed Service Agreements with the City of Lake Worth for transmission service under FPL's Transmission Tariff Nos. 2 and 3.

FPL requests that the proposed Service Agreements be permitted to become effective on May 1, 1995, or as soon thereafter as practicable.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: May 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power & Light Company

[Docket No. ER95–995–000]

Take notice that on May 1, 1995, Florida Power & Light Company (FPL), tendered for filing proposed Service Agreements with the Jacksonville Electric Authority for transmission service under FPL's Transmission Tariff Nos. 2 and 3.

FPL requests that the proposed Service Agreements be permitted to become effective on April 4, 1995, or as soon thereafter as practicable.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: May 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Southern California Edison Company

[Docket No. ER95–999–000]

Take notice that on May 1, 1995, Southern California Edison Company (Edison), tendered for filing the following Supplemental Agreement (Supplemental Agreement) to the 1990 Integrated Operations Agreement (IOA) with the City of Riverside (Riverside), FERC Rate Schedule No. 250, and associated Firm Transmission Service Agreement

Supplemental Agreement Between Southern California Edison Company and City of Riverside for the Integration of The Washington Water Power—Riverside Power Sale Agreement

Edison-Riverside, Washington Water Power, Firm Transmission Service Agreement

The Supplemental Agreement and FTS Agreement set forth the terms and conditions by which Edison will integrate Riverside's Washington Water Power resource and provide bi-directional firm transmission service.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: May 26, 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. 95–12417 Filed 5–19–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER95–734–000, et al.]

Portland General Electric Company, et al., Electric Rate and Corporate Regulation Filings

May 15, 1995.

Take notice that the following filings have been made with the Commission:

1. Portland General Electric Company

[Docket No. ER95–734–000]

Take notice that on May 9, 1995, Portland General Electric Company (PGE), tendered for filing an amendment to its filing in this docket.

Comment date: May 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Louisville Gas and Electric Company

[Docket No. ER95–997–000]

Take notice that on May 1, 1995, Louisville Gas and Electric Company (Louisville), tendered for filing new Power Sales Service, Rate PSS.

The Power Sales Service allows customers to reserve firm or non-firm power and associated energy.

A copy of the filing was served upon the Kentucky Public Service Commission.

Comment date: May 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. IES Utilities Inc.

[Docket No. ER95–998–000]

Take notice that on May 1, 1995, IES Utilities Inc. (IES) respectfully requests that, pursuant to its authority under § 35.15 of its regulations, the Commission waive the notice requirement to allow an effective date of December 31, 1994, to terminate the Iowa Southern Utilities Company FERC Electric Tariff, Original Volume 1 including cancellation of specified service agreements, and allow a proposed effective date of January 1, 1995, to add specified IES service agreements. Section 35.15 provides: ''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.'' In support of its request, the following good cause is shown: The cancellation of the Iowa Southern Utilities Company FERC Electric Tariff, Original Volume 1, does not modify the IES tariff. The rate schedules themselves remain unaffected. It results in the addition of new IES service agreements which are hereby filed.

Wherefore, IES Utilities Inc. respectfully requests that the Commission waive the notice requirements of § 35.15 of the Commission's Regulations and that the proposed effective dates of December 31, 1994, for the cancellation of the Iowa Southern Utilities Company FERC Electric Tariff Original Volume 1, and January 1, 1995, for the effective date of the new IES Utilities service agreements be authorized.

Comment date: May 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–1000–000]

Take notice that on May 1, 1995, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule FERC No. 105, an agreement to provide transmission service for Orange and Rockland Utilities, Inc. (O&R). The Supplement provides for an increase in the monthly transmission charge from $1.03 to $1.04 per kilowatt per month thus increasing annual revenues under the Rate Schedule by a total of $1200. Con Edison requests that this increase take effect on July 1, 1995.

Con Edison states that a copy of this filing has been served by mail upon O&R.

Comment date: May 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Louisville Gas and Electric Company

[Docket No. ER95–1002–000]

Take notice that on May 1, 1995, Louisville Gas and Electric Company, tendered for filing a copy of a service agreement between Louisville Gas and Electric Company and Carolina Power and Light Company under Rate GSS.

Comment date: May 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Oklahoma Gas and Electric Company

[Docket No. ER95–1003–000]

Take notice that on May 2, 1995, Oklahoma Gas and Electric Company (OG&E), tendered for filing a proposed Letter Agreement with City Water and Light Plant of the City of Jonesboro, Arkansas (Jonesboro) for the sale of capacity and energy.

Copies of this filing have been sent to Jonesboro, the Oklahoma Corporation Commission, and the Arkansas Public Service Commission.

Comment date: May 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. The Montana Power Company

[Docket No. ER95–1004–000]

Take notice that on May 2, 1995, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.12 a ''Phase Shifter and Operation Agreement Between The Montana Power Company and PacifiCorp''. Montana requests that the Commission accept the Agreement for filing.

A copy of the filing was served upon PacifiCorp and Western Area Power Administration.

Comment date: May 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. UtiliCorp United Inc.

[Docket No. ER95–1005–000]

Take notice that on May 2, 1995, UtiliCorp United Inc., tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10, with Rainbow Energy Marketing Corporation. The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to Rainbow Energy Marketing Corporation pursuant to the tariff, and for the sale of capacity and energy by Rainbow Energy Marketing Corporation to Missouri Public Service pursuant to Rainbow Energy Marketing Corporation's Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by Rainbow Energy Marketing Corporation.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: May 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Entergy Services, Inc.

[Docket No. ER95–1006–000]

Take notice that on May 2, 1995, Entergy Services, Inc. (Entergy Services), acting as agent for Arkansas Power & Light Company, Gulf States

Utilities Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc. (collectively the Entergy Operating Companies), tendered for filing a Letter Agreement for the sale of limited firm capacity and energy to Alabama Electric Cooperative, Inc. (AECI) pursuant to Service Schedule LF—Limited Firm Capacity and Energy of the Interchange Agreement between Mississippi Power & Light Company and AECI. Entergy Services requests waiver of the notice requirements to permit an effective date of June 1, 1995.

Comment date: May 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Logan Generating Company, L.P.

[Docket No. ER95–1007–000]

Take notice that on May 2, 1995, Logan Generating Company, L.P. (Logan), tendered for filing with the Federal Energy Regulatory Commission, pursuant to 18 CFR 385.205, 35.12 of the Commission's Regulations an Application for Blanket Approval of Rate Schedule for Future Power Sales of Market-Based Rates and Confirmation of Previously Granted Waivers and Preapprovals of Certain Commission Regulations for Logan's Initial Rate Schedule FERC No. 2.

Logan intends to sell up to 25 MW of capacity and/or energy, from Logan's cogeneration facility located in Logan Township, New Jersey, not committed under power purchase agreements. Under Rate Schedule FERC No. 2, Logan intends to sell such capacity and/or energy at rates, terms and conditions to be mutually agreed upon with the purchasing party.

Comment date: May 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. PECO Energy Company

[Docket No. ER95–1008–000]

Take notice that on May 3, 1995, PECO Energy Company (PECO), filed a service agreement under its Borderline Interchange Agreement with Metropolitan Edison Company which is on file as Rate Schedule FERC No. 69.

PECO requests an effective date of February 28, 1995.

PECO has served copies of the filing on the Pennsylvania Public Utility Commission.

Comment date: May 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Fitchburg Gas and Electric Light Company

[Docket No. ER95–1009–000]

Take notice that on May 3, 1995, Fitchburg Gas and Electric Light Company (Fitchburg), filed with the Commission a service agreement between Fitchburg and Massachusetts Municipal Wholesale Electric Company (MMWEC) for the sale of 7.5 MW (seasonal maximum claimed capability) of capacity and associated energy from Fitchburg #7. This is a service agreement under Fitchburg's FERC Electric Tariff, Original Volume No. 2, which was accepted for filing by the Commission in Docket No. ER92–88–000 on September 30, 1992. Fitchburg requests that service commence as of May 1, 1995. A notice of cancellation was also filed.

Fitchburg states that copies of the filing were served on MMWEC and the Massachusetts Department of Public Utilities.

Comment date: May 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. New York State Electric & Gas Corporation

[Docket No. ER95–1010–000]

Take notice that on May 3, 1995, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12, as an initial rate schedule, an agreement with Heartland Energy Services, Inc. (Heartland). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to Heartland and Heartland will purchase from NYSEG either capacity and associated energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on May 4, 1995, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and Heartland.

Comment date: May 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Entergy Power, Inc.

[Docket No. ER95–1011–000]

Take notice that on May 3, 1995, Entergy Power, Inc. (EPI), tendered for filing a Purchase and Sale Agreement with NorAm Energy Services, Inc.

EPI requests an effective date for the Agreement that is one (1) day after the date of filing, and respectfully requests waiver of the Commission notice requirements in § 35.11 of the Commission's Regulations.

Comment date: May 30, 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. 95–12418 Filed 5–19–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–488–000, et al.]

Columbia Gas Transmission Corporation, et al.; Natural Gas Certificate Filings

May 11, 1995.

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Corp.

[Docket No. CP95–488–000]

Take notice that on May 5, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP95–488–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct a delivery point in Loudon County, Virginia, under Columbia's blanket certificate issued in Docket No. CP83–76–000 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.

Columbia proposes to construct a delivery point in Loudon County, Virginia, to Washington Gas for firm service of a maximum of 48 Dth/d and an estimated annual quantity of 3,250 Dth. The cost of $53,263, will be reimbursed by Washington Gas. No impact to existing customers is anticipated, according to Columbia.

Comment date: June 26, 1995, in accordance with Standard Paragraph G at the end of this notice.

2. Transcontinental Gas Pipe Line Corp.

[Docket No. CP95–490–000]

Take notice that on May 8, 1995, Transcontinental Gas Pipe Line Corporation (TGPL), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP95–490–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an interruptible service to Elizabethtown Gas Company, which was authorized in Docket No. CP73–4, all as more fully set forth in the application on file with the Commission and open to public inspection.

TGPL proposes to abandon an interruptible service to Elizabethtown Gas Company, under its Rate Schedule X–67, because it is no longer utilized. It is stated that if future service is desired such transportation would be done under TGPL's Rate Schedule IT and Part 284 of the Regulations.

Comment date: June 1, 1995, in accordance with Standard Paragraph F at the end of this notice.

3. El Paso Natural Gas Co.

[Docket No. CP95–475–000]

Take notice that on May 2, 1995, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed an application pursuant to Section 7(b) of the Natural Gas Act for an order permitting the abandonment of certain of its gathering system facilities located in Offshore Texas by conveyance to El Paso Field Services Company (Field Services), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso owns a percentage in four lateral line facilities and certain production area compression facilities located in the Offshore Texas Area and connect to High Island Offshore System (HIOS). El Paso states that it intends, effective January 1, 1996, to complete a major corporate restructuring through which all of El Paso's gathering, treating, and processing functions will be transferred to Field Services.

El Paso states that the proposed facilities to be transferred are already functionalized in the production function for rate and accounting purposes and therefore, constitute nonjurisdictional gathering facilities. Additionally, El Paso states that it no longer owns any reserves in the Offshore Texas area and it no longer has any obligation to any producer to purchase supplies of natural gas from that area. El Paso states that all contracts have been terminated.

Comment date: June 1, 1995, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a request. 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. 95–12419 Filed 5–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–291–000]

Algonquin Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

May 16, 1995.

Take notice that on May 12, 1995, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets, effective June 11, 1995:

Original Sheet No. 93A
Third Revised Sheet No. 700
First Revised Sheet No. 701
First Revised Sheet No. 702
Third Revised Sheet No. 703

Algonquin states that the purpose of this filing is to reflect a revision in the take-or-pay allocation methodology of National Fuel Gas Supply Corporation (National Fuel), and to flow through $989,803.46 of take-or-pay charges billed to Algonquin by National Fuel.

Algonquin further states that copies of this filing were mailed to all affected customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with 18 CFR Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 23, 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. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are

available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12420 Filed 5–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES95–8–001]

Central Louisiana Electric Company, Inc; Notice of Amended Application

May 16, 1995.

Take notice that on May 15, 1995, Central Louisiana Electric Company, Inc. (CLECO) filed an amendment to its application in Docket No. ES95–8–000, under Section 204 of the Federal Power Act. By letter order dated November 29, 1994 (69 FERC ¶ 62,173), CLECO was authorized to issue not more than $123 million of short-term indebtedness during the period January 1, 1995 through December 31, 1996, with final maturities not later than one year from the date of issuance. CLECO requests that the authorization issued in Docket No. ES95–8–000 be amended to authorize CLECO to issue and incur short-term indebtedness aggregating not more than $123 million principal amount outstanding at any one time, in connection with commercial paper issuances and commercial bank borrowings, and to enter into a new revolving credit agreement.

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 May 24, 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 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. 95–12421 Filed 5–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–292–000]

Columbia Gas Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

May 16, 1995.

Take notice that on May 12, 1995, Columbia Gas Transmission Corporation (Columbia) submitted for filing with the Commission pursuant to Section 154.1(a) of the Commission's regulations the following tariff sheets (Rate Schedules X–132 and X–133) to its FERC Gas Tariff, Original Volume No. 2, effective as follows:

To Be Effective November 1, 1993

First Revised Sheet Nos. 1567 through 1601

To Be Effective January 1, 1994

Second Revised Sheet No. 1570
Second Revised Sheet No. 1590

Columbia states that it provides service from its Chesapeake LNG facility to three customers pursuant to Rate Schedules X–131, X–132 and X–133. Columbia states that changes were made to the subject X-Rate Schedules effective November 1, 1993, as a result of Columbia's compliance with and implementation of Order No. 636 effective November 1, 1993. All parties to the subject revised X-Rate Schedules have been performing pursuant to their terms since November 1, 1993, the effective date Columbia's implementation of Order No. 636. Second Revised Sheet Nos. 1570 and 1590 reflect a minor rate reduction effective January 1, 1994, as part of Columbia's compliance with Order No. 636. Columbia is submitting Rate Schedules X–132 and X–133 at this time since they have been executed, and states that it will submit Rate Schedule X–131 when executed by the customer.

Columbia also notes that some of Rate Schedule X–132's delivery points were eliminated as a result of Columbia's assigning upstream capacity in its Order No. 636 restructuring, and requests a waiver of compliance with any Commission requirements in part 157 of its regulations with respect to that specific amendment to Rate Schedule X–132.

Columbia states that copies of its filing have been mailed to each of its Original Volume No. 2 tariff holders, firm customers and interested State Commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before May 23, 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. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashel,

Secretary.

[FR Doc. 95–12422 Filed 5–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–38–000]

Florida Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

May 16, 1995.

Take notice that on May 12, 1995, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 3, the following tariff sheet:

First Revised Sheet No. 15

On May 12, 1995, FGT filed the above tariff sheet in Docket No. GT95–38–000 to reflect the cancellation of Rate Schedule E–3 which was an emergency exchange agreement by and between FGT and Texas Eastern Transmission Company pursuant to an order issued by the Federal Power Commission in Docket No. CP65–124. The proposed effective date of the First Revised Sheet No. 15 is May 10, 1995. Pursuant to an order issued by the Federal Power Commission on December 27, 1973, in Docket No. CP74–56, the exchange agreement dated September 1, 1964 under Rate Schedule E–3 was canceled and superseded by a new exchange agreement dated May 24, 1973 under Rate Schedule E–9.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 23, 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. 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. 95–12423 Filed 5–19–95;8:45am]

BILLING CODE 6717–01–M

[Docket No. GT95–39–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 16, 1995.

Take notice that on May 12, 1995, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 3, the following tariff sheet:

First Revised Sheet No. 26

On May 12, 1995, FGT filed the above tariff sheet in Docket No. GT95–39–000 to reflect the cancellation of Rate Schedule X–3 under which FGT used to transport natural gas, on an interruptible basis, for Sun Oil Company pursuant to an order issued by the Federal Power Commission in Docket No. CP61–18. The proposed effective date of the First Revised Sheet No. 26 is May 10, 1995. Pursuant to an order issued by the Federal Power Commission on August 26, 1974, in Docket No. CP74–259, FGT received authorization, among other things, to abandon service under a transportation agreement dated May 30, 1959, designated as Rate Schedule X–3.

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 Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 23, 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. 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. 95–12424 Filed 5–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–295–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 16, 1995.

Take notice that on May 12, 1995, Koch Gateway Pipeline Company (Koch Gateway) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective June 12, 1995:

First Revised Sheet No. 30
Original Sheet No. 31
Original Sheet No. 32
Original Sheet No. 33
First Revised Sheet No. 3904

Koch Gateway states that this filing is submitted as a limited application pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. 717c (1988), and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), and in accordance with the provisions of Section 32.4 of the General Terms and Conditions of Koch Gateway's FERC Gas Tariff, Fifth Revised Volume No. 1.

Koch Gateway states that the above tariff sheets will permit the recovery of Koch Gateway's Account No. 191 costs resulting from the suspension of Koch Gateway's Purchased Gas Adjustment mechanism (''PGA'') on November 1, 1991. As a result of Koch Gateway's restructuring of its services pursuant to Order No. 636, Koch Gateway has not reinstituted the PGA mechanism. Koch Gateway states that the total amount to be directly billed is $5,953,755.

Koch Gateway also states that copies of its filing are being served upon those former sales customers which utilized that service during the twelve-month period ending October 31, 1991, or their authorized agents, and the applicable state regulatory agencies.

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NW., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's regulations. All such motions or protests should be filed on or before May 23, 1995. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. 95–12425 Filed 5–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–290–000]

Mid Louisiana Gas Company; Notice of Compliance Filing

May 16, 1995.

Take notice that on May 12, 1995, Mid Louisiana Gas Company (Mid Louisiana) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, which Mid Louisiana requests be made effective May 12, 1995, are:

First Revised Sheet No. 88
First Revised Sheet No. 92
First Revised Sheet No. 94
First Revised Sheet No. 95
First Revised Sheet No. 97
First Revised Sheet No. 98

Mid Louisiana states that these tariff sheets revise Section 4 of the General Terms and Conditions of its tariff to conform with Order No. 577 capacity release provisions by: (1) Extending to one calendar month the exception from the advance posting and bidding requirement applicable to released capacity; (2) adding tariff language to require a 28-day hiatus during which customers that release capacity at less than the maximum rate are prohibited from re-releasing that capacity to the same replacement customer at less than the maximum tariff rate; and (3) adding tariff language so that Mid Louisiana's tariff will comport with the Commission's regulations that address bidding for prearranged releases for one calendar month or less at a rate less than the maximum rate.

Pursuant to Section 154.51 of the Commission's Regulations, Mid Louisiana respectfully requests waiver of the notice requirement of Section 154.22 of said Regulations to permit the tendered tariff sheets to become effective May 12, 1995 as submitted.

Mid Louisiana states that copies of its filing were served upon its jurisdictional customers and appropriate state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 23, 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. Any person wishing to become a party must file a motion to intervene. Copies of this compliance filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12426 Filed 5–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–37–000]

Mississippi River Transmission Corp.; Notice of Proposed Flowthrough of Account No. 858 Refund

May 16, 1995.

Take notice that on May 10, 1995, Mississippi River Transmission Corporation (MRT) submitted worksheets reflecting the proposed flowthrough of an Account No. 858 refund received by MRT from Natural Gas Pipeline Company of America.

MRT states that subject to the receipt of Commission approval it proposes to refund by check on June 30, 1995 each customer's respective portion of the refund including interest through June 29, 1995.

MRT states that a copy of this filing is being mailed to each of MRT's former jurisdictional sales customers and the state commissions of Arkansas, Illinois and Missouri.

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, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 23, 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. 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. 95–12427 Filed 5–19–95;8:45am]

BILLING CODE 6717–01–M

[Docket No. RP95–31–000]

National Fuel Gas Supply Corporation; Notice of Informal Settlement Conference

May 16, 1995.

Take notice that an informal settlement conference will be convened in these proceedings on May 26, 1995 at 9:30 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NW., Washington, DC, 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Marc G. Denkinger (202) 208–2215 or Arnold H. Meltz (202) 208–2161.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12429 Filed 5–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–367–000]

National Fuel Gas Supply Corporation; Notice of Informal Settlement Conference

May 16, 1995.

Take notice that an informal settlement conference will be convened in these proceedings on May 26, 1995 at 2:00 p.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, D.C., 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Marc G. Denkinger (202) 208–2215 or Arnold H. Meltz (202) 208–2161.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12428 Filed 5–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–294–000]

Northern Border Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

May 16, 1995.

Take notice that on May 12, 1995, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets:

First Revised Sheet Number 104
First Revised Sheet Number 124
Fourth Revised Sheet Number 156
Fifth Revised Sheet Number 157
First Revised Sheet Number 277
Second Revised Sheet Number 294
First Revised Sheet Number 436
Fourth Revised Sheet Number 500
Sixth Revised Sheet Number 501

Northern Border states that the purpose of this filing is to (i) revise the Maximum Rate and Minimum Revenue Credit under Rate Schedule IT–1; (ii) allow a Rate Schedule T–1 Shipper to extend its Service Agreement to a term of ten or more years at anytime prior to receipt of termination notice; (iii) comply with the Commission's Final Rule in Docket No. RM95–5–000, Order No. 577 for calendar month or less capacity releases; and (iv) reflect housekeeping changes.

Northern Border states that none of the herein proposed changes result in a change in Northern Border's total revenue requirement due to its cost of service form of tariff.

Northern Border proposes to decrease the Maximum Rate from 4.174 cents per 100 Dekatherm-Miles to 4.074 cents per 100 Dekatherm-Miles and to increase the Minimum Revenue Credit from 2.316 cents per 100 Dekatherm-Miles to 2.335 cents per 100 Dekatherm-Miles. The revised Maximum Rate and Minimum Revenue Credit are being filed in accordance with Northern Border's Tariff provisions under Rate Schedule IT–1.

Northern Border requests that the above listed tariff sheets be made effective July 1, 1995.

Northern Border further states that copies of this filing have been sent to all of Northern Border's contracted shippers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before May 23,

1995. Protests will be considered but not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12430 Filed 5–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–293–000]

Northern Natural Gas Co; Notice of Proposed Changes in FERC Gas Tariff

May 16, 1995.

Take notice that on May 12, 1995, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to be effective May 12, 1995:

Second Revised Sheet No. 286
Second Revised Sheet No. 287
First Revised Sheet No. 288

Northern is filing revised tariff sheets to comply with the Commission's Final Rule on Order No. 577. ''Release of Firm Capacity on Interstate Natural Gas Pipeline'', issued on March 29, 1995 in Docket No. RM95–5–000.

Northern further states that copies of the filing have been mailed to each of its customers, interested State Commissions and other parties.

Any person desiring to be heard or to protest said filing should file a petition 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 385.214). All such petitions or protests must be filed on or before May 23, 1995. Protests will be considered by the Commission in determining the appropriate 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. 95–12431 Filed 5–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–288–000]

Pacific Gas Transmission Co.; Notice of Proposed Changes to FERC Gas Tariff

May 16, 1995.

Take notice that on May 11, 1995, Pacific Gas Transmission Company (PGT) tendered for filing certain revised tariff sheets to be a part of its FERC Gas Tariff, First Revised Volume No. 1–A and requested that they be made effective May 15, 1995.

PGT states that the tariff sheets which it is submitting conform the Capacity Release provisions of its Transportation General Terms and Conditions to the capacity release provisions in Order No. 577.

PGT further states it has served a copy of this filing upon all interested state regulatory agencies and PGT's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 23, 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 must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12432 Filed 5–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2009–003, North Carolina]

Virginia Electric and Power Company; Amendment to Application

May 16, 1995.

On May 12, 1995, the Virginia Electric and Power Company, licensee for the Gaston and Roanoke Rapids Project, filed an amendment to its application for Nonproject Use of Project Lands and Water. The original application, filed on February 20, 1991, proposed to allow the City of Virginia Beach, Virginia to construct a water intake structure on lake Gaston in order to convey up to 60 mgd of water to a water supply reservoir in Norfolk, Virginia. The City of Virginia Beach would access the water from this reservoir.

On July 1, 1994, the Commission staff issued a Notice of Intent to Prepare an Environmental Impact Statement and to Conduct Scoping Meetings. On January 27, 1995, the Commission staff issued a Draft Environmental Impact Statement (DEIS) for public review and comment. The DEIS noted that before the Commission makes a decision on the proposal it would take into account all concerns relevant to the public interest, and that the Final Environmental Impact Statement (FEIS) would be part of the record from which the Commission makes its decision.

Attached to the amendment to the application filed on May 12, 1995, is a settlement agreement entered into by the State of North Carolina and the City of Virginia Beach, dated April 28, 1995. In the amendment, the applicant requests that the Commission: (1) Analyze those provisions of the agreement which relate to the withdrawal of water from Project No. 2009 and the use of such water, as well as the other portions of the agreement which may affect the Commission's environmental analysis of the pending application, and reflect those provisions in the Commission's environmental analysis: and (2) approve the application as modified by the amendment based on a finding that operation of the project in accordance with the application, as modified, and the terms of the agreement would be in the public interest. The provisions of the settlement agreement related to the withdrawal of water from Lake Gaston contain certain limitations to that withdrawal under defined circumstances. The amendment to the application further notes that, ''Nothing in this Amended Application or in the Settlement should be construed as requesting that the Commission approve water withdrawals in excess of 60 mgd.''

Federal, state, and local resource agencies, and other interested groups and individuals are requested to forward to the Commission, any comments or information that they believe will assist the Commission in conducting an accurate and thorough analysis of the amendment to application.

Comments and information must be submitted in writing and received no later than June 12, 1995. Reply comments must be filed in writing and received no later than June 22, 1995. Written comments, information, and reply comments should be sent to: Secretary, Federal Energy Regulatory Commission, Mail Code: HL–21.1, 825 North Capitol Street NE., Washington, DC 20426.

Any questions concerning the procedural aspects of the amendment to application for the Nonproject Use of Project Lands and Water at the Gaston and Roanoke Rapids Project should be directed to Steve Edmondson at (202) 219–2653.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12464 Filed 5–20–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–289–000]

Williston Basin Interstate Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

May 16, 1955.

Take notice that on May 11, 1995 Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1 revised tariff sheets.

Williston Basin states that the revised tariff sheets are being submitted to revise its Rate Schedule ST–1 to implement a two part rate structure, with a one part straight-fixed-variable (SFV) designed reservation rate applicable to the Maximum Daily Delivery Quantity (MDDQ) for service under Rate Schedule ST–1. In addition, Williston Basin states it has revised the Gas Supply Realignment Tariff provisions included as Section 39 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1, to bill the Rate Schedule ST–1 shipper the GSR cost surcharge applicable to Rate Schedule FT–1 shippers and to remove Subsections 39.3.3.1.2 and 39.3.3.2.2 pertaining to the determination and reconciliation of the Rate Schedule ST–1 reservation charge surcharge, respectively.

Williston Basin has requested that the Commission accept this filing to become effective June 13, 1995.

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 385.214). All such motions or protests should be filed on or before May 23, 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. 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. 95–12433 Filed 5–19–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Notice of Cases Filed During the Week of March 20 Through March 24, 1995

During the Week of March 20 through March 24, 1995, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

May 15, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of March 20 through March 24, 1995]

Date	Name and location of applicant	Cas No.	Type of submission
3/20/95	Hudson Oil Company, Kansas City, Kansas	VEF–0011	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, Subpart V, in connection with the July 7, 1985 Remedial Order issued to Hudson Oil Company.
3/23/95	Gratex Corp./Compton Corp., Dallas, Texas	VEF–0012	Implementation of Special Refund Procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, Subpart V, in connection with the April 27, 1984 Remedial Order issued to Gratex Corp./Compton Corp.
3/24/95	Flasher Farmers Union Oil Co., Flasher, North Dakota.	RR272–199	Request for Modification/Recission in the Crude Oil Refund Proceeding. If Granted: The March 9, 1995 Dismissal, Case No. RF272–92082, issued to Flasher Farmers Union Oil Co. would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.

Date received	Name of refund proceeding/name of refund application	Case No.
3/20/95	Crude Oil Refund Applications.	R6272–37 thru R6272–43.

During the Notice of Cases Filed Week of March 27 through March 31, 1995

During the Week of March 27 through March 31, 1995, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the

[FR Doc. 95–12493 Filed 5–19–95; 8:45 am]

BILLING CODE 6450–01–P

procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: May 15, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of March 27 through March 31, 1995]

Date	Name and Location of Applicant	Case No.	Type of Submission
3/27/95	Idaho Operations Office Idaho Falls, Idaho	VSO–0026	Request for Hearing Under 10 C.F.R., Part 710. If granted: An individual whose security clearance was suspended by the Idaho Operations Office would receive a hearing under 10 C.F.R. Part 710.
3/27/95	State of California, Sacramento, California .	RM23–288	Request for Modification/Rescission in the Charter Oil Company Second Stage Refund Proceeding. If granted: The March 12, 1990 Decision and Order, Case No. RQ23–546, issued to the State of California would be modified regarding the state's application for refund submitted in the Charter Oil Company second stage refund proceeding.
3/28/95	Boyd Jolley Company, Shelley, Idaho	VEE–0006	Exception to the Reporting Requirements. If granted: Boyd Jolley Company would not be required to file Form EIA–782B, Resellers/Retailer's Monthly Petroleum Products Sales Report.
3/30/95	Capital Transport Co., Inc., McComb, Mississippi.	RR272–198	Request for Modification/Rescission in in the Crude Oil Refund Proceeding. If granted: The March 6, 1995 Dismissal, Case No. RF272–97066, issued to Capital Transport Co., Inc. would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
3/30/95	Rocky Flats Field Office, Golden, Colorado	VSO–0027	Request for Hearing under 10 C.F.R Part 710. If granted: An individual whose security clearance was suspended by the Rocky Flats Field Office would receive a hearing under 10 C.F.R. Part 710.

Date received	Name of refund proceeding/name of refund application	Case No.
3/27/95–3/31/95	Crude Oil	RG272–44 through RG272–73
3/27/95–3/31/95	Texaco	RF321–21062 through RF321–21064.

[FR Doc. 95–12494 Filed 5–19–95; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders During the Week of April 17 Through April 21, 1995

During the week of April 17 through April 21, 1995 the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

Amoco Corporation, 4/21/95, RF272–92482

The DOE issued a Decision and Order concerning one Application for Refund in the Subpart V crude oil overcharge refund proceeding. The refund application was filed by Amoco Corporation. The DOE determined that Amoco was not entitled to a refund since it had filed a Refiners Escrow Settlement Claim Form and Waiver. In that filing, Amoco requested a Stripper Well refund from the Refiners escrow, thereby waiving its right to a Subpart V crude oil refund. Accordingly, the Application for Refund was denied.

Central Hudson Gas & Electric Corp., 4/21/95, RF272–92494

The DOE issued a Decision and Order concerning one Application for Refund in the Subpart V crude oil overcharge refund proceeding. The refund application was filed by Central Hudson Gas & Electric Corporation. The DOE determined that Central Hudson was not entitled to a refund since it had filed a Utilities Escrow Settlement Claim Form and Waiver. In that filing, Central Hudson requested a Stripper Well refund from the Utilities escrow, thereby waiving its right to a Subpart V crude oil refund. Accordingly, the Application for Refund was denied.

Empire Gas Corporation/Gulf Coast Petroleum, Inc., 4/18/95, RR335–64

Gulf Coast Petroleum, Inc. submitted an Application for Refund in the Empire Gas Corporation refund proceeding. The DOE found that Gulf Coast had proved that it was injured with respect to its Empire propane purchases during May 1979 through January 1981. Accordingly, the DOE granted Gulf Coast a principal refund of $15,509 for this product and accrued interest of $11,075. The total refund granted to Gulf Coast was $26,584. This Decision also resolved the last pending application in the Empire refund proceeding. The DOE determined that no further claims would be accepted in this proceeding as of the date of this Decision and Order and any unclaimed funds remaining in the Empire escrow account would be made available for indirect restitution pursuant to the Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C.A. § 4501.

Texaco Inc./International Paper Company, 4/21/95, RR321–176

The DOE issued a Decision and Order granting the Motion for Reconsideration filed by International Paper Company (IP), an end-user of Texaco Inc. products. In an earlier Decision, the DOE had granted the Application for Refund filed in the Texaco Inc. refund proceeding by IP for purchases of 6,846,812 gallons of motor gasoline. In its Motion for Reconsideration, IP requested that it be granted an additional refund for purchases of 99,278,000 gallons of residual fuel oil by one of its paper mills. Based on the compelling reasons that the DOE had not originally investigated IP's statement on its application that it was applying for purchases of # 6 (residual) fuel oil and because IP quickly filed a sufficiently documented Motion for Reconsideration, the DOE exercised its discretion to consider IP's Motion. IP's gallonage claim was found to be well documented, and where necessary, conservatively estimated. Accordingly, IP's Motion for Reconsideration was granted for an additional $159,703 refund.

Texaco Inc., La Villa Service Station, Eladio Rivera, Gasolinera Melendez, Inc., Jesus Ramirez Ramirez, Villas de Navarra Service Station, 4/18/95, RF321–21016, RF321–21028, RF321–21029, RF321–21034, 4/18/95, RF321–21035

The DOE issued a Decision and Order regarding five Applications for Refund filed in the Texaco Inc. refund proceeding by retailers located in Puerto Rico. Each of the applications was postmarked and received more than four months after the February 28, 1994 final deadline for filing applications in the Texaco proceeding. Four of the applicants requested that their applications be accepted because they did not have notice of the Texaco proceeding until after the February 28 deadline. Additionally, one of these applicants further asserted that retailers in Puerto Rico had not been effectively informed about the proceeding and that neither Texaco nor the DOE made an effort to notify Puerto Rican retailers about the proceeding. Consequently, this applicant argued that equity required the DOE to process its late application. The DOE found that some notice had been given in Puerto Rico and noted that, in consideration of the lack of Texaco's notification to potential Puerto Rican applicants, the DOE previously had agreed to accept for possible consideration all Texaco applications submitted from Puerto Rico in the month of March 1994. The DOE found that the extreme length of time which the Texaco proceeding has lasted and the need for finality outweighed the claimed inequity. Consequently, the DOE found that none of the applicants had presented an equitable consideration or compelling reason to excuse its lateness in filing its application. Accordingly, the applications were dismissed.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Gulf Oil Corporation/American Hoechst Corp	RF300–19970	04/21/95
Hoechst Celanese Chemical Grp	RF300–21699	
Gulf OIl Corporation/Dick's Sacramento Gulf Rentals et al	RF300–21300	04/21/95
Gulf Oil Corporation/Livingston Gulf	RF300–21826	04/21/95
Gulf Oil Corporation/Simmons Pole & Piling	RR300–262	04/21/95
Texaco Inc./Vanguard Petroleum Corp	RF321–13015	04/18/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Agway Petroleum Corp	RF345–30
American Freight System, Inc	RF321–20215
Apac-Tennessee, Inc	RF272–98242
Boston Gas Company	RF321–20357
Camellia Food Stores, Inc	RF272–98866
Carl's Texaco	RF321–20353
Coyier's Texaco	RF321–20356
East Store Material	RF321–20279
Ernie's Texaco	RF321–20354
Marvin V. Templeton & Sons, Inc	RF321–20262
Morgan Adhesives Company	RF321–20358
Par-Co Drilling, Inc	RF272–98983
Paraco Gas Corp	RF321–20588
Schwan's Sales Enterprises, Inc	RF321–20366
Tap Air Portugal	RF272–92485
Tungsten Products Corp	RF272–92490
Van Dusen Airport Service Company	RF272–92151

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system.

Dated: May 15, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–12495 Filed 5–19–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–59345; FRL–4957–2]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–95–4. The test marketing conditions are described below.

DATES: This notice becomes effective May 10, 1995. Written comments will be received until June 6, 1995.

ADDRESSES: Written comments, identified by the docket number [OPPT–59345] and the specific TME number should be sent to: TSCA nonconfidential center (NCIC), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NEB–607 (7407), 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by [OPPT–59345]. No CBI should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Shirley Howard, New Chemicals Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–447, 401 M St., SW., Washington, D.C. 20460, (202) 260–3780.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME–95–4. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and within the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

Inadvertently, notice of receipt of the application was not published. Therefore, an opportunity to submit comments is being offered at this time. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury.

The following additional restrictions apply to TME–95–4. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced and the date of manufacture.
2. The applicant must maintain records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T–95–4

Date of Receipt: March 29, 1995. The extended comment period will close (insert date 15 days after date of publication in the **Federal Register**).

Applicant: Reichhold Chemicals, Inc.

Chemical: (G) Polyurethane adhesives.

Use: (G) Industrial Adhesive.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: One year, commencing on first day of commercial manufacture.

Risk Assessment: EPA identified no significant environmental concerns for the test market substance. EPA identified potential lung toxicity and oncogenicity from the TME substance, however exposures will be mitigated by the substances low vapor pressure and by adequate ventilation. Therefore, the test market activities will not present any unreasonable risk of injury to human health and the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to health or the environment.

A record has been established for this notice under docket number [OPPT–59345] (including comments and data submitted electronically as described above). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NEB–607, 401 M St., SW., Washington, D.C. 20460.

Electronic comments can be sent directly to EPA at:
ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

List of Subjects

Enviornmental protection, Test marketing exemptions.

Dated: May 10, 1995.

Paul J. Campanella,

Chief, New Chemicals Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 95–12472 Filed 5–19–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL RESERVE SYSTEM

Financial Trust Corp.; 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 June 5, 1995.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Financial Trust Corp., Carlisle, Pennsylvania; to acquire Financial Trust Services Company, Carlisle, Pennsylvania, and thereby engage in trust activities, pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 16, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–12446 Filed 5–19–95; 8:45 am]

BILLING CODE 6210–01–F

Fulton Financial Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) 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)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than June 15, 1995.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Fulton Financial Corporation, Lancaster, Pennsylvania; to merge with Delaware National Bankshares Corp., Georgetown, Delaware, and thereby indirectly acquire Delaware National Bank, Georgetown, Pennsylvania.

Board of Governors of the Federal Reserve System, May 16, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–12447 Filed 5–19–95; 8:45 am]

BILLING CODE 6210–01–F

Shirley A. Reynolds, 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 June 5, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Shirley A. Reynolds, Huntington, West Virginia; Marshall T. Reynolds, Huntington, West Virginia; Robert L. Shell, Jr., Barboursville, West Virginia; Robert H. Beymer, Huntington, West Virginia; Barbara W. Beymer, Huntington, West Virginia; Deborah P. Wright, Flatwoods, Kentucky; Thomas W. Wright, Flatwoods, Kentucky; and Jeanne D. Hubbard, Huntington, West Virginia; all to acquire a total of 71.3 percent of the voting shares of Abigail Adams National Bancorp, Inc., Washington, D.C., and thereby indirectly acquire The Adams National Bank, Washington, D.C.

Board of Governors of the Federal Reserve System, May 16, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–12488 Filed 5–19–95; 8:45 am]

BILLING CODE 6210–01–F

Sierra Tahoe Bancorp; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of

Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 5, 1995.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Sierra Tahoe Bancorp, Truckee, California; to engage *de novo* through its subsidiary, Sierra Tahoe Bancorp, Truckee, California, in acquiring, making, or servicing loans or other extensions of credit, pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted throughout the States of California and Nevada.

Board of Governors of the Federal Reserve System, May 16, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–12449 Filed 5–19–95; 8:45 am]

BILLING CODE 6210–01–F

Valley National Bank; De Novo Corporation to do Business Under Section 25A of the Federal Reserve Act

An application has been submitted for the Board's approval of the organization of a corporation to do business under section 25A of the Federal Reserve Act (Edge Corporation) 12 U.S.C. § 611 *et seq*. The Edge Corporation will operate as a subsidiary of the applicant, Valley National Bank, Passaic, New Jersey. The factors that are to be considered in acting on the application are set forth in the Board's Regulation K (12 CFR 211.4).

The application may by inspected at the Federal Reserve Bank of New York or at 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, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing.

Comments regarding the application must be received by the Reserve Bank indicated or at the offices of the Board of Governors not later than June 20, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Valley National Bank, Passaic, New Jersey; to establish VNB International Services, Inc., Wayne, New Jersey, a *de novo* Edge Corporation, pursuant to § 25A of the Federal Reserve Act.

Board of Governors of the Federal Reserve System, May 16, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–12450 Filed 5–19–95; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Public Buildings Service

Notice of Availability, Environmental Assessment, Port of Entry, Located at Point Roberts, Whatcom County, Washington

The General Services Administration (GSA) hereby gives notice an Environmental Assessment (EA) has been prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended. The EA was prepared for the proposed expansion of the Port of Entry located in Point Roberts, Whatcom County, Washington.

Written comments on the proposed action, impacts, and mitigation measures may be submitted to GSA's EIS subconsultant, ABAM Consulting Engineers, at the following address: 33301 Ninth Avenue South, Federal Way, Washington 98003–6395 during the 30-day public comment period, which begins on May 19, 1995 and concludes on June 19, 1995. It is anticipated a Finding of No Significant Impact (FONSI) for this project will be prepared, signed, and become final after completion of the public comment period, provided no information leading to a contrary finding is received or is made available during the 30-day comment period.

For further information contact Donna M. Meyer, Regional Environmental Program Officer, General Services Administration, Public Buildings Service (10PT), 400 15th Street SW., Auburn, Washington 98001–6599. Telephone: (206) 931–7675.

Dated: May 12, 1995.

L. Jay Pearson,

Regional Administrator (10A).

[FR Doc. 95–12486 Filed 5–19–95; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Local Agency Data on Use of Multiple Services

AGENCY: Office of the Assistant Secretary for Planning and Evaluation.

ACTION: Request for applications to build and analyze a research data base from local agency data on client use of multiple health and human services.

SUMMARY: The Department seeks applications to build and analyze a research data base on multiple health and human services. The primary goal of the proposed grant is to assist a local multi-service agency in (1) creating, from existing separate data files, a longitudinal data set tracking client use of several health and human service programs over time and (2) analyzing that data set. It is anticipated that one grant of $50,000 for 12 months will be awarded. The Department's award must be matched by the grantee with $50,000 from non-Federal sources.

CLOSING DATE: The closing date for submitting an application is July 21, 1995.

FOR FURTHER INFORMATION CONTACT: Application instructions and forms should be requested from and submitted to: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, S.W., Room 405F, Hubert H. Humphrey Building, Washington, D.C., 20201, Phone (202) 690–8794. Requests for forms and technical questions will be accepted and responded to up to 15

days prior to the closing date of receipt of applications. Technical questions should be directed to Matthew Stagner, DHHS, ASPE, Telephone, 202–690–5653. Questions may also be faxed to 202–690–5514. Written technical questions should be addressed to Dr. Stagner at the above address. Application submissions may not be faxed.

ELIGIBLE APPLICANTS: The Department seeks applications from local non-profit health and social services providers. For-profit organizations are advised that no funds may be paid as profit to any recipient of a grant or sub-grant. Profit is any amount in excess of allowable direct and indirect costs of the grantee.

SUPPLEMENTARY INFORMATION:

Part I

Legislative Authority

This grant is authorized by Section 1110 of the Social Security Act (42 U.S.C. 1310) and awards will be made from funds appropriated under Public Law 103–112 (DHHS Appropriation Act for FY 1995).

Available Funds

HHS intends to award one grant from this announcement. $50,000 has been set aside for one grant to be awarded in FY 1995. Funds will be obligated fully at the time of award. This grant will require a 1 to 1 match of private or local funding to federal funding. To receive $50,000 of federal funds, an organization must demonstrate that it has access to $50,000 of private or local funding for this project. Nothing in this application should be construed as committing the Assistant Secretary to make an award. The selection of the grantee will be determined by the Assistant Secretary on the basis of the availability of funds and the criteria outlined in this announcement.

Part II. Purpose

Health and human services policy makers increasingly recognize that many clients use multiple types of services, either at a point in time or over the course of their lives. The timing of services in a client's ''service career,'' the ordering of services, and the overlap of service receipt have many implications for policy and practice. In particular, it is important to understand how use of one services leads clients to another service and to understand how programs should work together when a client is involved with many programs simultaneously. Services of interest to the Department include AFDC, Medicaid, job training, child care, food and nutrition programs, foster care, Head Start, counseling, and other social services.

Several issues make it extremely difficult to understand patterns of service provision across programs or over time. These include the fragmentation of service provision, the varying quantity and quality of data available within each service stream, and the difficulty of tracking the same client across different service providers.

The increasing sophistication and comprehensiveness of human services computer systems now make it possible to use administrative data to improve our understanding of multiple service use. There are at least two ways to begin to use such administrative data. First, researchers are merging data bases from many service streams at the state or county level. After identifying where each client appears in each data base, researchers join the data bases, making it possible to follow each client's experiences in different service systems. Such data bases can show pathways from one service to another and ''careers'' of multiple service use over time.

Second, it is possible to use data from local agencies that serve as the coordinators of services. In some communities, these agencies may be newly formed service ''collaboratives.'' In other communities, they may be older umbrella agencies like settlement houses. Though obviously limited in its generalizability, developing data on comprehensive services from a single local agency overcomes many of the problems in building state-wide or county-wide data bases. In particular, the single administrative unit decreases the need to obtain multiple clearances and to work with multiple computer systems.

As the cross-cutting policy research agency at HHS, ASPE has a long history of interest in multiple service use by health and human services clients. ASPE has supported the development of several state-level data bases for policy research. This grant award seeks to create a similar, smaller integrated data base at a single multi-service local agency. Applicants must be local comprehensive services agencies that provide multiple services to a large, diverse client base. Services of interest to the Department include AFDC, Medicaid, job training, child care, food and nutrition programs, foster care, Head Start, counseling, and other social services. The agency must have a comprehensive computer system that contains data on individual's use of services, including the timing, length, type, and cost of services.

It is anticipated that one grant will be awarded as a result of this announcement. The Department hopes to contribute to an on-going project in which the grantee is building and analyzing a computerized data file that tracks a large number of health and human service clients through multiple service programs over time. Applicants should demonstrate their access to data that describe client participation (by individual) in many health and human services programs; their capacity to work with this data; the steps they plan to take to combine these data into a single file for policy and practice research; and the analysis they hope to perform using that data. Key issues include the ordering of services, the timing of transitions from one service to another, and the use of multiple services simultaneously.

After building this data base and conducting preliminary analysis, the grantee will prepare a final report describing the procedures they used to build the data base, findings about multiple service use, barriers encountered in developing the data base, and other relevant information. A primary audience for this report is other local comprehensive services data bases. The report should assist other agencies that are attempting to build and analyze such data bases.

Part III. Application Preparation and Evaluation Criteria

This section contains information on the preparation of applications for submission under this announcement, on the forms necessary for submission, and on the evaluation criteria under which the applications will be reviewed. Potential applicants should read this section carefully in conjunction with the information provided above. The application must contain the required Federal forms, title page, table of contents, and the sections listed below. All pages of the narrative should be numbered.

The application must include the following elements:

1. Abstract: a one-page summary of the proposed project.

2. Goals and objectives of the project: an overview that describes the project, what will be accomplished, what the applicant, the Department, and the field will learn from the successful completion of the project.

3. Corporate capacity and qualifications: Applicants must demonstrate access to computerized records within a single agency that cover a wide range of social services and a large number of clients. Services of interest to the Department include

AFDC, Medicaid, job training, child care, food and nutrition programs, foster care, Head Start, counseling, and other social services.

Applicants must demonstrate access to computer hardware and software for storing and analyzing these computerized records. They must also demonstrate that they have staff capable of merging multiple data files and conducting analysis on the resulting data set. Applicants should also describe the type of agency, its organizational structure, and it meets the qualifications outlined in this announcement. Finally, applicants must demonstrate access to $50,000 in matching funds from private or local sources.

4. Experience, qualifications, and use of staff: Applicants must list primary staff and the activities they will perform on this project. Curriculum Vitae or job descriptions for key staff must be appended. This section must show that the organization—and the particular staff assigned—has a good track record in the use of administrative data. If the applicant plans to contract for outside staff for this project, the relationship and commitment of these people to the applicant organization must be demonstrated.

5. Initial Workplan: Applicants must describe the activities they plan to undertake and outline their rationale for undertaking those activities. This plan should describe the data files that will be used, the steps that will be taken to create a single data file for analysis, and the planned analysis of that data file. The role of key staff in each step of the work plan should be presented.

6. Budget: Applicants must submit a request for federal funds using Standard Form 424A. In addition, they must include a detailed breakdown of all Federal line items along with a brief narrative description or justification for these line items. This section must demonstrate the availability of $50,000 in matching funds from local or private sources. This detailed breakdown should separate items for which Federal funds are requested from items to be provided by other sources, with those other sources identified.

Review Process and Funding Information

A panel of at least three experts will review and score all applications that are submitted by the deadline date and that meet the screening criteria (all information and documents as required by this Announcement.) The panel will review the applications using the evaluation criteria listed below to score each application. These review results will be the primary element used by the Assistant Secretary in making funding decisions. The Department reserves the option to discuss applications with other Federal agencies, specialists, experts, states, and the general public. Comments from these sources, along with those of the reviewers, may be considered in making an award decision.

State Single Point of Contact (E.O. No. 12372)

DHHS has determined that this program is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' Applicants are not required to seek intergovernmental review of their applications within the constraints of E.O. 12372.

Deadline for Submission of Applications

The closing date for submittal of applications under this announcement is July 21, 1995. Applications must be postmarked or hand delivered to the application receipt point no later than 4:30 p.m. on July 21, 1995. Hand-delivered applications will be accepted Monday through Friday, excluding Federal holidays during the working hours of 9:00 a.m. to 4:30 p.m. in the lobby of the Hubert H. Humphrey building located at 200 Independence Avenue, SW. in Washington, DC. When hand-delivering an application, call (202) 690–8794 from the lobby for pick up. A staff person will be available to receive applications. Faxed applications will not be accepted.

An application will be considered as meeting the deadline if it is either: (1) received at, or hand-delivered to, the mailing address on or before July 21, 1995, or (2) postmarked before midnight July 21, 1995 and received in time to be considered during the competitive review process (within two weeks of the deadline date).

When mailing applications, applicants are strongly advised to obtain a legibly dated receipt from a commercial carrier (such as UPS, Federal Express, etc.) or from the U.S. Postal Service as proof of mailing by the deadline date. If there is a question as to when an application was mailed, applicants will be asked to provide proof of mailing by the deadline date. When proof is not provided, an application will not be considered for funding. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which do not meet the deadline are considered late applications and will not be considered or reviewed in the current competition. DHHS will send a letter to this effect to each late applicant.

DHHS reserves the right to extend the deadline for all proposals due to natural disasters, such as floods, hurricanes, or earthquakes, or if there is a widespread disruption of the mail, or if DHHS determines a deadline extension to be in the best interest of the government. However, DHHS will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

Application Forms

See section entitled ''Components of a Complete Application.'' All of these documents must accompany the application package.

Length of Application

Applications should be as brief as possible but should assure successful communications of the applicant's proposal to the reviewers. In no case shall an application (excluding the resumes, appendix and other appropriate attachments) be longer than 15 single spaced pages. Applications should be neither unduly elaborate nor contain voluminous supporting documentation.

Selection Process and Evaluation Criteria

Selection of the successful applicant will be based on the criteria laid out in this announcement. Reviews will determine the strengths and weaknesses of each application in terms of the evaluation criteria listed below, will provide comments, and will assign numerical scores. The review panel will prepare a summary of all applicant scores and strengths/weaknesses and recommendations and will submit it to the Assistant Secretary for the final decision on the award.

The point value following each criterion heading indicates the maximum numerical weight that each section will be given in the review process. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, applicants should take care to ensure that all criteria are fully addressed in the applications.

Three (3) copies of each application are required. Applicants are encouraged to send an additional *seven (7) copies* of their application to ease processing, but applicants will not be penalized if these extra copies are not included.

Applications will be judged according to the criteria set forth below:

A. *Goals, Objectives, and Need for Assistance.* (10 points)

Are the goals and objectives of the project presented clearly and do they reflect the type of project sought by this announcement?

B. Project Design and Approach. (40 points)

Is there documented access to multiple data sets describing individual experiences in the services of interest (e.g., AFDC, Medicaid, job training, child care, foster care, Head Start, counseling, and other social services)? How long is the time frame covered by each data set? How detailed are the records of service receipt (e.g., type of activity, length of activity, cost of activity)? How large and diverse is the population covered in each data set? Is there a clear and achievable plan for creating a single data set that will allow the tracking of individuals through multiple services over time? Are there interesting questions about health and human services policy and practice that will be explored after the data set is created?

C. *Organization and Staffing.* (40 points)

Does the organization demonstrate the in-house capacity to conduct the project? Does the organization demonstrate access to and experience with computerized records for multiple services? Does the organization and staff demonstrate a track record of successful use of administrative data? Do the staff have documented experience working with multiple data sets involving several types of health and human services? Are the number and type of staff positions sufficient to achieve project objectives?

How many different types of health and human services does the organization provide? For how many of these services is their individual-level data on service receipt? Does the organization have computer hardware, computer software, and computing staff able to work with large data sets? Does the organization demonstrate an ability to manage a complex data-merging project, including analysis of such data? Does the organization demonstrate connections to key audiences for dissemination?

D. *Budget and budget narrative* (10 points)

Is the proposed budget reasonable and sufficient to ensure implementation of the project? Does the organization demonstrate access to $50,000 from non-Federal sources to match the Federal grant?

Disposition of Applications

1. *Approval, disapproval, or deferral.* On the basis of the review of the application, the Assistant Secretary will either (a) approve the application as a whole or in part; (b) disapprove the application; or (c) defer action on the application for such reasons as lack of funds or a need for further review.

2. *Notification of disposition.* The Assistant Secretary will notify the applicants of the disposition of their applications. If approved, a signed notification of the award will be sent to the business office named in the ASPE checklist.

Components of a Complete Application

A complete application consists of the following items in this order:

1. Application for Federal Assistance (Standard Form 424, Revised 4–88);
2. Budget Information—Non-construction Programs (Standard Form 424A, Revised 4–88);
3. Assurances—Non-construction Programs (Standard Form 424B, Revised 4–88);
4. Table of Contents;
5. Budget Justification for Section B Budget Categories;
6. Proof of Non-profit Status, if appropriate;
7. Copy of the applicant's Approved Indirect Cost Rate Agreement, if necessary;
8. Project Narrative Statement, organized in four sections addressing the following topics:
   a. Abstract
   b. Goals and objectives of the project
   c. Corporate capacity and qualifications
   d. Experience, qualifications, and use of staff
   e. Initial Workplan
   f. Budget and Budget Narrative
9. Any appendices or attachments;
10. Certification Regarding Drug-Free Workplace;
11. Certification Regarding Debarment, Suspension, or other Responsibility Matters;
12. Certification and, if necessary, Disclosure Regarding Lobbying;
13. Supplement to Section II—Key Personnel;
14. Application for Federal Assistance Checklist.

Dated: May 12, 1995.

David T. Ellwood,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 95–12463 Filed 5–19–95; 8:45 am]

BILLING CODE 4154–04

Health Resources and Services Administration

Final Review Criteria for Grants for Geriatric Education Centers for Fiscal Year 1995

The Health Resources and Services Administration (HRSA) announces the final review criteria for Grants for Geriatric Education Centers for FY 1995 under the authority of section 777(a) of the Public Health Service Act, as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992.

Purpose

Grants may be awarded to support the development of collaborative arrangements involving several health professions schools and health care facilities. These arrangements, called Geriatric Education Centers (GECs), are established to facilitate training of health professional faculty, students, and practitioners in the diagnosis, treatment, and prevention of disease, disability, and other health problems of the aged. Health professionals include allopathic physicians, osteopathic physicians, dentists, optometrists, podiatrists, pharmacists, nurses, nurse practitioners, physician assistants, chiropractors, clinical psychologists, health administrators, and allied health professionals.

Projects supported under these grants must offer training involving four or more health professions, one of which must be allopathic or osteopathic medicine. Projects must address one or more of the statutory purposes listed below:

(a) Improve the training of health professionals in geriatrics;
(b) Develop and disseminate curricula relating to the treatment of the health problems of elderly individuals;
(c) Expand and strengthen instruction in methods of such treatment;
(d) Support the training and retraining of faculty to provide such instruction;
(e) Support continuing education of health professionals and allied health professionals who provide such treatment; and
(f) Establish new affiliations with nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers in order to provide students with clinical training in geriatric medicine.

Eligibility

Section 777(a) of the PHS Act authorizes the award of grants to accredited health professions schools as

defined by section 799(1), or programs for the training of physician assistants as defined by section 799(3), or schools of allied health as defined in section 799(4), or schools of nursing as defined by section 853(2).

Applicants must be located in the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Republic of Palau, the Republic of the Marshall Islands, or the Federated States of Micronesia.

A notice was published in the **Federal Register** at 60 FR 2396 on January 9, 1995 which proposed two new review criteria for Grants for Geriatric Education Centers. No comments were received within the 30 day comment period. Therefore, the review criteria remain as proposed.

Review Criteria

The following review criteria are established in 42 CFR part 57, subpart OO:

(1) The degree to which the proposed project adequately provides for the project requirements;
(2) The extent to which the rationale and specific objectives of the project are based upon a needs assessment of the status of geriatrics training in the institutions to be assisted and/or the geographic area to be served;
(3) The ability of the project to achieve the project objectives within the proposed geographic area;
(4) The adequacy of educational facilities and clinical training settings to accomplish objectives;
(5) The adequacy of organizational arrangements involving professional schools and other organizations necessary to carry out the project;
(6) The adequacy of the qualifications and experience in geriatrics of the project director, staff and faculty;
(7) The administrative and managerial ability of the applicant to carry out the proposed project in a cost-effective manner, and;
(8) The potential of the project to continue on a self-sustaining basis.

In addition, the following review criteria are hereby finalized:

(9) If applicable, the extent to which there is evidence that the institutions jointly have planned and jointly will conduct the proposed consortial activities.
(10) The potential of the project to recruit and/or retain minority faculty members and trainees for participation in long term and/or short term training experiences.

If additional information is needed, please contact: Lt. Commander Judith Arndt, Geriatric Initiatives Branch, Division of Associated, Dental, and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–103, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6887.

This program, Grants for Geriatric Education Centers, is listed at 93.969 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: May 16, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–12455 Filed 5–19–95; 8:45 am]

BILLING CODE 4160–15–P

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (''the Program''), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Court of Federal Claims, 717 Madison Place, N.W., Washington, D.C. 20005, (202) 219–9657. For information on the Public Health Service's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 8A35, Rockville, MD 20857, (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq*, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at section 2114 of the PHS Act. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a partial list of petitions received by PHS on January 31, 1991 through November 20, 1991.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

(a) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Table but which was caused by'' one of the vaccines referred to in the Table, or

(b) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

This notice will also serve as the special master's invitation to all

interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading ''For Further Information Contact''), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8–05, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Audrey Cairns on behalf of Nicholas Cairns, Duluth, Minnesota, Claims Court Number 91–0796 V
2. Donald Mahramas on behalf of Theodore Mahramas, Pittsburgh, Pennsylvania, Claims Court Number 91–0797 V
3. Keith Ralston on behalf of Amber Ralston, Deceased, Biloxi, Mississippi, Claims Court Number 91–0798 V
4. John Papinko, Chicago, Illinois, Claims Court Number 91–0799 V
5. Frank Casne on behalf of Carrie Casne, Deceased, Pittsburgh, Pennsylvania, Claims Court Number 91–0800 V
6. James Lynch on behalf of Christine Lynch, Nyack, New York, Claims Court Number 91–0801 V
7. Anthony Spitalere on behalf of Thomas Spitalere, Andover, Massachusetts, Claims Court Number 91–0802 V
8. Marita Rogers on behalf of Carrie Heibieser, Sacramento, California, Claims Court Number 91–0803 V
9. Ernesto and LeeAnn Hardcastle on behalf of Sarah Hardcastle, Salt Lake City, Utah, Claims Court Number 91–0804 V
10. Gregory Brown on behalf of Jordan Brown, Ramsey, New Jersey, Claims Court Number 91–0805 V
11. C. J. Cardwell on behalf of Nathaniel Cardwell, Deceased, Lubbock, Texas, Claims Court Number 91–0806 V
12. Rodney Scott, Sr. on behalf of Rodney Scott Jr., Dayton, Ohio, Claims Court Number 91–0807 V
13. Amelia Bunner on behalf of Nancy Bunner, Geneva, Ohio, Claims Court Number 91–0808 V
14. Edward Downey on behalf of Patricia Downey, Deceased, Erie, Pennsylvania, Claims Court Number 91–0809 V
15. Donald Farmer, Knoxville, Tennessee, Claims Court Number 91–0810 V
16. Joseph Lorber on behalf of Matthew Lorber, Nanuet, New York, Claims Court Number 91–0811 V
17. Vanessa Gordon, Philadelphia, Pennsylvania, Claims Court Number 91–0812 V
18. Cherryl Moore on behalf of Reginald Moore, Mobile, Alabama, Claims Court Number 91–0813 V
19. Raylene Brecheisen on behalf of Stephanie Blackburn Ottawa, Kansas, Claims Court Number 91–0814 V
20. Mary Jo Carpentier on behalf of Jerome Eddlemon, Murfreesboro, Tennessee, Claims Court Number 91–0815 V
21. Albert Foland on behalf of Roxanne Foland, Alamosa, Colorado, Claims Court Number 91–0816 V
22. Joynce Cain on behalf of Eric Cain, Deceased, Albuquerque, New Mexico, Claims Court Number 91–0817 V
23. Troy Bailes, Dayton, Ohio, Claims Court Number 91–0818 V
24. Hoyt B. Hazal on behalf of Hoyt R. Hazal, Abilene, Texas, Claims Court Number 91–0819 V
25. Erika Nelson, Galesburg, Illinois, Claims Court Number 91–0820 V
26. Henry Collins on behalf of Henry Wayne Collins, Bartlesville, Oklahoma, Claims Court Number 91–0821 V
27. Timothy Bartlett on behalf of Andrea Bartlett, Grand Island, Nebraska, Claims Court Number 91–0822 V
28. Cheryl Nyholm, Duluth, Minnesota, Claims Court Number 91–0823 V
29. Gary Bartholomae on behalf of Evie Bartholomae, Naperville, Illinois, Claims Court Number 91–0824 V
30. Jerry Martchinske on behalf of Kenny Martchinske, Faulkton, South Dakota, Claims Court Number 91–0825 V
31. Cynthia Szczepanski on behalf of Katherine Szczepanski, Elyria, Ohio, Claims Court Number 91–0826 V
32. Thomas and Phillis Jazdzewski on behalf of Thomas Jazdzewski, Jr., Chicago, Illinois, Claims Court Number 91–0828 V
33. Samuel Garcia, Saginaw, Michigan, Claims Court Number 91–0829 V
34. Marilyn Petrenko, Parma, Ohio, Claims Court Number 91–0830 V
35. Leonard Youngbear on behalf of Ira Whitebreast, Marshalltown, Iowa, Claims Court Number 91–0831 V
36. David Lindey, Erie, Pennsylvania, Claims Court Number 91–0832 V
37. Clifford Smith on behalf of Andrew Smith, Deceased, Dimmitt, Texas, Claims Court Number 91–0833 V
38. Reyes Sanchez on behalf of Olga Sanchez, San Antonio, Texas, Claims Court Number 91–0834 V
39. Pamela Pavelka on behalf of Brandon Pavelka, Dayton, Ohio, Claims Court Number 91–0835 V
40. Rhea Salzberg on behalf of Andrea Salzberg, Stafford, Connecticut, Claims Court Number 91–0836 V
41. Kimberly Spence on behalf of Justin Spence, Mansfield, Ohio, Claims Court Number 91–0837 V
42. Richard A. and Marlin Bullock on behalf of Richard S. Bullock, Fort Necessity, Louisiana, Claims Court Number 91–0838 V
43. Martha Bainer on behalf of Robert McNabb, Deceased, Columbus, Ohio, Claims Court Number 91–0839 V
44. John and Beverly Glade on behalf of Christopher Glade, Texarkana, Texas, Claims Court Number 91–0840 V
45. Barbara Thill on behalf of Jessica Thill, Deceased, Klamath Falls, Oregon, Claims Court Number 91–0841 V
46. Maureen Scott on behalf of Tracy Scott, Bethany, Connecticut, Claims Court Number 91–0843 V
47. Tammy Early on behalf of Erica Early, Deceased, Owensboro, Kentucky, Claims Court Number 91–0845 V
48. Kristine Yani on behalf of Thomas Hafner, Long Island, New York, Claims Court Number 91–0846 V
49. Hale and Rebecca Case on behalf of Matthew Case, Charleston, West Virginia, Claims Court Number 91–0847 V
50. James and Laura Banta on behalf of Sara Banta, Ogden, Utah, Claims Court Number 91–0848 V
51. Phillip and Magaly Wenzofsky on behalf of Leah Wenzofsky, West Palm Beach, Florida, Claims Court Number 91–0849 V
52. Diane Franco on behalf of Jesse Gardner, Santa Rosa, California, Claims Court Number 91–0850 V
53. Ave Edpao on behalf of Christian Edpao, Deceased, Los Angeles, California, Claims Court Number 91–0851 V
54. Alan Torres, St. Louis, Missouri, Claims Court Number 91–0852 V
55. Linda F. Mayle, Canton, Ohio, Claims Court Number 91–0853 V
56. Terry Burden on behalf of Amber Burden, Deceased, Madisonville, Kentucky, Claims Court Number 91–0854 V
57. Suzanne Neal on behalf of Elizabeth Neal, Thousand Oaks, California, Claims Court Number 91–0855 V
58. Shellia Davis on behalf of Jodie Davis, Deceased, Louisville,

Kentucky, Claims Court Number 91–0856 V
59. Robert Carr on behalf of Karen Carr, Gainesville, Georgia, Claims Court Number 91–0857 V
60. Gumersinda Toledo on behalf of Gerardo Toledo, Paterson, New Jersey, Claims Court Number 91–0858 V
61. Sammy and Susan Young on behalf of Denise Young, Deceased, Newland, North Carolina, Claims Court Number 91–0859 V
62. Wayne Springer on behalf of Craig Springer, Gaithersburg, Maryland, Claims Court Number 91–0860 V
63. Rhonda Esco, Abbeville, South Carolina, Claims Court Number 91–0861 V
64. David Kennedy, Hazleton, Pennsylvania, Claims Court Number 91–0862 V
65. Diane Cuthbertson, Clayton, Missouri, Claims Court Number 91–0863 V
66. Gerald and Saundra Balsdon on behalf of Stacy Balsdon, Evansville, Indiana, Claims Court Number 91–0864 V
67. Terry Lynn Higgins, Madisonville, Kentucky, Claims Court Number 91–0865 V
68. Alexander Schmidt on behalf of Christian Schmidt, El Paso, Texas, Claims Court Number 91–0866 V
69. Dawn and Raul Armenta on behalf of Amanda Armenta, Deceased, San Dimas, California, Claims Court Number 91–0867 V
70. William Carter, Davis, Oklahoma, Claims Court Number 91–0868 V
71. Michael Shackelford, Fort Campbell, Kentucky, Claims Court Number 91–0880 V
72. Susan Dipaci, Nanuet, New York, Claims Court Number 91–0881 V
73. Richard Thiesen on behalf of Michael Thiesen, Albany, New York, Claims Court Number 91–0882 V
74. William Bradle, Rosemead, California, Claims Court Number 91–0883 V
75. Teri O'Dell on behalf of Kyla O'Dell, Muskogee, Oklahoma, Claims Court Number 91–0884 V
76. Allen Black on behalf of Timothy Black, Memphis, Tennessee, Claims Court Number 91–0885 V
77. Paul Pope on behalf of April Pope, Hartsville, South Carolina, Claims Court Number 91–0886 V
78. Cathy Smith on behalf of Carolyn Smith, Houghton, New York, Claims Court Number 91–0890 V
79. Bobby and Ernestine Pruitt on behalf of Justin Pruitt, Deceased, Williamson County, Tennessee, Claims Court Number 91–0891 V
80. John and Mary Lindley on behalf of Thomas Lindley, Covington, Tennessee, Claims Court Number 91–0893 V
81. Colleen Pfefferle, Cincinnati, Ohio, Claims Court Number 91–0894 V
82. Fermin Vasquez, Mayaguez, Puerto Rico, Claims Court Number 91–0895 V
83. John and Martha Johnson on behalf of Jackie Johnson, Covington, Tennessee, Claims Court Number 91–0896 V
84. James and Martha Motta on behalf of Thomas Motta, Deceased, Redmond, Washington, Claims Court Number 91–0899 V
85. John Paul Cotterman on behalf of John Cotterman, Deceased, Wapakoneta, Ohio, Claims Court Number 91–0904 V
86. Trina Gonzales on behalf of Christopher Gonzales, Deceased, Renton, Washington, Claims Court Number 91–0905 V
87. John and Daphine Smith on behalf of John Smith, Bessemer, Alabama, Claims Court Number 91–0906 V
88. Rand Craft on behalf of William Craft, Elk City, Oklahoma, Claims Court Number 91–0907 V
89. Joseph Krofchick on behalf of Amanda Krofchick, Fort Leonard Wood, Missouri, Claims Court Number 91–0912 V
90. Wilson Wagner on behalf of Darrell Wagner, Monterey, California, Claims Court Number 91–0914 V
91. Stella Pousha on behalf of Michael Pousha, Milwaukee, Wisconsin, Claims Court Number 91–0915 V
92. Darcel Massard, Washington, D.C., Claims Court Number 91–0916 V
93. Richie Bryant on behalf of Justin Bryant, Madison, Indiana, Claims Court Number 91–0917 V
94. Larry Gray on behalf of Christopher Gray, West Covina, California, Claims Court Number 91–0942 V
95. Sandra Brown, Chicago, Illinois, Claims Court Number 91–0948 V
96. Annette Pasek on behalf of Michael Pasek, Deceased, Manchester, Connecticut, Claims Court Number 91–0950 V
97. Maxine Rivera on behalf of Maria Alvarado, Murray, Utah, Claims Court Number 91–0960 V
98. Shabazz Cushmeer on behalf of Muhammed Cushmeer, Deceased, Little Rock, Arkansas, Claims Court Number 91–0966 V
99. Stephen Cole on behalf of Joshua Cole, Deceased, Bradner, Ohio, Claims Court Number 91–0971 V
100. J. Mark and Deborah Sowers on behalf of Melissa Sowers, Richmond, Virginia, Claims Court Number 91–0972 V
101. Lena Harvey on behalf of Delmonte Benallie, Deceased, Shiprock, New Mexico, Claims Court Number 91–0973 V
102. Reginald Davis on behalf of Leguisha Davis, Birmingham, Alabama, Claims Court Number 91–0975 V
103. Wanda Sanchez-Flores on behalf of Jonathan Otero, Manati, Puerto Rico, Claims Court Number 91–0979 V
104. John S. Franklin, Jr., Memphis, Tennessee, Claims Court Number 91–0987 V
105. John Cucuras on behalf of Nichole Cucuras, Mansfield, Ohio, Claims Court Number 91–0994 V
106. Francis Schriefer on behalf of Stephanie Schriefer, Long Island, New York, Claims Court Number 91–1004 V
107. Roscoe Brown, Jr. on behalf of Roscoe Brown, III, Deceased, New Orleans, Louisiana, Claims Court Number 91–1036 V
108. Robert McAllister on behalf of Dana McAllister, Mineola, New York, Claims Court Number 91–1037,
109. Johnny Hernandez on behalf of Johnny Hernandez, Jr., Abilene, Texas, Claims Court Number 91–1043 V
110. Nazar Aramian on behalf of Ani Aramian, Deceased, Fountain Valley, California, Claims Court Number 91–1046 V
111. Wayne Conley, Sr. on behalf of Wayne Conley, Jr., Deceased, Bluefield, West Virginia, Claims Court Number 91–1050 V
112. Michael Jones on behalf of Shad Jones, Brigham City, Utah, Claims Court Number 91–1053 V
113. Roger Kearney on behalf of Bryan Kearney, Deceased, Hibbing, Minnesota, Claims Court Number 91–1054 V
114. Verna May, Sacramento, California, Claims Court Number 91–1057 V
115. Anthony Euken, Virginia Beach, Virginia, Claims Court Number 91–1059 V
116. Julie West on behalf of Anthony Price, Louisa, Kentucky, Claims Court Number 91–1060 V
117. Katherine Gordon, Canton, Michigan, Claims Court Number 91–1061 V 1
118. Deborah Cobb on behalf of Kevin Cobb, North Little Rock, Arkansas, Claims Court Number 91–1062 V
119. Jeffrey and Natasha Bryant on behalf of Ryan Bryant, Arkansas City, Kansas, Claims Court Number 91–1080 V
120. Dawn Myers, Harlingen, Texas, Claims Court Number 91–1083 V
121. Allan and Linda Radika on behalf of Levi Radika, Hibbing, Minnesota, Claims Court Number 91–1084 V
122. Paul and Lisa Lykins on behalf of Alexandra Lykins, Aiken, South

Carolina, Claims Court Number 91–1089 V
123. Raymond Salcido on behalf of Megan Salcido, Deceased, Yucaipa, California, Claims Court Number 91–1092 V
124. Brian Donner on behalf of Shauna Donner, White Earth, Minnesota, Claims Court Number 91–1095 V
125. Douglas and Melissa Stewart on behalf of Allen Stewart, Brandon, Florida, Claims Court Number 91–1096 V
126. Patricia Everett on behalf of Michelle Everett, Arlington, Texas, Claims Court Number 91–1115 V
127. Monty Bertelli on behalf of Matthew Bertelli, Deceased, Topeka, Kansas, Claims Court Number 91–1122 V
128. Mary Vessels on behalf of Jimmy Vessels, Deceased, Elizabethtown, Kentucky, Claims Court Number 91–1129 V
129. Sergia Vijil, Deceased, Miami, Florida, Claims Court Number 91–1132 V
130. John Church on behalf of Justin Church, Pineville, West Virginia, Claims Court Number 91–1134 V
131. Houshang Salimian on behalf of Bijan Salimian, Deceased, La Habra, California, Claims Court Number 91–1140 V
132. Jack Sorensen on behalf of Robert Sorensen, Deceased, San Diego, California, Claims Court Number 91–1161 V
133. Ronald McGhee on behalf of Brandy McGhee, Fredericksburg, Virginia, Claims Court Number 91–1162 V
134. Todd Becker on behalf of Elisabeth Becker, Deceased, Norfolk, Virginia, Claims Court Number 91–1172 V
135. Scott and Peggy Casto on behalf of Sam Casto, Deceased, Portland, Oregon, Claims Court Number 91–1178 V
136. Paula Hervey on behalf of Sharina Hervey, Deceased, Tulsa, Oklahoma, Claims Court Number 91–1180 V
137. Pauline Strong on behalf of Christina Strong, Hazard, Kentucky, Claims Court Number 91–1187 V
138. Mary Cooper on behalf of Bradley Cooper, Deceased, Garrettsville, Ohio, Claims Court Number 91–1213 V
139. Antonio Gutierrez on behalf of Mark Gutierrez, Elgin, Illinois, Claims Court Number 91–1219 V
140. Donna Hammond, Pensacola, Florida, Claims Court Number 91–1238 V
141. David Knievel on behalf of Rachel Knievel, Waco, Texas, Claims Court Number 91–1240 V
142. Elizabeth Simonds on behalf of Kathryn Simonds, Deceased, Yardley, Pennyslvania, Claims Court Number 91–1246 V
143. Anita Rojas Junction, Texas, Claims Court Number 91–1256 V
144. Michal Silbermintz on behalf of Galit Silbermintz, Bayside, New York, Claims Court Number 91–1268 V
145. John Bushell on behalf of Kenneth Bushell, Carmel, New York, Claims Court Number 91–1270 V
146. Hillory Bodden on behalf of Ashley Bodden, Deceased, Miami, Florida, Claims Court Number 91–1298 V
147. Marie Bernard on behalf of Timothy Bernard, Bucksport, Maine, Claims Court Number 91–1301 V
148. Michael Harman, Wantagh, New York, Claims Court Number 91–1326 V
149. Tammy Wells on behalf of Stephanie Wells, Oak Lawn, Illinois, Claims Court Number 91–1330 V
150. Stacy McLean on behalf of Melody Holmes, Fairbanks, Alaska, Claims Court Number 91–1343 V
151. Richard and Julia Jordan on behalf of Matthew Jordan, Richmond, Indiana, Claims Court Number 91–1344 V
152. Collette Cogliandro on behalf of Anna Joy Cogliandro, Norfolk, Virginia, Claims Court Number 91–1345 V
153. Susan Watson on behalf of Thomas Watson, Brandon, Florida, Claims Court Number 91–1354 V
154. Kristie Hart on behalf of Jeremiah Hart, Big Spring, Texas, Claims Court Number 91–1360 V
155. Andrew Englert on behalf of Marilyn Englert, Ballinger, Texas, Claims Court Number 91–1370 V
156. Hellen Jack, Los Angeles, California, Claims Court Number 91–1374 V
157. Francis Hoult on behalf of Benjamin Hoult, Rockville, Maryland, Claims Court Number 91–1377 V
158. Antonio Lopez on behalf of Laura Lopez, Deceased, Houston, Texas, Claims Court Number 91–1391 V
159. Peggy Pruitt on behalf of Stephen Pruitt, Knox County, Tennessee, Claims Court Number 91–1413 V
160. Jesse Levy on behalf of Andrew Levy, Grapevine, Texas, Claims Court Number 91–1416 V
161. Marilyn Bostick on behalf of Walter Bostick, Bay City, Michigan, Claims Court Number 91–1417 V
162. Bonita and Carl Wallace on behalf of Shanice Young, Deceased, Buffalo, New York, Claims Court Number 91–1430 V
163. Doris Youngblood on behalf of Matthew Youngblood, Washington, D.C.,Claims Court Number 91–1442 V
164. David Simon on behalf of Wayne Simon, Jordan, Minnesota, Claims Court Number 91–1444 V
165. Pha and Tang Her on behalf of Bee Her, Deceased, Ramsey, Minnesota, Claims Court Number 91–1447 V
166. Linda Smith on behalf of Jefferson Smith, Deceased, Boulder, Colorado, Claims Court Number 91–1461 V
167. Leona Jones on behalf of Phillip Murphy, San Antonio, Texas, Claims Court Number 91–1476 V
168. Lisa Patrin, St. Paul, Minnesota, Claims Court Number 91–1477 V
169. Lisa Carlson on behalf of Michael Carlson, Phoenix, Arizona, Claims Court Number 91–1486 V
170. Vivian Haskell on behalf of Ashley Haskell, Deceased, Chesapeake, Virginia, Claims Court Number 91–1487 V
171. Sharon Webb on behalf of Arius Webb, Deceased, Flint, Michigan, Claims Court Number 91–1488 V
172. Clayton Blair on behalf of Jeremiah Blair, Cookeville, Tennessee, Claims Court Number 91–1503 V
173. Michael Pickett on behalf of Griffin Pickett, Des Moines, Iowa, Claims Court Number 91–1507 V
174. Kimberly Love on behalf of Brandon James, Deceased, Detroit, Michigan, Claims Court Number 91–1514 V
175. Terry Harris on behalf of Brandon Harris, Deceased, Silverton, Oregon, Claims Court Number 91–1519 V
176. Tammy Jordan on behalf of Christopher Jordan, Seneca, South Carolina, Claims Court Number 91–1524 V
177. Troy Smith on behalf of Nicholas Smith, Deceased, Traverse City, Michigan, Claims Court Number 91–1525 V
178. Gregory Harkins on behalf of Matthew D. Harkins, Tucson, Arizona, Claims Court Number 91–1526 V
179. Marlynne Little, Mesa, Arizona, Claims Court Number 91–1527 V
180. John Hossack on behalf of Jeffrey Hossack, Deceased, Folsom, California, Claims Court Number 91–1528 V
181. Teresa Jordan on behalf of Rebecca Jordan, Longview, Texas, Claims Court Number 91–1533 V
182. Susie Lee on behalf of Stephanie Lee, College Point, New York, Claims Court Number 91–1538 V
183. Beth Gustafson, Robbinsdale, Minnesota, Claims Court Number 91–1539 V
184. Robert McCabe on behalf of David McCabe, Jacksonville, Florida, Claims Court Number 91–1540 V
185. Peggy Potts on behalf of Jennifer Potts, Waverly, Ohio, Claims Court Number 91–1545 V
186. Robert Nichols on behalf of Daniel Nichols, Charleston, West Virginia, Claims Court Number 91–1547 V

187. Debra Klein on behalf of Gary Klein, Jr., Deceased, Glen Carbon, Illinois, Claims Court Number 91–1548 V
188. Velma Cullinane on behalf of Kyle Cullinane, Deceased, Boston, Massachusetts, Claims Court Number 91–1554 V
189. Marc Plavin on behalf of Rachel Reiss-Plavin, Lexington, Kentucky, Claims Court Number 91–1555 V
190. Martha Steenbruggen on behalf of Dana Steenbrugen, Reading, Massachusetts, Claims Court Number 91–1557 V
191. Michele Moore on behalf of Jonathan Amorella-Moore, Reading, Massachusetts, Claims Court Number 91–1558 V
192. Michael Stephens on behalf of Matthew Stephens, Houston, Texas, Claims Court Number 91–1565 V
193. Ida Rasmussen, Westland, Michigan, Claims Court Number 91–1566 V
194. Donella Raspberry on behalf of Shanelle Eastling, Deceased, Baldwin, Michigan, Claims Court Number 91–1567 V
195. Pradeep Nayyar on behalf of Geeta Nayyar, Old Bridge, New Jersey, Claims Court Number 91–1583 V
196. Rodney Jones, Chicago, Illinois, Claims Court Number 91–1590
197. Lori Barton on behalf of Dustin Barton, Albuquerque, New Mexico, Claims Court Number 91–1594
198. Michele Bartl on behalf of Caitlyn Bartl, Foley, Alabama, Claims Court Number 91–1595
199. Donna DeFazio, Staten Island, New York, Claims Court Number 91–1597
200. Barbara Toebe on behalf of Anne Toebe, Paoli, Pennsylvania, Claims Court Number 91–1623.

Dated: May 16, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–12453 Filed 5–19–95; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting: AIDS Research Advisory Committee, NIAID

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the AIDS Research Advisory Committee, National Institute of Allergy and Infectious Diseases, on June 6–7, 1995, in the Grand Ballroom of the Gaithersburg Hilton Hotel, 620 Perry Parkway, Gaithersburg, Maryland.

The entire meeting will be open to the public from 8 a.m. until recess on June 6, and from 8 a.m. until adjournment on June 7. The AIDS Research Advisory Committee (ARAC) advises and makes recommendations to the Director, National Institute of Allergy and Infectious Diseases, on all aspects of research on HIV and AIDS related to the mission of the Division of AIDS (DAIDS).

The Committee will provide advice on scientific priorities, policy, and program balance at the Division level. The Committee will review the progress and productivity of ongoing efforts, and identify critical gaps/obstacles to progress. Attendance by the public will be limited to space available.

Ms. Anne P. Claysmith, Executive Secretary, AIDS Research Advisory Committee, DAIDS, NIAID, NIH, Solar Building, Room 2B06, telephone 301–402–0755, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Claysmith in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: May 15, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–12403 Filed 5–19–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Notice of Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of meetings of the review committees of the National Institute of Child Health and Human Development for June 1995.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Population Research Committee.

Scientific Review Administrator: Dr. A.T. Gregoire, 6100 Executive Boulevard—Rm. 5E03, Telephone: 301–496–1696.

Date of Meeting: June 8–9, 1995.

Place of Meeting: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814, Georgia Room.

Time: June 8–8:00 am–5:00 p.m. June 9–8:00 am–adjournment.

Name of Committee: Maternal and Child Health Research Committee.

Scientific Review Administrator: Dr. Gopal Bhatnagar, 6100 Executive Boulevard—Rm. 5E03, Telephone: 301–496–1485.

Date of Meeting: June 12–13, 1995.

Place of Meeting: Holiday Inn—Gaithersburg, #2 Montgomery Village Avenue, Gaithersburg, Maryland 20879.

Time: June 12–8:00 am–5:00 p.m. June 13–8:00 am–adjournment.

Name of Committee: Mental Retardation Research Committee.

Scientific Review Administrator: Dr. Norman Chang, 6100 Executive Boulvard—Rm. 5E03, Telephone: 301–496–1485.

Date of Meeting: June 23–24, 1995.

Place of Meeting: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

Time: June 23–8:00 am–5:00 p.m. June 24–8:00 am–adjournment.

(Catalog of Federal Domestic Assistance Program No. 93.864, Population Research and No. 93.865, Research for Mothers and Children, National Institutes of Health.)

Dated: May 15, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–12404 Filed 5–19–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Purpose: To review grant applications.

Committee Name: National Institute of General Medical Sciences, Cellular and Molecular Basis of Disease Review Committee.

Date: June 7.

Time: 8:30 a.m.—5 p.m.

Place: 45 Center Drive, Conference Room B, Bethesda, MD 20892–62000.

Contact Person: Dr. Carole Latker, Scientific Review Administrator, NIGMS, 45 Center Drive, Room 1AS–13K, Bethesda, MD 20892–62000.

Committee Name: National Institute of General Medical Sciences, Pharmacological Sciences Review Committee.

Date: June 7.

Time: 8:30 a.m.—5 p.m.

Place: 45 Center Drive, Conference Room G1 and G2, Bethesda, MD 20892–6200.

Contact Person: Dr. Irene Glowinski, Scientific Review Administrator, NIGMS, 45 Center Drive, Room 1 AS–13J, Bethesda, MD 20892–6200.

Committee Name: National Institute of General Medical Sciences, Genetic Basis of Disease Review Committee.

Date: June 12.
Time: 8:30 a.m.—adjournment.
Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Dr. Arthur Zachary, Scientific Review Administrator, NIGMS, 45 Center Drive, Room 1AS–13H, Bethesda, MD 20892–6200.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552(c)(6), Title 5, U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the first meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93,821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862 Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS].

Dated: May 15, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–12400 Filed 5–19–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meetings of the National Institute of Mental Health:

Agenda/Purpose: To review and evaluate grant applications.
Committee Name: National Institute of Mental Health Initial Review Group, Clinical Centers and Special Projects Review Committee.
Date: June 5–9, 1995.
Time: 7:00 p.m.
Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Phyllis L. Zusman, Grant Technical Assistant, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: June 19, 1995.
Time: 2:00 p.m.
Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Regina M. Thomas, Grant Technical Assistant, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: June 20, 1995.
Time: 1:30 p.m.
Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Rehana A. Chowdhury, Grant Technical Assistant, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Agenda/Purpose: To review for final approval recent views of selected intramural research projects.
Committee Name: Board of Scientific Counselors, National Institute of Mental Health.
Date: June 13–14, 1995.
Time: 9:00 a.m.
Place: Building 36, Room 1B07, National Institute of Health, 9000 Rockville Pike, Bethesda, MD 20892.
Contact Person: Jack D. Maser, Ph.D., Executive Secretary, Building 10, Room 4N224, 9000 Rockville Pike, Bethesda, MD 20982, Telephone: 301, 496–4183.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. These applications, research project reviews, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meeting timing limitations imposed by the review cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award.)

Dated: May 15, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–12401 Filed 5–19–95; 8:45 am]

BILLING CODE 4140–01–M

Ad Hoc Review Committee for the Recombinant DNA Advisory Committee; Notice of Meeting

Notice is hereby given of a meeting of the Ad Hoc Review Committee for the Recombinant DNA Advisory Committee on June 19, 1995, at the National Institutes of Health, Building 31C, 6th Floor, Conference Room 8, 9000 Rockville Pike, Bethesda, Maryland 20892, starting at approximately 9 a.m. to adjournment at approximately 5 p.m. The meeting will be open to the public to discuss three major topics for review: (1) Domain and mandate of the Recombinant DNA Advisory Committee; (2) composition of the Recombinant DNA Advisory Committee; and (3) Recombinant DNA Advisory Committee's review of human gene transfer protocols. Attendance by the public will be limited to space available. Members of the public wishing to speak at this meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, Suite 323, National Institutes of Health, 6006 Executive Boulevard, MSC 7052, Bethesda, Maryland 20892–7052, Phone (301) 496–9838, FAX (301) 496–9839, will provide materials to be discussed at this meetings, roster of committee members and substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Wivel in advance of the meeting. A summary of the meeting will be available at a later date.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number of title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: May 15, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–12402 Filed 5–19–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment and Center for Substance Abuse Prevention; Notice of Meetings

Pursuant of Public Law 92–463, notice is hereby given of the meetings of the Center for Substance Abuse Treatment (CSAT) National Advisory Council and the Center for Substance Abuse Prevention (CSAP) Drug Testing Advisory Board in June 1995.

The meeting of the CSAT National Advisory Council will include a discussion of Center policy issues and current administrative, legislative, and program developments. The Council will also conduct a review of grant applications and procurement plans; therefore a portion of this meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(3) and (6) and 5 U.S.C. app. 2 10(d). Attendance by the public at the open portion of the meeting will be limited to space available.

A summary of the meeting and roster of council members may be obtained from: Ms. D. Winstead, Committee Management Specialist, CSAT, Rockwall II Building, Suite 840, 5600 Fishers Lane, Rockville, Maryland 20857; (301) 443–8448.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Center for Substance Abuse Treatment, National Advisory Council.

Meeting Dates: June 26 and 27, 1995.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chase Room, Chevy Chase, Maryland 20815.

Open: June 26, 8:30 a.m.–2:00 p.m., June 27, 8:30 a.m.–3:00 p.m.

Closed: June 26, 2:00 p.m.–4:30 p.m.

Contact: Marjorie Cashion, Rockwall II Building, Suite 840; Telephone (301) 443–3821.

The meeting of the Drug Testing Advisory Board will include discussion of announcements and reports of administrative, legislative, and program developments. It will also include reviews of sensitive National Laboratory Certification Program (NLCP) internal operating procedures and program development issues. Therefore, a portion of this meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(2),(4), and (6) and 5 U.S.C. App 2 10(d).

A summary of this meeting and roster of committee members may be obtained from: Ms. Vera Hunter, Acting Committee Management Officer, CSAP, Rockwall II Building, Suite 7A–140, 5600 Fishers Lane, Rockville, MD 20857; Telephone: (301) 443–9540.

Substantive program information may be obtained from the contact whose name, room number and telephone number is listed below.

Committee Name: Drug Testing Advisory Board.

Meeting Dates: June 29, 1995.

Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20857.

Open: June 29, 8:30 a.m.–11:00 a.m.

Closed: June 29, 11:00 a.m.-Adjournment.

Contact: Donna M. Bush, Ph.D.; Parklawn Building, Room 13A–54; Telephone (301) 443–6014.

Dated: May 16, 1995.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 95–12452 Filed 5–19–95; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. FR–3911–N–01]

Mortgagee Review Board Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In compliance with Section 202(c) of the National Housing Act, notice is hereby given of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: William Heyman, Director, Office of Lender Activities and Land Sales Registration, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1515. The Telecommunication Device for the Deaf (TDD) number is (202) 708–4594. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by Section 142 of the Department of Housing and Urban Development Reform Act of 1989 (Pub.L. 101–235), approved December 15, 1989) requires that HUD ''publish in the **Federal Register** a description of and the cause for administrative action against a HUD-approved mortgagee'' by the Department's Mortgagee Review Board. In compliance with the requirements of Section 202(c)(5), notice is hereby given of administrative actions that have been taken by the Mortgagee Review Board from January 1, 1995 through March 31, 1995.

1. Randall Mortgage, Inc., Maitland, Florida

Action: Proposed Settlement Agreement that includes indemnification to the Department for any claim losses in connection with seven improperly originated loans; payment to the Department of a civil money penalty in the amount of $2,500; and corrective action by the company to assure compliance with HUD–FHA requirements.

Cause: A HUD monitoring review that disclosed violations of HUD–FHA requirements that included: Failure to maintain an adequate Quality Control Plan for the origination of HUD–FHA insured mortgages; failure to verify borrowers' source of funds used for downpayment; failure to ensure that borrowers made the minimum required investment in the property; requiring a borrower to deposit excess escrow funds at closing; inadequate or lack of face-to-face interviews with borrowers; and failure to properly complete HUD Form 92900 Applications.

2. West Star Financial Corporation, Centennial Park, Arizona

Action: Settlement Agreement that includes payment to the Department of a civil money penalty in the amount of $35,000; indemnification for any claim loss in connection with an improperly originated loan; corrective action to assure compliance with HUD–FHA requirements; and submission of a report to the Board compiled by an independent Certified Public Accountant at the end of a six-month period with respect to the company's compliance with HUD–FHA requirements.

Cause: A HUD monitoring review which disclosed violations of HUD–FHA loan servicing and origination requirements that included: Failure to maintain an adequate Quality Control Plan for the servicing and origination of HUD–FHA insured mortgages; failure to maintain staff trained in HUD–FHA requirements; failure to properly service delinquent mortgages; failure to properly administer the assignment program; failure to comply with property inspection, preservation and protection requirements; failure to refund excess escrow funds to mortgagors; failure to establish controls to ensure timely mortgagor escrow payments; failure to remit accurate

mortgage insurance premiums; failure to enter into reasonable forebearance agreements; failure to meet the reporting requirements of the Single Family Default Monitoring System; failure to timely remit One-Time Mortgage Insurance Premiums; payment of loan origination fees not proportionate to the value of work performed; and failure to ensure that borrowed funds were not used to close a HUD–FHA insured mortgage.

3. F.C. Chadwick Financial, Cerritos, California

Action: A Settlement Agreement that includes indemnification to the Department for any claim losses in connection with six improperly originated Title I loans; and corrective action to assure compliance by the company with HUD–FHA Title I program requirements.

Cause: A HUD monitoring review that cited violations by the company of HUD–FHA Title I property improvement loan program requirements which included: Operating an unapproved branch office; payment of ineligible referral fees; failure to verify the source of borrowers' initial payment; and failure to meet program requirements for the promissory note.

4. First Financial Funding Group, Mission Viejo, California

Action: Settlement Agreement that includes indemnification to the Department for any claim losses in connection with five improperly originated Title I loans; payment to the Department of a civil money penalty in the amount of $1,000; and corrective action to assure compliance with HUD–FHA Title I program requirements.

Cause: A HUD monitoring review that cited violations by the company of HUD–FHA Title I property improvement loan program requirements that included: Failure to document the source of funds required for the borrowers' initial payment; failure to ensure that borrowers provided detailed descriptions of work improvements; and failure to comply with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA).

5. Magna Financial Corporation, Irvine, California

Action: Proposed Settlement Agreement that includes indemnification to the Department for any claim losses in connection with five improperly originated Title I loans; payment to the Department of a civil money penalty in the amount of $1,000; and corrective action to assure compliance with HUD–FHA requirements.

Cause: A HUD monitoring review that disclosed violations by the company of HUD–FHA Title I property improvement loan program requirements that included: Failure to verify borrowers' source of funds required for initial payment; failure to property verify borrower's income; requiring a minimum loan amount; failure to meet program requirements for the promissory note; failure to ensure that detailed descriptions of improvements were provided by borrowers; and failure to comply with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA).

6. Greystone Servicing Corporation, Inc., New York, New York

Action: Proposed Settlement Agreement that includes a payment to the Department and assurance by the company of compliance with the requirements of the Government National Mortgage Association (GNMA).

Cause: Violation of GNMA requirements resulting from the improper termination of 57 GNMA mortgage-backed securities pools.

7. Whitehall Funding, Inc., Davenport, Iowa

Action: Proposed Settlement Agreement that includes a payment to the Department and assurance by the company of compliance with the requirements of the Government National Mortgage Association (GNMA).

Cause: Violation of GNMA requirements resulting from the improper termination of 13 GNMA mortgage-backed securities pools.

8. Washington Credit Union, Lynwood, Washington

Action: Proposed Settlement Agreement that includes the payment of a civil money penalty to the Department in the amount of $10,000; indemnification for one improperly originated Title I loan; and corrective action to assure compliance with HUD–FHA Title I program requirements.

Cause: A HUD monitoring review that disclosed violations of HUD–FHA Title I property improvement loan program requirements that included: Failure to comply with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA); failure to comply with dealer approval requirements; failure to report to HUD–FHA borrowers' uncompleted property improvements; failure to resolve a borrower complaint against a dealer; and failure to verify a borrower's source of funds for the required initial payment.

9. Indigo Mortgage Services, Inc., Santa Ana, California

Action: Withdrawal of HUD–FHA mortgagee approval.

Cause: Failure by the company to comply with the terms and conditions of a Settlement Agreement with the Department and to indemnify HUD in the amount of $49,724 for its claim loss in connection with an improperly originated HUD–FHA insured mortgage.

10. Beacon Mortgage Company, Dallas, Texas

Action: Letter of Reprimand and proposed civil money penalty in the amount of $2,000.

Cause: Failure by the company to comply with HUD–FHA requirements and to submit to the Department physical inspection reports with respect to two HUD–FHA insured multifamily projects.

11. Mortgage Systems, Inc., d/b/a Associated Mortgage Bankers, Las Vegas, Nevada

Action: Withdrawal of HUD–FHA mortgagee approval and proposed civil money penalty in the amount of $75,000.

Cause: A HUD monitoring review that cited the company for violations of HUD–FHA program requirements which included: Failure to comply with conditions of probation previously imposed by the Board; failure to implement an adequate Quality control Plan; failure to remit mortgage insurance premiums within l5 days after loan closing; failure to submit closed loans for endorsement within 60 days after loan closing; failure to meet annual recertification requirements regarding amount of liquid assets; submission of false information; failure to document the borrower's source of funds for downpayment and closing costs; failure to correctly calculate the borrower's income for loan approval; failure to ensure that the borrower made the minimum required investment; use of mortgage brokers to originate loans and payment of ''kickbacks'' to such brokers; non-compliance with HUD's conflict-of-interest prohibited payments provisions; failure to conduct face-to-face interviews; and allowing loan correspondents to improperly close loans in the name of the company.

Dated: May 16, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 95–12460 Filed 5–19–95; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–09–1430–00]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made to the Bureau Clearance Office and to the Office of Management and Budget, Paperwork Reduction Project (1004–0009), Washington, D.C. 20503, telephone number 202–395–7340.

Title: Land Use Application and Permit

OMB Approval Number: (1004–0009)

Abstract: The regulations at 43 CFR 2920 provide for non-Federal use of bureau administered land via lease or permit. Uses include agriculture, trade or manufacturing concerns and business uses such as outdoor recreation concession. BLM will determine the validity of uses proposed by private individuals and other qualified proponents from information provided by the proponent on the Land Use Application and Permit form

Bureau Form Number: 2920–1

Frequency: Once

Description of Respondents: Individuals, State and local government entities, and other qualified proponents apply for use of Bureau administered land via lease or permit

Estimated Completion Time: 9.60 hours

Annual Responses: 620

Annual Burden Hours: 5955

Bureau Clearance Officer: Wendy Spencer 303–236–6642

Dated: April 15, 1995.

W. Hord Tipton,

Assistant Director, Resource Use and Protection.

[FR Doc. 95–12415 Filed 5–19–95; 8:45 am]

BILLING CODE 4310–84–M

[WO–350–09–1430–00]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made to the Bureau Clearance Officer and to the Office of Management and Budget, Interior Department Desk Officer, Washington, D.C. 20503, telephone number 202–395–7340.

Title: Application for Transportation and Utility Systems and Facilities on Federal Lands, P.L. 96–487 (Also applicable for 43 CFR 2800 and 2880)

OMB Approval Number: (1004–0060)

Abstract: Respondents supply information as to their identity and address and the nature, location and potential impacts of the proposed facility. The information enables the using agency to identify and communicate with the applicant and to locate and evaluate the effect of the proposed facility on the environment and other land uses

Bureau Form Number: SF–299

Frequency: On occasion

Description of Respondents: Applicants for rights-of-way on Federal lands

Estimated Completion Time: 2 hours

Annual Responses: 4,300

Annual Burden Hours: 8,600

Bureau Clearance Officer: Wendy Spencer 303–236–6642

Dated: May 1, 1995.

W. Hord Tipton,

Assistant Director, Resource Use and Protection.

[FR Doc. 95–12414 Filed 5–19–95; 8:45 am]

BILLING CODE 4310–84–M

[NV–930–1430–01; N–59025]

Notice of Realty Action: Lease/ conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management.

ACTION: Recreation and public purpose lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The City of Las Vegas proposes to use the land for public park to include a soccer complex.

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E., M.D.M.
Sec. 10: S½S½NW¼NE¼NW¼, S½SW¼NE¼NE¼NW¼, SE¼NE¼NE¼NW¼, SE¼NE¼NE¼NW¼, S½NE¼NW¼, SE¼NW¼, NE¼SW¼.

Containing 106.250 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement 40.00 feet in width along the east boundary for Tenaya Way, and an easement 30.00 feet in width along the south boundary for Buckskin Avenue, and a 40.00 foot easement along the south boundary of the SE¼NW¼ for Gowan Road, and a 40.00 foot easement along the north boundary of the NE¼SW¼ for Gowan Road, and a 30.00 easement along the west boundary of the NE¼SW¼ of Section 10 for Pioneer Way, in favor of the City of Las Vegas for roads, public utilities and flood control purposes.

2. Those rights for flood detention basin purposes which have been granted to the City of Las Vegas by Permit No. N–37220 the under the Act of October 21, 1976 (47USC1761).

3. Those rights for water well purposes which have been granted to the Las Vegas Valley Water District by Permit No. N–53362–D and N–53362–E the under the Act of October 21, 1976 (43USC1761).

4. Those rights for electrical line purposes which have been granted to Nevada Power Company by Permit No. N–54757 the under the Act of October 21, 1976 (43USC1761).

5. Those rights for telephone line purposes which have been granted to Sprint Central Telephone of Nevada by Permit No. N–56449 the under the Act of October 21, 1976 (43USC1761).

6. Those rights for telephone line purposes which have been granted to Sprint Central Telephone of Nevada by Permit No. NEV–067254 the under the Act of March 4, 1911 (43USC961.

7. Those rights for communication line purposes which have been granted to Sprint Central Telephone of Nevada by Permit No. N–7342 the under the Act of February 15, 1901 (43USC959).

8. Those rights for substation and transmission line purposes which have been granted to Nevada Power Company by Permit No. NEV–061618 the under the Act of October 21, 1976 (43USC1761).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register** interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the District Manager, Las Vegas District, P. O. Box 26569, Las Vegas, Nevada 89126.

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 a public park.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: May 5, 1995.

Marvin D. Morgan,

District Manager, Las Vegas, NV.

[FR Doc. 95–12416 Filed 5–19–95; 8:45 am]

BILLING CODE 4310–HC–M

Fish and Wildlife Service

Availability of Draft Environmental Impact Statement on the Establishment of the Silvio O. Conte National Fish and Wildlife Refuge Within the Four-State Connecticut River Watershed of New England

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared, for public review and comment, a Draft Environmental Impact Statement (DEIS) on establishing the Silvio O. Conte National Fish and Wildlife Refuge (refuge) in the Connecticut River watershed of Connecticut, Massachusetts, Vermont and New Hampshire. The DEIS describes a No Action alternative, the Service's Proposed Action, and three other alternatives for establishing the refuge and the environmental consequences of implementing each alternative. This notice is being furnished pursuant to the National Environmental Policy Act (NEPA) regulations (40 CFR 1503.1) to invite comment on the DEIS from other federal and state agencies and the public.

PUBLIC MEETINGS AND HEARINGS: During the public review period, a series of afternoon walk-in informational sessions and evening public meetings and hearings will be held in 16 different locations throughout the four-state Connecticut River watershed. Meetings will be held in four locations in Massachusetts the week of June 6, 1995; in four locations in Connecticut the week of June 12, 1995; in four locations in southern Vermont and New Hampshire the week of June 19, 1995; and in four locations in northern Vermont and New Hampshire the week of June 26, 1995. The dates, times and locations of these meetings will be announced in local and regional newspapers, through public service announcements in other media, and through direct mailings. Written and oral comments will be accepted at all walk-in informational sessions and public meetings, or hearings.

FOR FURTHER INFORMATION CONTACT: Larry Bandolin, Project Leader, U.S. Fish and Wildlife Service, 38 Avenue A, Turners Falls, Massachusetts 01376. Telephone (413) 863–0209 or Fax (413) 863–3070.

PUBLIC COMMENT PERIOD: In order to be considered in the preparation of the Final EIS, all comments should be received no later than July 31, 1995.

SUPPLEMENTARY INFORMATION: The DEIS was prepared to fulfill the requirements of the Silvio O. Conte National Fish and Wildlife Refuge Act of 1991 (Act), Section 105. The Act's long-term purposes for establishing a new refuge in the Connecticut River watershed are to: (1) conserve, protect, and enhance the Connecticut River watershed populations of Atlantic salmon, American shad, river herring, shortnose sturgeon, bald eagles, peregrine falcons, osprey, black ducks, and other native species of plants, fish, and wildlife; (2) conserve, protect, and enhance the natural diversity and abundance of plant, fish, and wildlife species and the ecosystems upon which these species depend within the refuge; (3) protect species listed as endangered or threatened, or identified as candidates for listing, pursuant to the Endangered Species Act of 1973, as amended; (4) restore and maintain the chemical, physical, and biological integrity of wetlands and other waters within the refuge; (5) fulfill the international treaty obligations of the United States relating to fish and wildlife and wetlands, and (6) provide opportunities for scientific research, environmental education, and fish and wildlife-oriented recreation and access to the extent compatible with the other purposes stated in this section. The DEIS describes five alternative ways to help fulfill these purposes. It also discusses the process used to develop them and the environmental consequences of implementing each one. The first alternative (No Action) would involve no new conservation efforts in the watershed on the part of the Service. A second alternative (Private Lands Work and Education) relies on the voluntary restoration and enhancement of private lands through the Service's Partners for Wildlife Program. A third alternative (Private Lands Work, Education and Partnerships) relies on the voluntary restoration and enhancement of private lands, developing partnerships, providing technical assistance and establishing a cost-sharing grants program—through the Service's Challenge Cost Share Program—to help other conservation interests carry out their land protection programs. A fourth alternative (Private Lands Work, Education, Partnerships and Land Protection—The Service's Proposed Action) is similar to the third

alternative, except that the Service would also acquire lands to protect threatened or endangered, rare and uncommon species and communities. Under the fifth alternative (Private Lands Work, Education and Land Protection) the Service would establish a more traditional national fish and wildlife refuge. All issues and concerns identified by the public during scoping were considered and the most significant analyzed in detail. The potential effects of each alternative on agriculture and forestry, biological resources, local economies, environmental education, public use and access, and water use and quality are also described. Copies of the DEIS have been sent to all federal and state agencies, organizations and individuals who requested copies, as well as all libraries within the watershed. A summary of the DEIS has been sent to all other organizations and individuals on the project mailing list. A limited number of copies of both documents are available upon request from the project office in Turners Falls, Massachusetts. No final decision will be made until such time as the public has had the opportunity to review and comment on the DEIS. It is estimated that a Final Environmental Impact Statement will be available by September, 1995.

Cathy Short,

Acting Regional Director.

[FR Doc. 95–12413 Filed 5–19–95; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Electronic Data Interchange (EDI) in the Royalty Management Program

May 16, 1995.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability and training.

SUMMARY: The Minerals Management Service (MMS) is making Electronic Data Interchange (EDI) technology available to minerals royalty payors on a voluntary basis. Implementation of EDI is also intended to help achieve the objectives of the Vice President's National Performance Review.

FOR FURTHER INFORMATION CONTACT: General EDI Information—Contact Mr. Ron Hatton, Systems Management Division, Minerals Management Service, Royalty Management Program, P. O. Box 25165 MS–3140, Denver, Colorado, 80225–0165, telephone numbers 1–800–619–4593 or (303) 275–7050, FAX number (303) 275–7099. EDI Orientation Training Information—Contact Ms. Barbara Matthews, Systems Management Division, Minerals Management Service, Royalty Management Program, P. O. Box 25165 MS–3140, Denver, Colorado, 80225–0165, telephone numbers 1–800–619–4593 or (303) 275–7036, FAX number (303) 275–7099. EDI Technical Training Information—Contact Mr. Tim Allard, Systems Management Division, Minerals Management Service, Royalty Management Program, P. O. Box 25165 MS–3140, Denver, Colorado, 80225–0165, telephone numbers 1–800–619–4593 or (303) 275–7007, FAX number (303) 275–7099.

SUPPLEMENTARY INFORMATION: MMS is publishing this Notice in response to a **Federal Register** notice, ''Offshore Minerals Management and Royalty Management Electronic Data Interchange Projects'' (55 FR 38166, September 17, 1990), and the Executive Order No. 12862, ''Setting Customer Service Standards'' (September 14, 1993).

MMS defines EDI as ''the intercompany electronic transmission of business transactions in a standard format.'' EDI allows royalty payors to use electronic technologies to submit records required under the regulations in Title 30 of the Code of Federal Regulations (CFR). MMS will perform most EDI activity in Denver, Colorado. However, the MMS Outer Continental Shelf (OCS) offices also have a limited EDI capacity for well test data.

MMS will provide approved customers with choices in both sources of service and the means of delivery. Sources of service include Electronic Data Interchange, E-Mail, Magnetic Tape, various Diskette formats and public electronic carriers. Security procedures to protect confidential or proprietary information are provided for in the Electronic Commerce Agreement (ECA).

EDI technology benefits both royalty payors and MMS because it allows for paperless reporting, automated receipt, fewer data errors, and cost savings. Because EDI mutually benefits royalty payors and MMS, MMS' objective is to use EDI wherever feasible as a means of conducting business. All industries MMS regulates may voluntarily participate in the electronic data submission. In some instances, records required by Title 30 of the CFR may need to be retained in paper form and their associated conventional methods of signing may need to be preserved. MMS will specify in future rulemakings which records must be maintained in paper form. Information packets regarding EDI are available by contacting Mr. Ron Hatton at MMS.

Orientation and Training

MMS is offering orientation and technical training at no cost to companies and interested parties that intend to implement EDI with the Minerals Management Service/Royalty Management Program (MMS/RMP). MMS will conduct orientation sessions on request and discuss MMS EDI activities, capabilities and implementation planning and schedules. MMS will conduct a technical training session in Lakewood, Colorado, on June 21, 1995. The technical training session is primarily for technical specialists responsible for EDI and will target the translation of data from the company's application system to reports required by MMS. The training will discuss EDI implementation with MMS/RMP and will be oriented to technical considerations which are essential for successful implementation. The specific transaction sets and reports to be discussed at the technical training session are:

1. Royalty Regulatory Reports, Data Transaction Set 185 for Form MMS–2014;
2. Product Transfer and Resale Report, Data Transaction Set 867 for Forms MMS–3160 and OGOR; and
3. Payment Order/Remittance Advice, Data Transaction Set 820 for electronic payment of royalties, rents, bonuses, penalties, interest, and assessments.

If you are interested in this training session, please reply to Mr. Tim Allard no later than May 31, 1995, using one of the following methods:

1. Call directly at (303) 275–7007;
2. Call the Electronic Commerce Information number 1–800–619–4593;
3. FAX your training request to (303) 275–7099;
4. Respond by E-Mail using Internet address: Timothy—C.—Allard@SMTP.MMS.GOV
5. Respond by E-Mail using X.400 address: /C=US/A=ATTMAIL/P=GOV+MMS/S=Allard/G=Timothy/I=C.

Participants will receive confirmation two weeks in advance of the training and instructions as to exact location and times.

MMS/RMP is also considering conducting similar technical training sessions outside of the Denver area if there is sufficient interest. If you are interested in this training, but are unable to attend the session scheduled in Lakewood, please contact Mr. Tim Allard at MMS to request alternative dates and locations. Future training

dates and locations will be published in the **Federal Register**.

Dated: May 16, 1995.

Donald T. Sant,

Acting Associate Director for Royalty Management.

[FR Doc. 95–12487 Filed 5–19–95; 8:45 am]

BILLING CODE 4310–MR–P

Bureau of Reclamation

Quarterly Status Report of Water Service and Repayment Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

AGENCY: Notice.

SUMMARY: Notice is hereby given of proposed contractual actions that are modified, completed, discontinued, or new since the last publication of this notice on February 1, 1995. The February 1, 1995, notice should be used as a reference point to identify changes. The number in parenthesis corresponds to the number in the February 1, 1995, notice. This notice is one means in which the public is informed about contractual actions for capital recovery and management of project resources and facilities. Additional Bureau of Reclamation (Reclamation) announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the supplementary information.

FOR FURTHER INFORMATION CONTACT: Alonzo Knapp, Manager, Reclamation Law, Contracts, and Repayment Office, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225–0007; telephone 303–236–1061 extension 224.

SUPPLEMENTARY INFORMATION: Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273) and 43 CFR 426.20 of the rules and regulations published in 52 FR 11954, Apr. 13, 1987, Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Pursuant to the ''Final Revised Public Participation Procedures'' for water resource-related contract negotiations, published in 47 FR 7763, Feb. 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. Each proposed action is, or is expected to be, in some stage of the contract negotiation process in 1995. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior or, pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comments.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to: (i) The significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. As a minimum, the regional director shall furnish revised contracts to all parties who request the contract in response to the initial public notice.

Acronym Definitions Used Herein

(BCP)—Boulder Canyon Project
(CAP)—Central Arizona Project
(CUP)—Central Utah Project
(CVP)—Central Valley Project
(CRSP)—Colorado River Storage Project
(D&MC)—Drainage and Minor Construction
(FR)—Federal Register
(IDD)—Irrigation and Drainage District
(ID)—Irrigation District
(M&I)—Municipal and Industrial
(O&M)—Operation and Maintenance
(P–SMBP)—Pick-Sloan Missouri Basin Program
(R&B)—Rehabilitation and Betterment
(SRPA)—Small Reclamation Projects Act
(WCUA)—Water Conservation and Utilization Act
(WD)—Water District

The following contract actions are either new, modified, discontinued, or completed in the Bureau of Reclamation since the February 1, 1995, **Federal Register** notice.

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Boise, Idaho 83706–1234, telephone 208–378–5346.

1. Contract Actions Modified.

(18) Hermiston, Stanfield, Westland, and West Extension Irrigation Districts, Umatilla Project, Oregon: Temporary contracts to provide water service for 1995 to lands lying outside of their boundaries.

2. New Contract Actions.

(19) Stanfield and Westland Irrigation Districts, Umatilla Project, Oregon: Repayment contract for reimbursable cost of dam safety repairs to McKay Dam.

(20) Pumpkin Ridge Golf Course, Tualatin Project, Oregon: Water service contract for provision of approximately 340 acre-feet of water for M&I use.

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5030.

1. Contract Actions Modified.

(2) Irrigation water districts, individual irrigators, M&I and miscellaneous water users, Mid-Pacific Region projects other than CVP: Temporary (interim) water service contracts for available project water for irrigation, M&I, or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; temporary Warren Act contracts for use of project facilities for terms up to 1 year; long-term contracts for similar service for up to 1,000 acre-feet annually. *Note:* Copies of the standard forms of temporary water service contracts for the various types of service are available upon written request from the regional director at the address shown above.

(3) Contractors from the American River Division, Buchanan Division, Cross Valley Canal, Delta Division, Friant Division, Hidden Division, Sacramento River Division, Shasta Division, and Trinity River Division, CVP, California: Renewal of existing long-term water service contracts with contractors whose contracts expire between 1995 and 1998; water quantities for these contracts total in excess of 1.7M acre-feet. These contract actions will be accomplished through interim renewal contracts pursuant to Pub. L. 102–575.

(5) Truckee Carson ID, Newlands Project, Nevada: New repayment contract for the unpaid construction cost repayment obligation from the original contract and for the operation and maintenance of project facilities. The United States terminated the original contract, and this was upheld by the U.S. District Court in Nevada on August 17, 1983.

(10) El Dorado County Water Agency, San Juan WD, and Sacramento County Water Agency, CVP, California: M&I water service contract to supplement existing water supply: 15,000 acre-feet for El Dorado County Water Agency, 13,000 acre-feet for San Juan WD, and 22,000 acre-feet for Sacramento County Water Agency, authorized by Pub. L. 101–514.

(17) Monterey County Water Resources Agency, Castroville Irrigation Water Supply Project, SRPA, California: Loan repayment contract in the amount of $32,600,000 to construct an irrigation distribution system to convey reclaimed water for agricultural purposes and to reduce seawater intrusion in the ground-water aquifers.

(22) San Juan WD and the Placer County Water Agency, CVP, California: Renewal of existing long-term wheeling contract allowing the Agency to use CVP facilities to deliver its water to the District for use on District land within Placer County. This will be a Warren Act contract.

2. Contract Actions Completed.

(7) City of Redding, CVP, California: Amendment to Contract No. 14–06–5272A to add a point of diversion at the turnout, Spring Creek Power Conduit, to facilitate proposed water treatment plant for Buckeye service area. This amendment will also conform the contract to current Reclamation policies, including the water ratesetting policy and Pub. L. 102–575. ACTION: Amendatory Contract No. 14–06–200–5272A executed November 22, 1994.

(11) Sacramento Area Flood Control Agency, CVP, California: Agreement for the Folsom Dam and Reservoir reoperation. ACTION: Contract executed on March 22, 1995.

(14) Widren WD, CVP, California: Amend water service contract No. 14–06–200–8018 to include M&I use and conform to Pub. L. 102–575. ACTION: Interim Renewal contract executed on February 27, 1995, that included M&I use.

(15) Del Puerto WD, CVP, California: Assignment of eleven Delta-Mendota Canal water service contracts to Del Puerto WD for administrative and operational purposes. Changes in water district name. ACTION: Assignment executed on February 13, 1995.

3. Contract Actions Discontinued.

(21) United Water Conservation District, SRPA, California: District can prepay the loan at a discounted rate pursuant to Pub. L. 102–575. ACTION: District did not pursue prepayment option provided in Pub. L. 102–575. Prepayment option has expired.

(24) Glide WD, CVP, California: Assignment of Tehama WD's water service contract to Glide WD. ACTION: Request withdrawn. Tehama WD dissolved.

(25) Glide WD and Orland-Artois WD, CVP, California: Assignment of Elder Creek WD water service contract to Glide WD and Orland-Artois WD. ACTION: Request withdrawn. Elder Creek WD chose not to renew its water service contract. Their water service contract expired on February 28, 1995.

4. New Contract Actions.

(27) Santa Barbara County Water Agency: Repayment contract for Safety of Dams work on Bradbury Dam.

(28) Central Valley Project Service Area, California: Temporary water purchase agreements for acquisition of 20,000 to 200,000 acre-feet of water for fish and wildlife purposes as authorized by the Central Valley Project Improvement Act for terms of up to 3 years.

Lower Colorado Region: Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City,Nevada 89006–1470, telephone 702–293–8536.

1. Contract Actions Completed.

(16) Elsinore Valley Municipal WD, Temescal Valley Project, SRPA, CA. Action: Contract executed.

2. Contract Actions Discontinued.

(21) City of Yuma , BCP, AZ: Amendment to Contract No. 14–06–W–106, for additional points of diversion. Action: Points of diversion will not be within City of Yuma.

3. New Contract Actions.

(41) Department of the Navy, Niland, CA: Contract for delivery of up to 23 acre-feet per year of California unused apportionment water for domestic use.

(42) Windsor Beach State Park, Lake Havasu City, AZ: Contract for 130 acre-feet entitlement to Colorado River domestic water.

Upper Colorado Region: Bureau of Reclamation, PO Box 11568, (125 South State Street), Salt Lake City, Utah 84147, telephone 801–524–5435.

No change in contract activities.

Great Plains Region: Bureau of Reclamation, PO Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–657–6413.

1. Contract Actions Modified.

(13) Lakeview Irrigation District, Shoshone Project, Wyoming: New long-term water service contract for up to 3,200 acre-feet of firm water supply annually and up to 11,800 acre-feet of interim water from Buffalo Bill Reservoir. Pursuant to Section 9(e) of the Reclamation Project Act of 1939 (Pub. L. 260).

(22) Mountain Park Master Conservancy District, Mountain Park Project, Oklahoma: Pursuant to Title IV of Pub. L. 103–434, amend the District's contract to reallocate the project costs to reflect the environmental activities authorized by Title IV and provide for a discounted prepayment of the reimbursable costs allocated for its M&I water supply.

Dated: May 15, 1995.

Wayne O. Deason,

Assistant Director, Program Analysis.

[FR Doc. 95–12440 Filed 5–19–95; 8:45 am]

BILLING CODE 4310–94–P

Office of Surface Mining Reclamation and Enforcement

Abandoned Mine Land Reclamation Program

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

ACTION: Notice of intent.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is requesting comments as to whether the Abandoned Mine Land (AML) Reclamation Program Final Guidelines, published March 6, 1980 (45 FR 14810–19), should be revised, and if so, what specific revisions need to be included.

DATES: *Written Comments:* OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on July 21, 1995.

ADDRESSES: *Written Comments:* Hand deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 660, 800 North Capitol Street NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 10–SIB, 1951 Constitution Avenue NW., Washington, DC 20240.

Comments may also be sent through the Internet to OSM's Administrative Record, Internet address: OSMRules@OSMRE.GOV. Copies of any messages received electronically will be filed with the Administrative Record.

FOR FURTHER INFORMATION CONTACT: Norman Hess, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202–208–2949 or 208–5365.

SUPPLEMENTARY INFORMATION: In 1980, OSM published AML Reclamation Program Final Guidelines (45 FR 14810, March 6, 1980) for reclamation programs and projects. These guidelines were intended to assist States, Indian tribes and OSM in interpreting and applying the general reclamation requirements for individual programs and projects contained in the Surface Mining Control and Reclamation Act (SMCRA) and the AML program regulations. These guidelines were designed to promote uniformity in programs and projects that are carried out by different entities assigned the responsibility for administering AML programs and to provide a common basis for the conduct of program and project evaluation activities.

The 1980 guidelines currently contain several outdated citations and other provisions due to legislative revisions to Title IV of SMCRA as well as policies adopted by OSM since 1980. Therefore, OSM is considering whether to revise the guidelines, and if so, what specific revisions and updates to incorporate. Toward this end, OSM requests all interested parties and organizations to provide any relevant comments related to this contemplated revision.

All comments will be analyzed and considered by the agency in making the determination of whether to revise the existing guidelines. If a decision is made to proceed with revision of the guidelines, appropriate comments will be incorporated into the revised guidelines to the fullest extent possible.

Dated: May 15, 1995.

Robert J. Uram,

Director.

[FR Doc. 95–12436 Filed 5–19–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade; Negotiations and Trade Policy; Meeting Notice

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: June 16, 1995, 10:00 am—12:00 noon, U.S. Department of Labor, Room N–4437 C&D, 200 Constitution Ave. NW., Washington, D.C. 20210.

Purpose: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to section 9(B) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(B) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

For further information, contact: Fernand Lavallee, Director, Trade Advisory Group, Phone: (202) 219–4752.

Signed at Washington, D.C. this 17 day of May, 1995.

Joaquin Otero,

Deputy Under Secretary, International Affairs.

[FR Doc. 95–12503 Filed 5–19–95; 8:45 am]

BILLING CODE 4510–28–M

Pension and Welfare Benefits Administration

[Application No. D–09878, et al.]

Proposed Exemptions; Tenneco, Inc. Health Care Plan

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, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice

shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Tenneco, Inc. Health Care Plan (the Plan) Located in Houston, Texas

[Application No. D–09878]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act 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), and 407(a) of the Act shall not apply to the proposed contribution to the Plan of common stock (the Stock) of Tenneco, Inc. (Tenneco) by Tenneco or any of its subsidiaries, provided the following conditions are satisfied: (a) The Plan will dispose of the Stock received within 2 business days of receipt, either by sale on the open market or by sale to Tenneco; (b) any sale of the Stock from the Plan to Tenneco will comply with conditions (1) and (2) of section 408(e) of the Act; and (c) Tenneco will pay any and all transactional costs for any sales by the Plan on the open market.

Summary of Facts and Representations

1. Tenneco is a Fortune 50 company, the Stock of which is traded on the New York Stock Exchange (the NYSE). The major businesses of Tenneco include the transportation and sale of natural gas, the manufacture and sale of farm and construction equipment, and the manufacture and sale of automotive exhaust system parts. Tenneco is a Delaware corporation which has its principal office in Houston, Texas.

2. The Plan is a voluntary employees' beneficiary association as described in section 501(c)(9) of the Code. The Plan pays for medical and dental benefits for employees and former employees of Tenneco and its participating domestic subsidiaries. The Plan has never accumulated reserves; benefits are paid by Tenneco through the Plan on a pay-as-you-go basis.

3. In 1992, Tenneco created the Tenneco Inc. Stock Employee Compensation Trust (the SECT). The SECT is not subject to the Act. The purpose of the SECT is to hold Stock which may be used to defray compensation and benefit obligations of Tenneco and its subsidiaries, including medical and dental benefits. The applicant represents that shares of Stock available under the SECT exceed the number of shares that Tenneco had anticipated would be needed for compensation and benefit purposes. The applicant represents that, for reasons of Delaware corporate law, the SECT may not sell more than 10% of the shares of Stock originally held by it. However, this limit applies only to sales, and there is no limit to the amount of Stock in the SECT which may be used for compensation and benefit purposes. The applicant represents that if the Stock is contributed to the Plan which, in turn, sells the Stock to Tenneco or on the open market, such transactions do not cause a violation of the 10% limit imposed on the SECT.

4. Tenneco proposes to contribute Stock from the SECT to the Plan. Upon such contribution, the Plan will immediately sell the Stock on the open market or to Tenneco. The applicant represents that the Plan will dispose of the Stock received within 2 business days of receipt. In fact, it is Tenneco's intention that the Plan will dispose of the Stock as soon as possible, which the applicant anticipates will generally be a matter of hours or perhaps overnight after receipt.

5. If the Plan sells the Stock to Tenneco, the applicant represents that the sale will be at a sale price equal to the price prevailing on the NYSE at the time of the sale to Tenneco. If the Plan sells the Stock on the open market, Tenneco will pay any and all transactional costs associated with such sales. The Plan will use the cash it receives for the Stock to pay medical and dental benefits under the Plan. This transaction may be done as often as needed to pay benefits. The applicant represents that it anticipates using approximately 691,000 shares of Stock for Plan expenses in 1995. It is anticipated that contributions would be made by the SECT to the Plan either weekly or bi-weekly, based upon projected expenses. In 1994, the average daily volume of trading of Tenneco Stock was approximately 540,000 shares per day. Because the number of shares of Stock involved in the proposed transaction is small compared to the general trading volume of Tenneco shares, the applicant represents that it anticipates there should be no effect on the market price of the Stock as a result of the proposed transaction.

6. The applicant represents that any sale of Stock by the Plan to Tenneco will comply with conditions (1) and (2) of Act section 408(e), because the sale will be for adequate consideration, and no commissions will be charged in connection with the sale. However, the applicant represents that the exemption proposed herein is needed for the subject transaction because the Stock being contributed to the Plan will constitute more than 10% of the Plan's assets in violation of sections 406(a)(2) and 407(a) of the Act. Tenneco represents that it could contribute a small amount of cash to the Plan and make a succession of small contributions of Stock by the SECT immediately followed by sales thereof in such a manner that the Stock would never represent more than 10% of the assets of the Plan. The applicant believes that this would be in compliance with Act section 407(a). However, such a procedure would be burdensome, and it would be advantageous for Tenneco to be able to make contributions of Stock to the Plan under the safeguards proposed without regard to the 10% limit of section 407(a) of the Act.

7. In summary, the applicant represents that the proposed exemption satisfies the criteria contained in section 408(a) of the Act because: (a) The Plan will dispose of the Stock received within 2 business days of receipt either by sale on the open market or to Tenneco; (b) any sale of Stock by the Plan to Tenneco will comply with conditions (1) and (2) of section 408(e) of the Act; and (c) Tenneco will pay any and all transactional costs for any sales by the Plan on the open market.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Construction Laborers Pension Trust for Southern California (the Trust) Located in El Monte, California

[Exemption Application No. D–09932]

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 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, effective December 22, 1989, to the leasing (the Lease) of space in a commercial office building (the Property) owned by 4401 Santa Anita Corporation (the Corporation), a corporation that is wholly-owned by the Trust, to American Benefit Plan Administrators, Inc. (ABPA), a party in interest with respect to the Trust.

This proposed exemption is conditioned on the following requirements: (1) The terms of all such leasing arrangements have been, and will remain, at least as favorable to the Trust as those obtainable in an arm's length transaction with an unrelated party; (2) an independent, qualified fiduciary determined, at the Lease's inception, that it was in the best interests of the Trust and its participants and beneficiaries; (3) An independent, qualified fiduciary has monitored and will continue to monitor the Lease for the Trust and the terms and conditions of the exemption; and (4) the rental charged by, and paid to, the Corporation under the Lease has been, and will continue to be, the fair market rental value of the premises as determined by an independent, qualified appraiser.

EFFECTIVE DATE: If granted, this proposed exemption will be effective December 22, 1989.

Summary of Facts and Representations

1. The Trust is a multiemployer plan that covers employees of construction contractors in Southern California. Such contractors include developers, builders, construction managers and owner-builders. The Trust is jointly-administered by sixteen trustees (the Trustees), eight of whom are appointed by multiemployer trade associations representing employers contributing to the Trust and eight of whom are designated by the Southern California District Council of Laborers (the Union). Since 1989, various investment managers have had investment discretion over the assets of the Trust.

2. As of December 31, 1990, the Trust had approximately 20,000 participants and total assets of $671,079,119. The Trust is one of four affiliated Laborer Trusts for Southern California (the Laborer Trusts). The other affiliated Laborer Trusts include the Laborer's Health and Welfare Trust for Southern California, the Construction Laborer's Vacation Trust for Southern California (the Vacation Trust), and the Laborer's Training and Retraining Trust for Southern California.

3. In an effort to relocate the Trusts' operations, Mitchell Hutchins Institutional Investors, Inc. (MHII), as investment manager, executed a purchase and sale agreement, on behalf of the Trust, with an unrelated party to acquire the Property in 1989.[1] The Trust's purchase of the Property coincided with the expiration of several leases of potential tenants, including various parties-in-interest. These potential tenants/parties-in-interest consisted of ABPA, which serves as the Trust's plan administrator, the Collection Office of the Laborers' Trust Funds for Southern California (the Collection Office) and the Union.[2] Prospective additional tenants included the Joint Apprenticeship Committee of the Laborers Training and Retraining Trust for Southern California (the Apprenticeship Committee), an operation newly-created through collective bargaining in 1988 and set to begin operations in 1989, and the Center for Contract Compliance (the Center), a jointly-trusteed, labor-management cooperation committee established through collective bargaining in 1988 for the purpose of monitoring employer compliance with the prevailing wage laws for public works in Southern California. The Trustees overlap to some extent with the trustees of the other trusts.

4. The Property, located within the Airport Business Park at 4399 and 4401 Santa Anita Avenue in El Monte, California, consists of two identical, 32,196 square foot, wood and steel frame office buildings and the underlying land. John J. Archer, ASA, a independent real estate appraiser located in Pasadena, California, appraised the Property prior to its purchase (the Appraisal). Mr. Archer has been involved in appraising all types of residential, commercial and industrial properties since 1953. Mr. Archer also placed the fair market value of the Property, as of February 9, 1989, at $6,800,000. In determining the fair market value of the Property, Mr. Archer gave considerable weight to the income approach of valuation due to the fact that the Property is income producing real estate. Mr. Archer also placed the fair market rental value of the Property for a net lease at $1.15 per square foot per month. At the time of the Appraisal, the Property did not have finished interior rental space.

5. Upon its acquisition, the Property became an asset of the Corporation, which is wholly-owned by the Trust. Due to the unfinished interior of the rental space, the officers of the Corporation, each of whom has extensive experience in the construction industry, interviewed potential construction managers and retained Gibeon, Inc., an unrelated party, to oversee and assist the Corporation in the build-out of the Property.

6. In early 1989, John S. Miller, Jr., Eva Marie Herhusky and John Berry (the Negotiators), all of Los Angeles, California, represented the Corporation in a series of negotiations with ABPA concerning the Lease. ABPA's space needs were primarily related to its servicing of the administrative needs of the Trust. However, its personnel also administer certain other client trusts in the Los Angeles area and its computer facility services all of its clientele nationwide.

7. Prior to the Lease negotiations, ABPA had been actively soliciting new space for its operations and had settled upon space in the Equitable Plaza (Equitable Plaza) on mid-Wilshire in Los Angeles. ABPA's professional leasing agent had negotiated the terms and conditions of a ten-year gross lease on an arm's length basis with the owner of Equitable Plaza to the point that a letter of intent was ready for execution. Such terms and conditions included the rental of approximately 41,000 to 42,000 square feet at a rate of $21.60 per square foot per annum for the first five years (or $1.80 per square foot per month) and $24.00 per square foot per annum for the final five years (or $2.00 per square foot per month) with tenant improvements provided by the landlord at $35.00 per square foot. Additionally, the landlord offered to provide twenty-four months free rent from the commencement of the lease. This proposed lease required ABPA to share

[1] The Department expresses no opinion in this proposed exemption as to whether plan fiduciaries violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act in acquiring and holding the Property.

[2] The Collection Office is a combined delinquency collection operation of the Laborer Trusts. Even though the Collection Office is operated under the auspices of the Vacation Trust, it is, in all respects, a shared administrative operation with the Laborer Trusts participating in its costs and management on a pro-rata basis.

in any increases in the actual operating costs of the building on a pro-rata basis.

8. In the Lease negotiations, ABPA, on one hand, was attempting at a minimum to match the lease terms it had negotiated with Equitable Plaza. ABPA contended that it should receive better terms from the Corporation because the Equitable Plaza, a 35-story Los Angeles high rise, was a higher quality, more valuable leasehold for ABPA than a leasehold in the Airport Business Park, a low-rise facility in a residential suburb outside Los Angeles. The Negotiators, on the other hand, were attempting to obtain a lease that was at ''market rates'' for the area in which the Airport Business Park is located.

9. In negotiating the terms of the Lease, the Negotiators relied on the Appraisal and two reports prepared by Mr. Archer which discussed the general concessions and improvements which landlords would typically offer to prospective tenants in order to secure a lease. Such reports included detailed discussions of the common practice of offering free rent for a period of time, the payment of utilities, tenant improvement allowances and probable normal expenses. By letter dated April 12, 1989, Mr. Archer opines that a typical owner of a new office building which was of good quality would expend $20 to $22 per square foot to finish out the building for tenant occupancy depending generally on the size of the area finished at one time. The applicants represent that this $20 to $22 per square foot cost estimate represents the expenditure that landlords would typically invest out of their own pockets without increasing their normal ''market rate of rent'' to a given tenant. The applicants further represent that once this number is exceeded, the landlord is likely to increase the normal rate of rent in order to recoup the higher costs of preparing the space.

By letter dated September 14, 1989, Mr. Archer estimates that the total operating and fixed expenses per annum would be $401,400 or $6.51 per square foot per annum (or 54.3 cents per square foot per month). Mr. Archer prepared such estimate based upon data for suburban office buildings from 50,000 to 100,000 square feet from the 1989 Building Office Management Association (BOMA) Experience Exchange Report, a compilation of office building data and surveys done for BOMA's members.

10. The Negotiators represent that, during the Lease negotiations, they used the tenant improvement allowance estimate of $20 to $22 per square foot as a bench mark to determine whether the rate of rent negotiated was at least equal to the market rate of rent for similar buildings in similar areas. In addition, ABPA was negotiating for a full service, gross lease, a lease in which all operating and fixed expenses are paid by the landlord and passed through to the tenants in the form of a higher rate of rent per square foot. In order to ensure that the increased cost to the Corporation had been passed on to ABPA through an appropriately higher rate of rent, the Negotiators used the $6.51 per square foot per annum estimate as a basis to calculate the annual cost of the total operating and fixed expenses for which the Corporation would be assuming responsibility. The applicant represents that eventually the Lease terms and conditions were finalized at market levels.[3]

Once this was accomplished, similar lease proposals were made to the Collection Office, the District Council, the Apprenticeship Committee and the Center.[4]

11. The primary provisions of the Lease include the rental of approximately 43,246 square feet at a rate of $2.045 per square foot per month for a term of ten years (or $24.54 per square foot per annum). As a full service gross lease, the landlord remains responsible for all fixed and operating expenses. However, the terms of Lease provide that ABPA is required to share in any increases in the actual operating costs of the Property on a pro-rata basis. In addition, the Lease provides that if the Trust and ABPA cancel their administrative contract at the end of the fifth year of the Lease or thereafter, either party has the right to terminate the Lease with six months written notice. Upon such termination, ABPA is to reimburse the Corporation for the unamortized value of ABPA's special improvements but such amount is not to exceed the lesser of $500,000 or one-half of the unamortized value of ABPA specific improvements.

The Lease does not provide for a tenant improvement allowance; however, the Corporation is required to construct all tenant improvements, including the tenant-specific improvements. The cost of such improvements is included in the Lease payments at a capitalization rate of 9.5 percent over the term of the Lease or 23.5 cents per square foot per month (or $2.82 per square foot per annum).

12. Prior to 1988 and through May 1990, MHII served as the independent, qualified fiduciary for the Trust with respect to the Lease (MHII's Fiduciary Period). By letter dated December 30, 1993, C. Gary Morris, Vice President of MHII, represents that MHII was an investment manager with the meaning of Section 3(38) of the Act. Mr. Morris represents that both he and MHII were unrelated to, and independent of, ABPA during MHII's Fiduciary Period. Mr. Morris states that MHII understood and acknowledged its duties, responsibilities, and liabilities in acting as a fiduciary with respect to the Trust.

Mr. Morris represents that MHII was familiar with the terms of the Lease and all of the documents and relevant information in connection with the Lease, including the Appraisal. Mr. Morris states that the terms of the Lease compared favorably with the terms of similar transactions between unrelated parties and was an arm's length transaction as evidenced by the Appraisal.

MHII reviewed the investment portfolio of the Trust as well as its diversification and liquidity needs. Based on this analysis, Mr. Morris represents that MHII believed that the Lease was in the best interests of the Trust and its participants and beneficiaries. Mr. Morris states MHII considered the Lease as an appropriate and desirable investment for the Trust, based on the Lease's rate of return, the stability of the tenant, the character and diversification of the Trust's other assets, and the projected liquidity needs of the Trust.

MHII was responsible for monitoring the Lease throughout MHII's Fiduciary Period and was willing to take any appropriate action necessary to protect the interests of the Trust and its participants and beneficiaries.

From July 1990 to July 1991, Am Cal served as the independent, qualified fiduciary for the Trust with respect to the Lease (Am Cal's Fiduciary Period). By letter dated April 1, 1993, James Mc

[3] The Department notes that no relief is proposed herein for the provision of services by ABPA to the Trust. The provision of services would be exempt from the prohibitions of section 406(a) provided the conditions of section 408(b)(2) are met. In this regard, the Department notes that the Trust renegotiated its administrative services contract with ABPA at approximately the same time as the negotiation of the Lease. The Department further wishes to point out that the proposal limits relief to the Lease transaction. Thus, no relief is proposed for any transaction that is part of a broader agreement, arrangement or understanding involving the Lease in which a fiduciary caused plan assets to be used in a manner designed to benefit a party in interest.

[4] The applicant represents that Prohibited Transaction Exemption (PTE) 76–1 and PTE 77–10 provide relief from 406 (a) and (b)(2) for leasing of office space from multiemployer plans to a participating employee organization, a participating employer or employer association, or another multiemployer plan with common trustees. The Department expresses no opinion in this proposed exemption on whether the leasing of such office space satisfies the terms and conditions of such exemptions.

Kenna, Executive Vice President of American Realty Advisors, represents that prior to 1992, that he was the president and a director of Am Cal, an independent real estate investment advisory service. Mr. Mc Kenna further represents that Am Cal was an investment manager with the meaning of Section 3(38) of the Act. Mr. Mc Kenna represents that both he and Am Cal were unrelated to, and independent of, ABPA during Am Cal's Fiduciary Period. Mr. Mc Kenna states that Am Cal understood and acknowledged its duties, responsibilities and liabilities in acting as a fiduciary with respect to the Trust.

Mr. Mc Kenna represents that once Am Cal became the investment manager for the Trust, it reviewed all the assets and investments of the Trust which included the Lease. Am Cal engaged Crane Realty Services (Crane), local commercial property manager, who further reviewed the terms of the Lease and other leases on the Property. Crane advised Mr. Mc Kenna that all of the leases of the Property, including the Lease, were ''at market.'' Additionally, Am Cal discussed the Property, the Lease and the other leases with the Negotiators to ascertain how the Property had been acquired and built out and how the Lease terms and conditions had been negotiated. In addition, Am Cal reviewed the Appraisal and the two reports prepared by Mr. Archer.

After obtaining the above information, Mr. Mc Kenna represents that Am Cal reviewed the terms of the Lease and all of the documents and relevant information in connection with the Lease. Mr. Mc Kenna states that the terms of the Lease compared favorably with the terms of similar transactions between unrelated parties and would be an arm's length transaction as evidenced by the information provided by Crane, the Negotiators, Am Cal's knowledge of commercial leasing conditions in Los Angeles County, the Appraisal and the two reports prepared by Mr. Archer.

Am Cal reviewed the investment portfolio of the Trust and considered the diversification of the Trust's assets as well as the liquidity needs of the Trust. Based on this analysis, Mr. Mc Kenna represents that Am Cal determined that the Lease was in the best interests of the Trust and its participants and beneficiaries. Mr. Mc Kenna states that Am Cal considered the Lease an appropriate and desirable investment for the Trust, based on the Lease's rate of return, the stability of the tenant, the character and diversification of the Trust's other assets, and the projected liquidity needs of the Trust. Mr. Mc Kenna represents that Am Cal, with the aide of Crane, monitored the Lease throughout Am Cal's Fiduciary Period.

During Am Cal's Fiduciary Period, Mr. Archer, by letter dated October 15, 1991, reviewed the Lease and the draft report on the factors considered in the Lease negotiations for Am Cal. Taking into consideration not only the rental, but other terms of the Lease which would typically be found in a lease entered into by unrelated parties in arm's length negotiations, Mr. Archer opined that the Lease was at fair market rent as of December of 1989, the commencement of the Lease. Mr. Archer stated that although he did not directly participate in the negotiation of the Lease or any of its particular terms, he did provide advice to Mr. Berry and Mr. Miller concerning the calculation of rent under a gross rental lease and on customary provisions and practices in office space leases.

Since July 1991, TDA, Inc. (TDA) has served as the independent, qualified fiduciary for the Trust with respect to the Lease. By letter dated November 11, 1992, Wayne Turner, a principal in TDA, represents that TDA is an investment manager with the meaning of Section 3(38) of the Act. Mr. Turner represents that both he and TDA are unrelated to, and independent of, ABPA. Mr. Turner states that TDA understands and acknowledges its duties, responsibilities and liabilities in acting as a fiduciary with respect to the Trust.

Mr. Turner represents that TDA has reviewed the terms of the Lease and all of the documents and relevant information in connection with the Lease. Mr. Turner states that the terms of the Lease compare favorably with the terms of similar transactions between unrelated parties and is an arm's length transaction as evidenced by the negotiations.

TDA has reviewed the current investment portfolio of the Trust as well as its diversification and liquidity needs. Based on this analysis, Mr. Turner represents that TDA believes that the Lease is in the best interests of the Trust and its participants and beneficiaries. Mr. Turner states that TDA considers the Lease to be an appropriate and desirable investment for the Trust.

Mr. Turner represents that TDA has monitored and will continue to monitor the Lease throughout its entire duration and will take any appropriate action necessary to protect the interests of the Trust and its participants and beneficiaries.

13. In summary, it is represented that the Lease transaction satisfies the statutory criteria for an exemption under section 408(a) of the Act because: (a) The terms of the Lease have been, and will remain, at least as favorable to the Trust as those obtainable in an arm's length transaction with an unrelated party; (b) MHII, as independent, qualified fiduciary believed, prior to its commencement, that the Lease was in the best interests of the Trust and its participants and beneficiaries; (c) MHII, Am Cal, and TDA as independent, qualified fiduciaries have monitored and TDA will monitor the Lease on behalf of the Trust as well as the terms and the conditions of the exemption at all times; and (d) the rental charge by the Corporation under the Lease has and continues to be based upon the fair market rental value of the premises as determined by an independent, qualified appraiser.

FOR FURTHER INFORMATION CONTACT: Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

United Food and Commercial Workers Union Local 789 and St. Paul Food Employers Health Care Plan (the Plan) Located in Bloomington, Minnesota

[Application No. L–09933]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act 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 section 406(a) of the Act shall not apply to the proposed purchase of prescription drugs, at discount prices, by Plan participants and beneficiaries, from Supervalu Pharmacies, Inc. (SPI) and Cub Foods (Cub), parties in interest with respect to the Plan, provided the following conditions are satisfied: (a) The terms of the transaction are at least as favorable to the Plan as those the Plan could obtain in a similar transaction with an unrelated party; (b) any decision by the Plan to enter into agreements governing the subject purchases will be made by Plan fiduciaries independent of SPI and Cub; and (c) at least 50% of the preferred providers participating in the Preferred Pharmacy Network (PPN) which will be selling prescription drugs to the Plan's participants and beneficiaries will be unrelated to SPI and Cub.

Summary of Facts and Representations

1. The Plan is a multiemployer welfare benefit plan which has been in existence since 1966. The Plan was

established to provide health and welfare benefits including life, sickness, accident and other benefits for participants and their beneficiaries. The Plan is directed by a joint board of trustees composed of five individuals selected to represent the United Food and Commercial Workers Union Local 789 (the Union) and five individuals selected to represent the retail food employers. The Plan currently has approximately 3,135 participants and beneficiaries, and $2,209,380 in total assets.

2. SPI is a wholly owned subsidiary of Supervalu, Inc. (Supervalu), a large retail grocer in Minnesota. Cub, another wholly owned subsidiary of Supervalu, is also a large retail grocer with stores located primarily throughout the Twin City Metropolitan Area. SPI's are located in Cub stores. The applicant represents that Supervalu and Cub are both parties in interest to the Plan because they make contributions to the Plan on behalf of their employees that are participants in the Plan.

3. Under the Plan, participants have two alternative ways to receive the prescription drug benefit. One, a participant may have a prescription filled at an out-of-network pharmacy, pay the pharmacy's charge for the prescription at the time of dispensing, and submit a reimbursement claim to the Plan Administrator. The Plan would then reimburse the participant in full for the pharmacy's charge for the prescription, less the $5.00 participant co-payment. Two, a participant may have a prescription filled at a pharmacy within a preferred network, and pay only the $5.00 co-payment. The pharmacy then submits the claim for the remaining agreed-upon cost for the prescription directly to the Plan Administrator.

4. Effective January 1, 1994, the trustees of the Plan implemented the Plan's first prescription drug PPN in order to manage prescription drug price and utilization, manage related costs, provide ready participant access to courteous and reliable pharmacy services and professional advice, and to minimize or eliminate eligibility policing problems. The first Preferred Provider Agreement (the Agreement), the result of arm's-length negotiations, is between the Plan and Snyder Drug Stores, Inc. (Snyder). Snyder is not a party in interest with respect to the Plan.

5. Under the Agreement, Snyder agrees to provide prescription drugs to the Plan participants and their beneficiaries consistent with the Plan document and the Agreement at a specified reduced cost in exchange for the potential to realize an expanded customer base due to its status as a preferred pharmacy with respect to the Plan. The material elements of the Agreement are as follows:

(1) Snyder agrees to dispense covered prescription drugs, using generic drugs when available, within prescribed dosage units for one dispensing fee;

(2) The agreed upon dispensing fee is:

(a) The lesser of:

(i) The Usual and Customary charge for such prescription drug, or

(ii) The sum of the Drug Acquisition Cost plus the Professional Dispensing Fee.

The Drug Acquisition Cost for each prescription drug provided by the Pharmacy to an Eligible Person shall be defined to be the lesser of the following amounts:

(a) 90% of the AWP (average wholesale price) for such prescription drug; or

(b) The lowest stated maximum allowable cost (MAC) for such prescription drug on the most recently published pharmaceutical industry maximum allowable cost list, however, in no event will the MAC price exceed the Federal Upper Limits (as published by the Federal Government under the Federal Medical Entitlement Program).

The Professional Dispensing Fee shall equal $2.45 for each dispensing of a prescription drug in accordance with the Plan and the Agreement.

(3) Neither the Plan nor the participant is liable for the cost of any prescription drug dispensed contrary to the Agreement;

(4) Snyder will provide eligibility identification cards, maintain a current computerized eligibility list, and verify eligibility prior to dispensation;

(5) The Plan receives 67½ percent of formulary rebates received by Snyder based on the dispensing of each manufacturer's formulary drugs under the Plan and the Agreement. The Plan also receives quarterly formulary reports of formulary drugs dispensed and rebates received;

(6) The Plan has the right to inspect Snyder's records to audit claims and formulary rebates;

(7) Snyder must provide monthly prescription drug utilization reports; and

(8) The Plan has the right to terminate the Agreement upon a maximum of 60 days written notice.

6. The Plan's trustees have also negotiated an identical Agreement with SPI, thereby significantly expanding the PPN by including the pharmacies located in Cub stores. The terms of the SPI Agreement are identical to those of the Snyder Agreement. The applicant represents that the fees are determined by a combination of amounts objectively established by reference to industry resources and beyond the control or manipulation of SPI.

7. The applicant represents that the Plan wishes to enter the Agreement with SPI to maximize the benefits that can be provided to participants and their beneficiaries. Reducing the cost paid by the Plan for prescription drugs will enable the Plan to maintain its current level of benefits to the participants and their beneficiaries. Expanding the PPN to include SPI, thereby increasing the utilization of the PPN, will enable the Plan to obtain additional discounts on prescriptions currently dispensed out-of-network. The Plan will be able to receive even greater savings due to the negotiated fees rather than the usual and customary billing of out-of-network pharmacies. The applicant represents that it is projected that the Plan will realize an additional 14% reduction of its prescription drug expenses over last year by the addition of SPI to the PPN. The requested exemption is also in the interest of the Plan because preferred pharmacies will be more conveniently located as a result of the expanded PPN.

8. The applicant represents that the PPN will be at least 50% composed of preferred providers that are not affiliated with Supervalu or Cub. In addition, the applicant represents that one of the current trustees of the Plan, Mr. Markwell, is an employee of Cub. The applicant further represents that to address the potential conflict of interest, Mr. Markwell has in the past and will continue in the future, to recuse himself from all discussions and/or votes that relate to the operation or maintenance of the PPN. Thus, all Plan decisions with respect to the PPN, including any decision to enter into the Agreement with SPI, will be made by Plan fiduciaries unrelated to Supervalu or Cub.

9. In summary, the applicant represents that the proposed transaction satisfies the criteria contained in section 408(a) of the Act for the following reasons: (a) The terms of the transaction are at least as favorable to the Plan as those the Plan could obtain in an arm's-length transaction with an unrelated party; (b) any decision made by the Plan with respect to the Agreement with SPI will be made by Plan fiduciaries independent of SPI and Cub; and (c) at least 50% of the preferred providers participating in the PPN which will be selling prescription drugs to the Plan's participants and beneficiaries will be unrelated to SPI and Cub.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

The General Motors Hourly-Rate Employees' Pension Plan (the GM Hourly Plan); The General Motors Retirement Program for Salaried Employees (the GM Salaried Plan); The Saturn Individual Retirement Plan for Represented Team Members (the SIRP); The Saturn Personal Choices Retirement Plan for Non-Represented Team Members (the SPCRP;) and The Employees' Retirement Plan for GMAC Corporation (the GMAC Plan; all Five Plans Collectively, the GM Plans); The AT&T Pension Plan; and the AT&T Management Pension Plan (the AT&T Management Plan; Together, the AT&T Plans; all Seven Plans Collectively, the Plans) Located in Detroit, Michigan (the GM Plans), and in New York, New York (the AT&T Plans)

[Application Nos. D–09964 through D–09968]

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 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 proposed granting to The Industrial Bank of Japan, Limited, New York Branch (IBJ), as the representative of lenders (the Lenders) participating in a credit facility (the Facility), of security interests in limited partnership interests in The Morgan Stanley Real Estate Fund II, L.P. (the Partnership) owned by the Plans with respect to which some of the Lenders are parties in interest; and (2) the proposed agreements by the Plans to honor capital calls made by IBJ in lieu of the Partnership's general partner; provided that (a) the proposed grants and agreements are on terms no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with unrelated parties; and (b) the decisions on behalf of each Plan to invest in the Partnership and to execute such grants and agreements in favor of IBJ are made by a fiduciary which is not included among, and is independent of, the Lenders and IBJ.

Summary of Facts and Representations

1. The Partnership is a Delaware limited partnership the general partner of which is MSREF II, L.P. (the General Partner), a Delaware limited partnership the general partner of which is MSREF II, Inc., a wholly owned subsidiary of Morgan Stanley Group, Inc. or one or more of its affiliates. The Partnership is organized under an agreement (the Agreement) dated December 29, 1994. The Partnership has a term expiring on December 31, 2004, subject to extension by the General Partner for up to three successive one-year terms. The Partnership has been organized to make investments, including leveraged equity investments, in undervalued or inappropriately capitalized real estate assets and portfolios, and corporate real estate. Proceeds from the sale or refinancing of properties generally will not be reinvested, but will be distributed to the limited partners, so that the Partnership will be self-liquidating.

2. After execution of the Agreement, the General Partner sought capital commitments through private placement and has obtained, as a result, irrevocable, unconditional capital commitments in excess of $350,000,000 from 18 purchasers of limited partnership units (the Limited Partners). The Agreement requires Limited Partners to make capital contributions upon receipt of notice from the General Partner. Under the Agreement, the General Partner may make a call for cash contributions, also known as a ''drawdown'', up to the total amount of the Limited Partner's capital commitment upon 15 days notice, with some limitations. The Partners' capital commitments are structured as irrevocable, unconditional and binding commitments to contribute equity when capital calls are made by the General Partner. The obligation of each Limited Partner to contribute the full amount of its capital commitment is secured by a security interest granted to the Partnership in the Limited Partner's partnership interest.

3. In the ordinary course of its business operations, it is contemplated that the Partnership will incur indebtedness in connection with many of its investments. This on-going need for credit will be provided by the Facility, a three-year arrangement for $300 million in revolving credit which will enable the Partnership to consummate investments quickly without the delay of separate arrangements for interim or permanent financing for each investment. The Facility is funded by the Lenders, represented by IBJ, which is also a participating Lender. IBJ serves as administrative agent for the Facility. The Facility is a non-recourse obligation of the Partnership which matures November 18, 1998 and which is secured by a security interest in the Limited Partners' capital commitments, the General Partner's right to make drawdowns and the Partnership's lien and security interest in each Limited Partner's partnership interest. As additional security, the Facility will require each Limited Partner to execute an agreement (the Security Agreement) granting to IBJ, for the benefit of each Lender, a security interest and lien in the Limited Partner's partnership interest, and covenanting with IBJ, for the benefit of the Lenders, that such Limited Partner will unconditionally honor any drawdown made by IBJ in accordance with the Agreement in lieu of the General Partner to the full extent of the Limited Partner's unfunded capital commitment.

4. The trusts which hold assets of the Plans (the Trusts) own limited partnership interests as Limited Partners in the Partnership. Some of the Lenders may be parties in interest with respect to some of the Plans in the Trusts by virtue of such Lenders' (or their affiliates') provisions of fiduciary services to such Plans with respect to Trust assets other than the Partnership interests. IBJ is requesting an exemption to permit the Trusts to enter into the Security Agreements under the terms and conditions described herein. The Plans and the other Limited Partners with the largest interests in the Partnership and the extent of their respective capital commitments to the Partnership are described as follows:

(a) The GM Hourly Plan, a defined benefit plan with 599,262 participants as of September 30, 1993, and assets with a total value of approximately 21.6 billion dollars on that date. Assets of the GM Hourly Plan are held in the Third Plaza Trust (the TP Trust), of which Mellon Bank, N.A. is the trustee. Assets of the SIRP (a defined benefit plan with 7,178 participants as of September 30, 1993), the SPCRP (a defined benefit plan with 1,435 participants as of September 30, 1993), and the GMAC Plan (a defined benefit plan with 2,761 participants as of June 21, 1994), are also held in the TP Trust. The TP Trust has undertaken a total capital commitment of $75,000,000 to the Partnership.

(b) The GM Salaried Plan, a defined benefit pension plan with 223,262 participants as of September 30, 1993, and assets with a total value of approximately 20.8 billion dollars as of

that date. Assets of the GM Salaried Plan are held in the Fourth Plaza Trust (the FP Trust), of which Mellon Bank, N.A. is the trustee. The FP Trust has undertaken a total capital commitment of $75,000,000 to the Partnership. The fiduciary responsible for authorizing and overseeing the GM Plans' investment in the Partnership and, subsequently, for monitoring such investment, is the General Motors Investment Management Corporation.

(c) The AT&T Pension Plan, a defined benefit pension plan with 261,788 participants as of December 31, 1993, and with assets of approximately 18.21 billion dollars as of that date, and the AT&T Management Plan, with 180,452 participants as of December 31, 1993 and with assets of approximately 20.03 billion dollars as of that date. Assets of the AT&T Plans are held in the AT&T Master Pension Trust (the AT&T Trust), of which State Street Bank and Trust Company is the trustee. The AT&T Trust has undertaken a total capital commitment of $150,000,000 to the Partnership. The fiduciary responsible for reviewing and authorizing the investment in the Partnership by the AT&T Plans is David Feldman, Corporate Vice President, American Telephone & Telegraph Company Investment Management Organization.

(d) Limited Partners which are not ERISA-covered plans include:

(i) Wells Fargo & Company, which has undertaken a total capital commitment of $15,000,000.

(ii) Allstate Insurance Company, which has undertaken a total capital commitment of $40,000,000.

(iii) Morstar Realty, N.V., which has undertaken a total capital commitment of $15,000,000.

5. IBJ represents that the Partnership has obtained an opinion of counsel that the Partnership will constitute an ''operating company'' under the Department's plan asset regulations [29 CFR 2510.3–101(c)] if the Partnership is operated in accordance with the Agreement and the offering memorandum (the Offering) distributed in connection with the private placement of the limited partnership interests.[5]

6. IBJ represents that the Security Agreement constitutes a form of credit security which is customary among financing arrangements for real estate limited partnerships, wherein the financing institutions do not obtain security interests in the real property assets of the partnership. IBJ also represents that the obligatory execution of the Security Agreement by the Limited Partners for the benefit of the Lenders was fully disclosed in the Offering as a requisite condition of investment in the Partnership during the private placement of the limited partnership interests. IBJ represents that the only direct relationship between any of the Limited Partners and any of the Lenders is the execution of the Security Agreements. All other aspects of the transaction, including the negotiation of all terms of the Facility, are exclusively between the Lenders and the Partnership. IBJ represents that the proposed executions of the Security Agreements will not affect the abilities of the Trusts to withdraw from investment and participation in the Partnership. The only Plan assets to be affected by the proposed transaction are each Plan's limited partnership interests in the Partnership and the related Plan obligations as Limited Partners to respond to drawdowns up to the total amount of each Plan's capital commitment to the Partnership.

7. IBJ represents that neither it nor any Lender acts or has acted in any fiduciary capacity with respect to any Trust's investment in the Partnership and that IBJ is independent of and unrelated to those fiduciaries (the Trust Fiduciaries) responsible for authorizing and overseeing the Trusts' investments in the Partnership. Each Trust Fiduciary represents independently that its authorization of Trust investment in the Partnership was free of any influence, authority or control by the Lenders. The Trust Fiduciaries represent that the Trust's investments in and capital commitments to the Partnership were made with the knowledge that each Limited Partner would be required subsequently to grant a security interest in the Partnership to the Lenders and to honor drawdowns made on behalf of the Lenders without recourse to any defenses against the General Partner. Each Trust Fiduciary individually represents that it is independent of and unrelated to IBJ and the Lenders and that the investment by the Trust for which that Trust Fiduciary is responsible continues to constitute a favorable investment for the Plans participating in that Trust and that the execution of the Security Agreement is in the best interests and protective of the participants and beneficiaries of such Plans.

8. In summary, the applicants represent that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The Plans' investments in the Partnership were authorized and are overseen by the Trust Fiduciaries, which are independent of the Lenders; (2) None of the Lenders have any influence, authority or control with respect to the Plans' investments in the Partnership or the Plans' executions of the Security Agreements; and (3) The Trust Fiduciaries invested in the Partnership on behalf of the Plans with the knowledge that the Security Agreements are required of all Limited Partners investing in the Partnership.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Eaton Corporation Share Purchase and Investment Plan (the Plan) Located in Cleveland, Ohio

[Application No. D–09978]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The proposed extension of credit by Eaton Corporation (Eaton) to the Plan in the form of loans (the Loans) with respect to certain guaranteed investment contracts (collectively, the GICs); and (2) the repayment (the Repayments) by the Plan of all or a portion of amounts advanced to the Plan by Eaton on the terms described in the agreement governing such Loans, provided: (a) All terms of such transactions are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with unrelated parties; (b) no interest or other expenses will be incurred by the Plan in connection with the Loans; (c) the Loans would be made only when, and to the extent needed, to avoid penalties that would otherwise be incurred if the liquidation of one or more of the GICs is required, as determined by the Corporate Compensation Committee (the Plan Committee); (d) Repayments will be made only from payments made to the Plan as the GICs mature (the GIC Proceeds); (e) the Repayments will not exceed the total amount of the Loans; and (f) the Repayments will be waived to the extent that the Loans exceed the GIC Proceeds.

[5] The Department expresses no opinion herein as to whether the Partnership will constitute an operating company under the regulations at 29 CFR 2510.3–101.

EFFECTIVE DATE: If this proposed exemption is granted, it will be effective July 5, 1995.

Summary of Facts and Representations

1. Eaton, an Ohio corporation headquartered in Cleveland, is the Plan sponsor. The Plan is a defined contribution plan that had approximately 23,500 participants and assets of $731,839,175 as of December 30, 1993. The participants of the Plan are employees of Eaton or its subsidiaries. Contributions to the Plan are made by Eaton and by participants. Participant contributions are made pursuant to before-tax salary reduction agreements and/or after-tax payroll deduction agreements. Effective July 5, 1989, the portion of the Plan that is attributable to Eaton contributions is designed to be invested primarily in Eaton securities and constitutes an employee stock ownership plan (ESOP) within the meaning of Act section 407(d)(6). The Plan Committee is responsible for the general administration of the Plan, and the Plan's Investment Committee (the Investment Committee) has the exclusive authority to select the Plan's investment options and the underlying investment vehicles.

2. The Plan allows individual investment direction for that portion of participants' accounts which derives from participant contributions. Participants may direct the investment of that portion of their accounts into one or more of several investment funds maintained by the Plan. Currently, the funds available include the Fixed Income Fund, the Aggressive Growth Fund, the Balanced Fund, the Equity Fund, the International Fund, the Stock Index Fund and the Eaton Common Shares Fund (which invests primarily in Eaton securities). Participants may transfer their account balances among the investment funds once every 30 days. The Fixed Income Fund has its assets invested primarily in guaranteed investment contracts with insurance companies. The remainder of the Fixed Income Fund's assets are invested in government securities and corporate debt instruments. As of December 30, 1993, the Fixed Income Fund had assets of $127,881,436 and comprised 17.47% of the total assets of the Plan. Key Trust Company of Ohio, N.A. (Key Trust) currently serves as the trustee holding all assets of the Plan. Key Trust has been appointed by the Investment Committee as the Investment Manager of the Fixed Income Fund and the Stock Index Fund.

3. Among the guaranteed investment contracts currently held by the Fixed Income Fund are the GICs, which can be described as follows:

(a) Effective January 20, 1994, the Plan purchased Guaranteed Investment Contract No. GA 322 GIC (GIC–1) from Life Insurance Company of Georgia. The Plan purchased GIC–1 for $5 million. GIC–1 provides an annual guaranteed interest rate of 5.0% and matures on January 20, 1998.

(b) Effective November 20, 1992, the Plan purchased Guaranteed Investment Contract No. GA 299 GIC (GIC–2) from Life Insurance Company of Georgia. The Plan purchased GIC–2 for $10 million. GIC–2 provides an annual guaranteed interest rate of 6.15% and matures on November 20, 1996.

(c) Effective February 18, 1992, the Plan purchased Guaranteed Investment Contract No. GA–5265 (GIC–3) from Allstate Life Insurance Company. The Plan purchased GIC–3 for $10 million. GIC–3 provides an annual guaranteed interest rate of 7.65% and matures on April 1, 1997.

(d) Effective August 13, 1990, the Plan purchased Guaranteed Investment Contract No. GB 10020 (GIC–4) from Massachusetts Mutual Life Insurance Company. The Plan purchased GIC–4 for $20 million. GIC–4 provides an annual guaranteed interest rate of 9.37% and matures on August 16, 1995.

The GICs are valued at $47,605,741 and constitute 37.23% of the Fixed Income Fund's $127,881,436 of assets.[6] At maturity, the current accumulated book value of the GICs (Accumulated Book Value), defined as the initial deposit, plus interest at the contract rate, less any withdrawals during the term of the GIC, is to be paid to the Plan. All of the four GICs provide for a penalty upon early withdrawal. Of the Fixed Income Fund's assets, $55,267,367 (43.22%) are invested in other guaranteed investment contracts which do not impose penalties for early withdrawal.

4. Eaton has determined that Plan participants should be provided expanded investment options under the Plan. Eaton plans to allow each participant to transfer all or a portion of his/her account balance subject to participant direction into a new money market fund, the Money Market Fixed Income Fund, to be selected by the Investment Committee. The addition of this fund not only will provide participants with an alternative to the Fixed Income Fund, but will provide a mechanism for easing the transfer of account balances into and out of other funds available under the Plan. There is concern, however, that participants may be subject to adverse financial consequences if the amount of Plan assets transferred from the Fixed Income Fund exceeds the availability of assets in that Fund that can be liquidated without penalty. If that situation arises, the Plan would be forced to liquidate one or more of the GICs prior to maturity, thus triggering financial penalties and causing potential losses to Plan participants.

5. Accordingly, Eaton proposes to advance funds to the Plan up to the Accumulated Book Value of the GICs, as of July 5, 1995 (see rep. 7, below), plus additional interest at the contract rate that accrues through the date of any Loans that Eaton makes to the Plan. The Plan proposes to accept such Loans in order to enable participants to transfer their account balances currently invested in the Fixed Income Fund into the Money Market Fund, or any other fund, without incurring a penalty for premature liquidation of one or more of the GICs. The Loans would be non-interest bearing and would be available under a line of credit running from Eaton to the Plan. The Loans would be made only when, and to the extent, needed to avoid penalties that would otherwise be incurred if the liquidation of one or more of the GICs is required, as determined by the Plan Committee. The Plan will agree to repay the Loans to Eaton, without interest, only from the GIC Proceeds. No collateral would be required or given, and no other Plan assets would be used to make the Repayments.

6. To the extent that Eaton and the Plan ultimately recoup less than the amount of the Loans, Repayment would be waived. If GIC Proceeds remain after full Repayment of the Loans following maturity of the affected GICs, those amounts will be allocated on a proportional basis to any participant who then has an account in the Plan.

7. The Investment Committee proposes to add the Money Market Fund effective July 5, 1995, and accordingly expects to receive a significant quantity of participant requests to transfer into that fund as of that date. The Loans may therefore be required as of July 5, 1995 to avoid adverse financial consequences to participants if the demand for transfers out of the Fixed Income Fund for the period commencing July 5, 1995 and ending January 20, 1998 (when the last GIC matures) exceeds the Fixed

[6] These valuation figures were calculated using the contract value of the GICs, i.e., contributions made under the GICs plus interest at the contracts' stated rates, less Plan expenses directly attributable to the holding of the GICs. The figures were taken from the December 30, 1993 audited financial statements and therefore do not include the value of GIC–1, which was purchased effective January 20, 1994.

Income Fund's access to unrestricted assets. Thus, Eaton has requested that the exemption proposed herein be made effective July 5, 1995.

8. In summary, the applicant represents that the proposed transactions satisfy the criteria contained in section 408(a) of the Act because: (a) All terms of the transactions will be no less favorable to the Plan than those obtainable in arm's-length terms with unrelated parties; (b) the Plan will pay no interest or other expenses in connection with the Loans; (c) the Loans will enable Plan participants to transfer their account balances out of the Fixed Income Fund without incurring penalties for premature liquidation of the GICs; (d) Repayments will be made only from GIC Proceeds; (e) the Repayments will not exceed the total amount of the Loans; and (f) the Repayments will be made waived to the extent that the Loans exceed the GIC Proceeds.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Rothschild, Incorporated (Rothschild) Located in New York, New York

[Application No. D–09993]

Proposed Exemption

I. Transactions

A. The restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[7]

B. The restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) a plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[8] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1) (i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. The restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[9]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a ''qualified administrative fee'' as defined in section III.S.

D. The restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as

[7] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[8] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[9] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D&P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. ''Certificate'' means:

(1) a certificate—

(a) that represents a beneficial ownership interest in the assets of a trust; and

(b) that entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) a certificate denominated as a debt instrument—

(a) that represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) that is issued by and is an obligation of a trust;

with respect to certificates defined in (1) and (2) above for which Rothschild or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to ''certificates representing an interest in a trust'' include certificates denominated as debt which are issued by a trust.

B. ''Trust'' means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T.);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U.);

(e) ''Guaranteed governmental mortgage pool certificates,'' as defined in 29 CFR 2510.3–101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)-(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term ''trust'' does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D & P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. ''Underwriter'' means:

(1) Rothschild;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Rothschild; or

(3) Any member of an underwriting syndicate or selling group of which Rothschild or a person described in (2) is a manager or co-manager with respect to the certificates.

D. ''Sponsor'' means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. ''Master Servicer'' means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. ''Subservicer'' means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. ''Servicer'' means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. ''Trustee'' means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. ''Insurer'' means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. ''Obligor'' means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, ''obligor'' shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. ''Excluded Plan'' means any plan with respect to which any member of the Restricted Group is a ''plan sponsor'' within the meaning of section 3(16)(B) of the Act.

L. ''Restricted Group'' with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) any affiliate of a person described in (1)-(6) above.

M. ''Affiliate'' of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be ''independent'' of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. ''Sale'' includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. ''Forward delivery commitment'' means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. ''Reasonable compensation'' has the same meaning as that term is defined in 29 CFR 2550.408c-2.

S. ''Qualified Administrative Fee'' means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. ''Qualified Equipment Note Secured By A Lease'' means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as would be the case if the equipment note were secured only by the equipment and not the lease.

U. ''Qualified Motor Vehicle Lease'' means a lease of a motor vehicle where:

(1) The trust holds a security interest in the lease;

(2) The trust holds a security interest in the leased motor vehicle; and

(3) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as would be the case if the trust consisted of motor vehicle installment loan contracts.

V. ''Pooling and Servicing Agreement'' means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, ''Pooling and Servicing Agreement'' also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

Summary of Facts and Representations

1. Rothschild and its affiliates provide a broad range of financial services, including mergers and acquisitions, restructuring, asset management and a variety of specialist financial services for both domestic and international clients. Rothschild conducts operations from its executive office in New York City. The applicant represents that several of Rothschild's officers have had extensive experience in the fields of mortgage-backed and asset-backed securities.

When acting as lead managing underwriter or placement agent, Rothschild will conduct extensive due diligence with respect to each offering of certificates. In general, Rothschild's due diligence efforts will concern four basic areas: first, the originator's or unrelated lender's underwriting policies and procedures for originating or purchasing receivables; second, the validity and enforceability of the secured claim or lien on the underlying collateral as represented by the receivable; third, the originator's or unrelated lender's recordkeeping systems; and fourth, the originator's or unrelated lender's documents kept on file with respect to each receivable.

In general, Rothschild's procedures are as follows: Rothschild conducts an extensive examination of the originator

or unrelated lender's underwriting practices to ensure that they conform with stated policies and procedures, and that there are periodic reviews of those practices by the originator's or unrelated lender's auditors. Rothschild's examination includes a review of written materials and interviews with the officers in charge of administrating the underwriting policies and procedures. Rothschild and/or its attorneys will also review the legal documentation creating the security interest in each underlying collateral asset. Rothschild's analysts will examine the originator's or unrelated lenders recordkeeping systems to verify, among other things, its capabilities with respect to the collection of amounts due and payable for the receivables sold to investors. In most cases, Rothschild also examines receivable files, selected at random, to verify that files are complete and the dates in the file conform to the recordkeeping systems.

Trust Assets

2. Rothschild seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) single and multi-family residential or commercial mortgage investment trusts; [10] (2) motor vehicle receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.[11]

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgages.[12]

Trust Structure

4. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee. The sponsor or servicer of a trust selects assets to be included in the trust. These assets are receivables which may have been originated by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.

On or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. Rothschild, alone or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. The majority of the public offerings of certificates made to date have been underwritten on an agency basis. However, Rothschild may in the future become involved in public offerings of certificates underwritten on either a firm commitment or a best efforts basis. In addition, Rothschild anticipates that it may privately place certificates on both a firm commitment and an agency basis. Rothschild may also act as the lead underwriter for a syndicate of securities underwriters. Rothschild may also act as the servicer or seller to the trust of the receivables or the trust sponsor.

Certificateholders are entitled to receive monthly, quarterly or semi-annually installments of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable.

When installments or payments are made on a semi-annual basis, funds are not permitted to be commingled with the servicer's assets for longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities which have received a rating comparable to the rating assigned to the certificates. In some cases, the servicer may be permitted to make a single deposit into the account once a month. When the servicer makes such monthly deposits, payments received from obligors by the servicer may be commingled with the servicer's assets during the month prior to deposit. Usually, the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account does not exceed one month. Furthermore, in those cases where distributions are made semi-annually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time this report is delivered to the trustee, it will be made available to certificateholders and delivered to or made available to each rating agency that has rated the certificates.

5. Some of the certificates will be multi-class certificates. Rothschild requests exemptive relief for two types of multi-class certificates: ''Strip'' certificates and ''fast-pay/slow-pay'' certificates. Strip certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.[13]

''Fast-pay/slow-pay'' certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. In certain transactions of this type, interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal,

[10] The Department notes that PTE 83–1 [48 FR 895, January 7, 1983], a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83–l are met. Rothschild requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, Rothschild has stated that it may still avail itself of the exemptive relief provided by PTE 83–1.

[11] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts may be plan assets.

[12] Trust assets may also include obligations that are secured by leasehold interests on residential real property. See PTE 90–32 involving Prudential-Bache Securities, Inc. (55 FR 23147, June 6, 1990 at 23150).

[13] It is the Department's understanding that where a plan invests in REMIC ''residual'' interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(1)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this exemption.

and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing a certificate be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders then entitled to receive distributions will share in the amount distributed on a pro rata basis.[14]

6. For tax reasons, the trust must be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of receivables by the sponsor only in the event of defects in documentation discovered within a short time after the issuance of trust certificates. Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

Parties to Transactions

7. The *originator* of a receivable is the entity that initially lends money to a borrower (obligor), such as a homeowner or automobile purchaser, or leases property to the lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trusts will be entities that originate receivables in the ordinary course of their business, including finance companies for whom such origination constitutes the bulk of their operations, financial institutions for whom such origination constitutes a substantial part of their operations, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer.

8. The *sponsor* will be one of three entities: (i) A special-purpose corporation unaffiliated with the servicer, (ii) a special-purpose or other corporation affiliated with the servicer, or (iii) the servicer itself. Where the sponsor is not also the servicer, the sponsor's role will generally be limited to acquiring the receivables to be included in the trust, establishing the trust, designating the trustee, and assigning the receivables to the trust.

9. The *trustee* of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to Rothschild, the trust sponsor or the servicer. Rothschild represents that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which will be paid by the servicer, sponsor or the trust as specified in the pooling and servicing agreement. The method of compensating the trustee which is specified in the pooling and servicing agreement will be disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

10. The *servicer* of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, it is common for the receivables to be ''subserviced'' by their respective originators and for a single entity to ''master service'' the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

In some cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (though they themselves may be related) will be unrelated to Rothschild. In other cases, however, affiliates of Rothschild may originate or service receivables included in a trust, or may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

11. Where the sponsor of a trust is not the originator of receivables included in a trust, the sponsor generally purchases the receivables in the secondary market, either directly from the originator or from another secondary market participant. The price the sponsor pays for a receivable is determined by competitive market forces, taking into account payment terms, interest rate, quality, and forecasts as to future interest rates.

As compensation for the receivables transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust, or the cash proceeds of the sale of such certificates. If the sponsor receives certificates from the trust, the sponsor sells all or a portion of these certificates for cash to investors or securities underwriters. In some transactions, the sponsor or an affiliate may retain a portion of the certificates for its own account. In addition, in some transactions the originator may sell receivables to a trust for cash. At the time of the sale, the trustee would sell certificates to the public or to underwriters and use the cash proceeds of the sale to pay the originator for receivables sold to the trust. The transfer of the receivables to the trust by the sponsor, the sale of certificates to investors, and the receipt of the cash proceeds by the sponsor generally take place simultaneously.

12. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces, including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and

[14] If a trust issues subordinated certificates, holders of such subordinated certificates may not share in the amount distributed on a pro rata basis with the senior certificateholders. The Department notes that the exemption does not provide relief for plan investment in such subordinated certificates.

expectations as to the likelihood of timely payment.

The pass-through rate for certificates is equal to the interest rate on receivables included in the trust minus a specified servicing fee.[15] This rate is generally determined by the same market forces that determine the price of a certificate. The price of a certificate and its pass-through, or coupon, rate together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

13. As compensation for performing its servicing duties, the servicer (who may also be the sponsor, and receive fees for acting in that capacity) will retain the difference between payments received on the receivables in the trust and payments payable (at the pass-through rate) to certificateholders, except that in some cases a portion of the payments on receivables may be paid to a third party, such as a fee paid to a provider of credit support. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer may be required to pay the administrative expenses of servicing the trust, including the trustee's fee, out of its servicing compensation, or it may be reimbursed for all or a portion of its expenses by the trust.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This ''credit support fee'' may be aggregated with other servicing fees, and is either paid out of the interest income received on the receivables in excess of the pass-through rate or paid in a lump sum at the time the trust is established.

14. The servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) Prepayment fees; (b) late payment and payment extension fees; and (c) fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation.

[15] The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into ''principal'' and ''interest'' components based on an implicit interest rate.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

15. Payments on receivables may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts maintained with itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on receivables are held in non-interest bearing accounts or are commingled with the servicer's own funds, the servicer is required to deposit these payments by a date specified in the pooling and servicing agreement into an account from which the trustee makes payments to certificateholders.

16. Rothschild and any other participating underwriter will receive a fee in connection with the securities underwriting or private placement of certificates. In a firm commitment underwriting, this fee would normally consist of the difference between what Rothschild receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a private placement, the fee may also take the form of an agency commission paid by the sponsor. Such fees are negotiated at arm's-length with the sponsor, originator or unrelated lender and are affected by fees in comparable offerings.

Purchase of Receivables by the Servicer

17. The applicant represents that as the principal amount of the receivables in a trust is reduced by payments, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables remaining in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually 5 to 10 percent) of the initial aggregate unpaid balance.

The purchase price of a receivable is specified in the pooling and servicing agreement and will be at least equal to: (1) The unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the servicer; or (2) the greater of (a) the amount in (1) or (b) the fair market value of such obligations in the case of a REMIC, or the fair market value of the certificates in the case of a trust that is not a REMIC.

Certificate Ratings

18. The certificates will have received one of the three highest ratings available from either S&P's, Moody's, D&P or Fitch. Insurance or other credit support (such as surety bonds, letters of credit, guarantees, or the creation of a class of certificates with subordinated cash flow) will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the rating agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

Provision of Credit Support

19. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (i.e. act as an insurer). In these cases, the master servicer, in its capacity as servicer, will first advance funds to the full extent that it determines that such advances will be recoverable (a) out of late payments by the obligors, (b) out of liquidation proceeds, (c) from the credit support provider (which may be itself) or, (d) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates, and the master servicer will advance such funds in a timely manner. When the servicer is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism. In some cases, however, the master servicer may not be obligated to advance funds but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. However, a master servicer typically can recover advances either from the provider of credit support or from future payments on the affected assets.

If the master servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover delinquent payments, or otherwise fails in its duties, the trustee would be required and would be able to

enforce the certificateholders' rights, as both a party to the pooling and servicing agreement and the owner of the trust estate, including rights under the credit support mechanism. Therefore, the trustee, who is independent of the servicer, will have the ultimate right to enforce the credit support arrangement.

When a master servicer advances funds, the amount so advanced is recoverable by the servicer out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations in the trust as payments on receivables are passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the master servicer to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust (monthly, quarterly or semi-annually, as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws upon the credit support. Further, the master servicer is required to deliver to the trustee annually a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee; and

(d) The credit support has a ''floor'' dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount thereafter is subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

Disclosure

20. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, and any material risk factors with respect to the certificates;

(b) A description of the trust as a legal entity and a description of how the trust was formed by the seller/servicer or other sponsor of the transaction;

(c) Identification of the independent trustee for the trust;

(d) A description of the receivables contained in the trust, including the types of receivables, the diversification of the receivables, their principal terms, and their material legal aspects;

(e) A description of the sponsor and servicer;

(f) A description of the pooling and servicing agreement, including a description of the seller's principal representations and warranties as to the trust assets and the trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the trustee, and provided to or made available to investors by the trustee; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the trustee's and the investors' remedies incident thereto;

(g) A description of the credit support;

(h) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the pass-through securities by a typical investor;

(i) A description of the underwriters' plan for distributing the pass-through securities to investors; and

(j) Information about the scope and nature of the secondary market, if any, for the certificates.

21. Reports indicating the amount of payments of principal and interest are provided to certificateholders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted loans or receivables.

22. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the Securities and Exchange Commission, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the trust and the certificates. While the Securities and Exchange Commission's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

23. At or about the time distributions are made to certificateholders, a report

will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets, payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the servicer, paying agent or trustee summarizing information regarding the trust and its assets. Such statement will include information regarding the trust and its assets, including underlying receivables. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

Secondary Market Transactions

24. It is Rothschild's normal policy to facilitate sales, including, without limitation, sales made in accordance with Rule 144A under the Securities Act of 1933, by investors who purchase certificates if Rothschild has acted as agent or principal in the original private placement of the certificates and if such investors request Rothschild's assistance. In the case of a trust that offers and sells certificates in a registered public offering, it is anticipated that Rothschild would generally attempt to make a market for securities for which it is lead or co-managing underwriter.

Discussion of Proposed Exemption

I. Differences Between Proposed Exemption and Class Exemption PTE 83–1

The exemptive relief proposed herein is similar to that provided in PTE 81–7 [46 FR 7520, January 23, 1981], Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts, amended and restated as PTE 83–1 [48 FR 895, January 7, 1983].

PTE 83–1 applies to mortgage pool investment trusts consisting of interest-bearing obligations secured by first or second mortgages or deeds of trust on single-family residential property. The exemption provides relief from sections 406(a) and 407 for the sale, exchange or transfer in the initial issuance of mortgage pool certificates between the trust sponsor and a plan, when the sponsor, trustee or insurer of the trust is a party-in-interest with respect to the plan, and the continued holding of such certificates, provided that the conditions set forth in the exemption are met. PTE 83–1 also provides exemptive relief from section 406 (b)(1) and (b)(2) of the Act for the above-described transactions when the sponsor, trustee or insurer of the trust is a fiduciary with respect to the plan assets invested in such certificates, provided that additional conditions set forth in the exemption are met. In particular, section 406(b) relief is conditioned upon the approval of the transaction by an independent fiduciary. Moreover, the total value of certificates purchased by a plan must not exceed 25 percent of the amount of the issue, and at least 50 percent of the aggregate amount of the issue must be acquired by persons independent of the trust sponsor, trustee or insurer. Finally, PTE 83–1 provides conditional exemptive relief from section 406 (a) and (b) of the Act for transactions in connection with the servicing and operation of the mortgage trust.

Under PTE 83–1, exemptive relief for the above transactions is conditioned upon the sponsor and the trustee of the mortgage trust maintaining a system for insuring or otherwise protecting the pooled mortgage loans and the property securing such loans, and for indemnifying certificateholders against reductions in pass-through payments due to defaults in loan payments or property damage. This system must provide such protection and indemnification up to an amount not less than the greater of one percent of the aggregate principal balance of all trust mortgages or the principal balance of the largest mortgage.

The exemptive relief proposed herein differs from that provided by PTE 83–1 in the following major respects: (1) The proposed exemption provides individual exemptive relief rather than class relief; (2) The proposed exemption covers transactions involving trusts containing a broader range of assets than single-family residential mortgages; (3) Instead of requiring a system for insuring the pooled receivables, the proposed exemption conditions relief upon the certificates having received one of the three highest ratings available from S&P's, Moody's, D&P or Fitch (insurance or other credit support would be obtained only to the extent necessary for the certificates to attain the desired rating); and (4) The proposed exemption provides more limited section 406(b) and section 407 relief for sales transactions.

II. Ratings of Certificates

After consideration of the representations of the applicant and information provided by S&P's, Moody's, D&P and Fitch, the Department has decided to condition exemptive relief upon the certificates having attained a rating in one of the three highest generic rating categories from S&P's, Moody's, D&P or Fitch. The Department believes that the rating condition will permit the applicant flexibility in structuring trusts containing a variety of mortgages and other receivables while ensuring that the interests of plans investing in certificates are protected. The Department also believes that the ratings are indicative of the relative safety of investments in trusts containing secured receivables. The Department is conditioning the proposed exemptive relief upon each particular type of asset-backed security having been rated in one of the three highest rating categories for at least one year and having been sold to investors other than plans for at least one year.[16]

III. Limited Section 406(b) and Section 407(a) Relief for Sales

Rothschild represents that in some cases a trust sponsor, trustee, servicer, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates may be a pre-existing party in interest with respect to an investing plan.[17] In these cases, a direct or indirect sale of certificates by that party in interest to the plan would be a prohibited sale or exchange of property under section 406(a)(1)(A) of

[16] In referring to different ''types'' of asset-backed securities, the Department means certificates representing interests in trusts containing different ''types'' of receivables, such as single family residential mortgages, multi-family residential mortgages, commercial mortgages, home equity loans, auto loan receivables, installment obligations for consumer durables secured by purchase money security interests, etc. The Department intends this condition to require that certificates in which a plan invests are of the type that have been rated (in one of the three highest generic rating categories by S&P's, D&P, Fitch or Moody's) and purchased by investors other than plans for at least one year prior to the plan's investment pursuant to the proposed exemption. In this regard, the Department does not intend to require that the particular assets contained in a trust must have been ''seasoned'' (e.g., originated at least one year prior to the plan's investment in the trust).

[17] In this regard, we note that the exemptive relief proposed herein is limited to certificates with respect to which Rothschild or any of its affiliates is either (a) the sole underwriter or manager or co-manager of the underwriting syndicate, or (b) a selling or placement agent.

the Act.[18] Likewise, issues are raised under section 406(a)(1)(D) of the Act where a plan fiduciary causes a plan to purchase certificates where trust funds will be used to benefit a party in interest.

Additionally, Rothschild represents that a trust sponsor, servicer, trustee, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates representing an interest in a trust may be a fiduciary with respect to an investing plan. Rothschild represents that the exercise of fiduciary authority by any of these parties to cause the plan to invest in certificates representing an interest in the trust would violate section 406(b)(1), and in some cases section 406(b)(2), of the Act.

Moreover, Rothschild represents that to the extent there is a plan asset ''look through'' to the underlying assets of a trust, the investment in certificates by a plan covering employees of an obligor under receivables contained in a trust may be prohibited by sections 406(a) and 407(a) of the Act.

After consideration of the issues involved, the Department has determined to provide the limited sections 406(b) and 407(a) relief as specified in the proposed exemption.

NOTICE TO INTERESTED PERSONS: The applicant represents that because those potentially interested participants and beneficiaries cannot all be identified, the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary 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 17th day of May, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–12502 Filed 5–19–95; 8:45 am]

BILLING CODE 4510–29–P

[18] The applicant represents that where a trust sponsor is an affiliate of Rothschild, sales to plans by the sponsor may be exempt under PTE 75–1, Part II (relating to purchases and sales of securities by broker-dealers and their affiliates), if Rothschild is not a fiduciary with respect to plan assets to be invested in certificates.

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–267]

Environmental Assessment and Finding of No Significant Impact; Public Service Company of Colorado Fort St. Vrain Nuclear Generating Station

The Nuclear Regulatory Commission (the NRC) is considering the issuance of an exemption from the requirements of 10 CFR 50.54(w) to maintain onsite property insurance to the Public Service Company of Colorado (PSC or the licensee) for the Fort St. Vrain Nuclear Generating Station (FSV) pursuant to the requirements of 10 CFR 50.12.

Environmental assessment

Identification of Proposed Action

The exemption will delete the requirements of 10 CFR 50.54(w) for the licensee to maintain onsite property insurance. FSV is permanently shut down and all the fuel assemblies are currently stored in an independent spent fuel storage installation (ISFSI), and the ISFSI is licensed under 10 CFR Part 72. In addition, decommissioning of FSV is approximately 65 percent complete, and PSC estimates that the facility license will be terminated and the facility released for unrestricted use in 1996.

The Need for the Proposed Action

The exemption is needed to eliminate the requirements of 10 CFR 50.54(w), which are appropriate for an operating plant but are not needed at the shutdown FSV. Granting the proposed exemption would reduce unnecessary costs for PSC.

Environmental Impact of the Proposed Action

The proposed action to eliminate the requirements for the licensee to have in effect and to continue to maintain onsite property insurance will have no environmental impact because FSV is permanently shut down, defueled, and 65 percent decommissioned. Thus, the risk of an accident requiring reactor stabilization or extensive decontamination does not exist at FSV. In addition, for the worst-case accident at FSV, the radiological release from the accident is a whole-body dose to an individual of 8.30 mrem. This dose is considerably less than 1 percent of the U.S. Environmental Protection Agency's ''Protective Action Guidelines'' dose of 1000 mrem that requires protective action.

The requested exemption would not authorize construction or operation, would not authorize a change in licensed activities, and would not effect changes in the permitted types or amounts of radiological effluent. With regard to potential nonradiological impacts, the NRC concludes that no measurable radiological or nonradiological impacts are associated with the exemption.

Alternatives to the Proposed Action

Because the NRC concluded that there are no significant environmental effects

that would result from the proposed action, alternatives need not be evaluated.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for FSV.

Agencies and Persons Consulted

The license initiated this exemption, and the NRC staff is reviewing its request. The State of Colorado was notified of the proposed exemption. State Officials had no comments on the exemption.

Finding of No Significant Impact

NRC has determined not to prepare an environmental impact statement for the proposed exemption.

Based on this environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details on this action, see the licensee's application dated February 16, 1995, which is available for public inspection at the NRC's Public Document Room, 2120 L Street, NW, Washington, DC 20037, and at the local public document room at the Weld Library District.—Downtown Branch, 919 7th Street, Greeley, CO 80631.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 12th day of May, 1995.

Michael F. Weber,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear material Safety and Safeguards.

[FR Doc. 95–12471 Filed 5–19–95; 8:45 am]

BILLING CODE 7590–01–M

Proposed Generic Communication Testing of Safety-Related Logic Circuits

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue a generic letter concerning problems with the testing of safety-related logic circuits. This draft generic letter requests addresses to review surveillance procedures to determine whether any of the procedures fail to test all required portions of the logic circuitry and, if any problems are found, to correct the problems. The NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed generic letter presented under the Supplementary Information heading. This proposed generic letter and supporting documentation were discussed in meeting number 272 of the Committee to Review Generic Requirements (CRGR) on April 25, 1995. The relevant information that was sent to the CRGR to support their review of the proposed generic letter will be made available in the NRC Public Document Room. The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter. The NRC's final evaluation will include a review of the technical position and, when appropriate, an analysis of the value/impact on licensees. Should this generic letter be issued by the NRC, it will become available for public inspection in the Public Document Rooms.

The staff recognizes that during implementation of the requested actions in the proposed generic letter, licensees may identify conditions in violation of their technical specifications or other NRC requirements. Consequently, the staff is considering the possibility of exercising enforcement discretion under certain circumstances during the period of implementation of the requested actions in order to encourage licensees to perform effective reviews.

DATES: Comment period expires on July 21, 1995. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to 11545 Rockville Pike, Rockville, Maryland, from 7:30 am to 4:15 pm, Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Hukam Garg, (301) 415–2929.

SUPPLEMENTARY INFORMATION:

NRC Generic Letter No. 95–XX: Testing of Safety-Related Logic Circuits

Addresses

All holders of operating licenses or construction permits for nuclear power reactors.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this generic letter to: (1) notify addressees about problems with testing of safety-related logic circuits, (2) request that all addresses implement the actions described herein, and (3) require that all addressees submit a written response to this generic letter regarding implementation of the requested actions.

Background

The Nuclear Regulatory Commission staff had previously issued the following information notices (INs) regarding problems with testing of safety-related logic circuits: IN 88–83, ''Inadequate Testing of Relay Contacts in Safety-Related Logic Circuits,'' dated October 19, 1988; IN 91–13, ''Inadequate Testing of Emergency Diesel Generators (EDGs),'' dated March 4, 1991; IN 92–40, ''Inadequate Testing of Emergency Bus Undervoltage Logic Circuitry,'' dated May 27, 1992; IN 93–15, ''Failure to Verify the Continuity of Shunt Trip Attachment Contacts in Manual Safety Injection and Reactor Trip Switches,'' dated February 18, 1993; and IN 93–38, ''Inadequate Testing of Engineered Safety Features Actuation Systems,'' dated May 24, 1993. Despite these notices, recent events have occurred similar to those described in the INs which indicate that licensees have not taken sufficient action to correct previously identified problems in logic circuit surveillance testing. On March 7, 1995, NRC issued IN 95–15, ''Inadequate Logic Testing of Safety-Related Circuits,'' which informed licensees about these recent events at Cooper Nuclear Station, Fermi 2, Waterford 3, Grand Gulf Nuclear Station, and Arkansas Nuclear One, Unit 1 and Unit 2.

Description of Circumstances

The NRC has documented a significant number of instances involving problems with logic testing of safety-related circuits in the information notices described above. These information notices discuss events at various pressurized water and boiling water reactors. The examples of problems with logic testing cover a wide range of systems including safety injection system actuation, containment spray system actuation, residual heat removal system actuation, diesel generator load sequencing, and rector protection system actuation. In most cases, the affected logic circuits functioned properly when testing in accordance with technical specification

(TS) requirements was performed. The NRC has taken enforcement action in many of these cases since they resulted in violations. The details of these instances are included in the information notices cited above. An example of the details associated with this issue at Fermi Station are repeated here.

On July 15, 1994, during a routine review of surveillance procedures required by the Fermi Unit 2 TS, the licensee (Detroit Edison Company) discovered that neither the procedures used for testing the load shedding of the 4160 volt Residual heat Removal (RHR) pumps nor the related instrumentation and control (I&C) logic functional test procedure provided for the full testing of the RHR pump start logic. Also, the test procedures did not include verification that the switchgear breaker would not close with an undervoltage signal present at the bus.

After investigating further, the licensee discovered additional deficiencies in the undervoltage functional test surveillance procedures including the logic functional test surveillance procedures for the three other engineered safety buses. Also, the surveillance test overlap did not include sufficient overlap of the logic circuit to cover the degraded voltage trip input to the non-interruptible air supply system isolation logic, the degraded voltage trip input to the bus feeder breaker position, and the alternative automatic closure circuits for the EDG output breakers. The licensee further determined that the 480 volt load shed logic had not been fully tested.

On September 9, 1994, the licensee identified additional surveillance deficiencies and expanded the investigation of its surveillance procedures for EDGs and I&C overlap testing. During this investigation, the licensee determined that (1) multiple pathways for starting an EDG through the emergency core cooling system (ECCS) logic were not being tested, (2) emergency equipment cooling water (EECW) actuation from the load sequencer was not being differentiated from EECW actuation on reactor building closed cooling water low pressure, and (3) test acceptance criteria permitted performance outside of the TS limits.

On November 30, 1994, the licensee identified several other test deficiencies in its surveillance procedures. These deficiencies were related to the core spray system, RHR system, reactor protection system, safety relief valves, alternate rod insertion and main steam isolation valve leadage control system logic, remote shutdown panel, primary containment manual isolation valves, and alternate shutdown panel transfer switches.

To address the above deficiencies, the licensee has taken the following correction actions: (1) Reviewed deficient procedures and performed required surveillance to establish operability, (2) reviewed similar procedures to identify other deficiencies. The licensee has taken the following corrective actions: (1) reviewed deficient procedures and performed required surveillance to establish operability, (2) reviewed similar procedures to identify other deficiencies, (3) created electrical overlap drawings, and (4) trained authors and technical reviewers of procedures to be fully aware of logic surveillance requirements. The NRC staff issued a notice of violation to Detroit Edison Company concerning the above issue (NRC Inspection Report No. 50–341/94–12).

Discussion

A number of NRC regulations document the requirements to test safety-related systems to ensure that they will function as designed when called upon. For example, Title 10 of the Code of Federal Regulations (10 CFR), Section 50.36, ''Technical Specifications,'' paragraph (c)(3) states that, ''surveillance requirements are requirements relating to test, calibration or inspection to assure that the necessary quality of systems and components is maintained, that facility operation will be within the safety limits, and that the limiting conditions of operation will be met.'' surveillance requirements to assure continued operability of safety related logic circuits have been included in the plant-specific technical specifications for all operating nuclear power plants

Other documents that provide a basis for these requirements include:

- 10 CFR 50.55a, ''Codes and Standards,'' paragraph (h) which includes reference to Institute of Electrical and Electronic Engineers (IEEE) Standard 279, ''Criteria for Protection Systems for Nuclear Power Generating Stations''
- Appendix A to 10 CFR 50, General Design Criterion (GDC) 21, 'Protection System for Reliability and Testability''
- Appendix A to 10 CFR 50, General Design Criterion (GDC) 18, ''Inspection and Testing of Electric Power Systems''
- Appendix B to 10 CFR 50, Criterion XI, ''Test Control''
- Regulatory Guide (RG) 1.118, ''Periodic Testing of Electric Power and Protection Systems''
- RG 1.32, ''Criteria for Safety-Related Electric Power Systems for Nuclear Power Plants''

As noted above, the NRC staff has issued a number of information notices (identified in the ''Background'' section) that document identified deficiencies in actuation logic surveillance test programs. However, because of the number of more recently identified similar deficiencies, the NRC staff has determined that licensees may not have yet adequately addressed this issue and further action is necessary.

The NRC staff finds that the failure to adequately test safety-related actuation logic circuitry is safety significant in that inoperable essential electric components required for automatic actuation of post-accident mitigation systems may be undetected for extended periods. This is particularly true for the reactor protection system, whose unavailability is shown in probabilistic risk assessments to be a dominant contributor to potential core damage scenarios. Undetected reactor protection system availability/reliability degradation is also a potentially significant contributor to overall risk. Unavailability of those circuits associated with automatic emergency core cooling system (ECCS) actuation, especially in a loss-of-offsite-power situation, is a lesser contributor to overall risk but is important in ensuring post-accident recovery in accordance with licensing bases. Failure to automatically actuate safety systems also places the additional burden on the operators of having to manually actuate required functions and thus increases the chance for operator error.

The NRC staff notes that even in cases where surveillance testing of the logic circuits has not been complete, it is likely that only very small portions of the circuit have been omitted from the test. Further, the NRC staff is not aware of instances of specifically identified surveillance inadequacies that resulted in the unavailability of the safety system when called on during an event. Nevertheless, as indicated above, the NRC staff finds that compliance with the plant-specific technical specifications is essential in order to maintain the validity of the assumptions in the licensing basis accident analyses. On the basis of the recent events, previously issued INs, complexity of the logic, and contribution to the core damage frequency, the NRC staff has further determined that licensees should review their surveillance procedures for the reactor protection system, EDG load shedding and sequencing, and actuation logic for the engineered safety features systems to ensure that complete testing

is being performed as required by the technical specifications.

Requested Actions

The NRC staff requests that all holders of operating licenses for nuclear power reactors take the following actions:

(1) Compare electrical schematic drawings and logic diagrams for the reactor protection system, EDG load shedding and sequencing and actuation logic for the engineered safety features systems against technical specification surveillance test procedures to ensure that all portions of the logic circuitry, including the parallel logic, interlocks, bypasses and inhibit circuits, are adequately covered in the surveillance procedures. This review should also include relay contacts, control switches, and other relevant electrical components within these systems, utilized in the logic circuits.

(2) Modify the surveillance procedures as necessary for complete testing to comply with the technical specifications. Additionally, the licensee may request an amendment to the technical specifications if relief from certain testing requirements can be justified.

It is requested the completion of these actions not go beyond the first refueling outage commencing 90 days after the issuance of this generic letter.

Note: Some licensees may have already performed the requested reviews and taken appropriate corrective actions. These licensees do not need to perform any additional review unless modifications have been made to the logic circuits for these systems. In these cases the modifications should be reviewed.

Required Response

All addressees, including those who have already completed the requested actions, are required to submit a written response to this generic letter as follows:

(1) Within 60 days of the date of this generic letter, a written response indicating whether or not the addressee will implement the actions requested above. If the addressee intends to implement the requested actions, submit a schedule for completing implementation. If an addressee chooses not to take the requested actions, submit a description of any proposed alternative course of action, the schedule for completing the alternative course of action (if applicable), and the safety basis for determining the acceptability of the planned alternative course of action.

(2) Within 30 days of completion of the requested actions, a response confirming completion.

Backfit Discussion

The actions requested in this generic letter are considered backfits in accordance with NRC procedures. Because established regulatory requirements exist but were not satisfied, these backfits are necessary to bring the addressees into compliance with existing requirements. Therefore, on the basis of 10 CFR 50.109(a)(4)(i), a full backfit analysis was not performed.

An evaluation was performed in accordance with NRC procedures, including a statement of the objectives of and reasons for the requested actions and the basis for invoking the compliance exception. Response to question ix in the CRGR review package contains this evaluation.

Dated at Rockville, Maryland, this 15th day of May, 1995.

For the Nuclear Regulatory Commission.

Brian K. Grimes,

Director, Division of Project Support, Office of Nuclear Reactor Regulation.

[FR Doc. 95–12468 Filed 5–19–95; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on June 8–10, 1995, in Conference Room T2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Wednesday, December 28, 1994 (59 FR 66977).

Thursday, June 8, 1995

8:30 a.m.–8:45 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

8:45 a.m.–9:15 a.m.: Preparation for Meeting with the Commissioners (Open)—The Committee will discuss topics scheduled for the meeting with the Commissioners.

9:30 a.m.–11:00 a.m.: Meeting with the Commissioners (Open)—The Committee will meet with the Commissioners, in the Commissioner's Conference Room, One White Flint North, to discuss items of mutual interest.

11:15 a.m.–12:00 noon: Ethics Training (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC Office of the General Counsel regarding the provisions of the Ethics regulations which apply to Special Government Employees.

1:00 p.m.–3:00 p.m.: Proposed Final PRA Policy Statement (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed Final PRA Policy Statement. Also representatives of the Nuclear Energy Institute (NEI) will brief the Committee regarding the NEI/EPRI Probabilistic Safety Assessment (PSA) Application Guide.

3:15 p.m.–4:45 p.m.: Proposed Final Rule on Reactor Vessel Annealing (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed final rule on reactor vessel annealing.

Representatives of the industry will participate, as appropriate.

5:00 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Friday, June 9, 1995

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 a.m.–9:45 a.m.: Status of Issues Associated with the AP600 Design Certification Review (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the status of issues associated with the AP600 design certification review.

Representatives of the industry will participate, as appropriate.

9:45 a.m.–10:45 a.m.: Policy and Technical Issues for Passive Plant Designs (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding policy and technical issues for passive plant designs.

Representatives of the industry will participate, as appropriate.

11:00 a.m.–12:30 p.m.: Prioritization of Generic Safety Issues (GSIs) (Open)—The Committee will hold discussions with representatives of the NRC staff regarding the comments from cognizant subcommittee chairman on the priority rankings proposed by the Staff for a group of GSIs, and also the schedule for prioritizing the remaining GSIs.

1:30 p.m.–2:30 p.m.: Fire-Protection Related Issues (Open/Closed)—The Committee will hear presentations by

and hold discussions with representatives of the NRC staff and the Nuclear Energy Institute (NEI) regarding several fire-protection related issues, including the NEI petition for rulemaking to amend portions of 10 CFR 50.48, ''Fire Protection'', status of the staff's Fire Protection Action Plan, adequacy of fire barrier penetration seals, and the fire event at the Narora nuclear plant in India.

A portion of this session may be closed to discuss information provided in confidence by a foreign source.

2:30 p.m.–3:15 p.m.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business and internal organizational and personnel matters relating to the ACRS staff members.

A portion of this session may be closed to discuss matters that relate solely to internal personnel rules and practices of this Advisory Committee, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

3:15 p.m.–3:30 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses expected from the NRC Executive Director for Operations to ACRS comments and recommendations included in recent ACRS reports.

3:45 p.m.–4:30 p.m.: Future ACRS Activities (Open)—The Committee will select topics for consideration during future ACRS meetings.

4:30 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

Saturday, June 10, 1995

8:30 a.m.–11:30 a.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

11:30 a.m.–12:30 p.m.: Strategic Planning (Open)—The Committee will discuss items that are of importance to the NRC which should receive additional emphasis in its future deliberations.

12:30 p.m.–12:45 p.m.: New Research Needs (Open)—The Committee will discuss new research needs, if any, identified during this meeting.

12:45 p.m.–1:00 p.m.: Miscellaneous (Open)—The Committee will discuss miscellaneous matters related to the conduct of Committee activities.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 5, 1994 (59 FR 50780). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director, Dr. John T. Larkins, at least five days before the meeting if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the ACRS Executive Director prior to the meeting. In view of the possibility that the schedule for ACRS Meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) Public Law 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss information that involves the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2); to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552(c)(6); and to discuss information provided in confidence by a foreign source per 5 U.S.C. 552b(c)(4).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the ACRS Executive Director, Dr. John T. Larkins (telephone 301–415–7361), between 7:30 a.m. and 4:15 p.m. edt.

Dated: May 18, 1995.

John C. Hoyle,

Acting Advisory Committee Management Officer.

[FR Doc. 95–12467 Filed 5–19–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–313]

Arkansas Nuclear One, Unit 1; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. 50–313, issued to Entergy Operations Inc. (the licensee), for operation of Arkansas Nuclear One, Unit 1 (ANO–1) located in Pope County Arkansas.

The proposed amendment would modify the operability requirements related to the reactor building (containment) emergency cooling system. Following failure of one of four reactor building cooling fans, the licensee reconfigured the reactor building cooling air and water flows to ensure that the system could cool the reactor building after a design basis loss of coolant accident. The licensee requested an exigent Technical Specification (TS) change to include the reconfigured reactor building cooling system in the TS as an authorized configuration. NRC granted enforcement discretion on May 12, 1995 to allow the facility to continue operation while this exigent TS is processed.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1: Involves a significant increase in the probability or consequences of an accident previously evaluated.

The Reactor Building Emergency Cooling system is not an initiator of any accident described in the ANO–1 Safety Analysis Report. The engineering evaluation discussed

above verifies that the green train of the Reactor Building Emergency Cooling system remains operable and capable of performing its design function under all postulated accident conditions. Therefore, the probability or consequences of any previously evaluated accident is not increased.

Criterion 2: Create the possibility of a new or different kind of accident from any accident previously evaluated.

The subject request does not create the possibility of a new or different kind of accident from any previously evaluated since the green train of the Reactor Building Emergency Cooling system remains operable and because the reactor building coolers and their associated surveillances are not related to the creation of accidents.

Criterion 3: Involve a significant reduction in a margin of safety.

The subject request does not involve a significant reduction in a margin of safety since both trains of the Reactor Building Emergency Cooling system remain operable. The current configuration represents a reduction in available flow; however, this is not considered significant since required heat removal capability is still maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 21, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interest persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a

hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to [APPROPRIATE PD]: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 15, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Dated at Rockville, Maryland, this 16th day of May 1995.

For the Nuclear Regulatory Commission.

George Kalman,

Senior Project Manager, Project Directorate IV–1, Division of Reactor Projects—III/IV Office of Nuclear Reactor Regulation.

[FR Doc. 95–12470 Filed 5–19–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No.: 70–00033]

Notice of Receipt of Amendment Request for Decommissioning the Texas Instruments, Inc., Site in Attleboro, Massachusetts and Opportunity for a Hearing

SUMMARY: This is a notice to inform the public that the U.S. Nuclear Regulatory Commission is considering issuance of an amendment to Special Nuclear Material License No. SNM–23, issued to Texas Instruments, Inc. for possession of special nuclear material and decommissioning of the licensee's site in Attleboro, Massachusetts. Successful implementation of the amendment would lead to completion of decommissioning, termination of the license, and release of the Attleboro site for unrestricted use.

DATES: The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR Part 2, Subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(c). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

ADDRESSES: Written comments on the amendment request should be sent to USNRC, Region I, Attn: Mark Roberts, Senior Health Physicist, 475 Allendale Road, King of Prussia, Pennsylvania 19406 and should refer to Control No. 121534. Hand deliver comments to 475 Allendale Road, King of Prussia, PA 19406 between 7:45 a.m. and 4:15 p.m. on Federal workdays.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Texas Instruments, Inc., 34 Forest Street, Attleboro, Massachusetts 02703, Attention: Michael Elliott; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Mark Roberts, Division of Radiation Safety and Safeguards, Region I, 475 Allendale Road, King of Prussia, PA 19406, Telephone: (610) 337–5094.

SUPPLEMENTARY INFORMATION: The licensee (Texas Instruments, Inc.) requested an amendment, by letter dated December 19, 1994, to approve the Supplement to the 1992 Remediation Plan (the Supplement) submitted with the letter. Texas Instruments, Inc. has been remediating portions of the Attleboro facility since it terminated active operations with licensed material in 1981. The NRC staff has reviewed and approved various remediation activities throughout that time, most recently the 1992 Remediation Plan for the Building 12 Burial Area on August 26, 1992. The request before the NRC at this time is to approve the Supplement which, if properly implemented and completed, will lead to release of the Attleboro site for unrestricted use and termination of the license.

The staff of the NRC's Region I Division of Radiation Safety and Safeguards has reviewed the adequacy of the amendment request and has asked the licensee to provide additional information and commitments. However, the staff expects the commitments to be forthcoming and that satisfactory information will be supplied. Therefore, the NRC staff anticipates approval of the Supplement based on receipt and review of the additional information.

NRC is inviting public comment on the amendment request prior to acting on the request. NRC considers public involvement more meaningful at this stage prior to authorizing final decommissioning activities at the site than if it were offered immediately prior

to license termination and after completion of decommissioning.

For further details with respect to this action, the application for amendment request is available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555 or at NRC's Region I offices located at 475 Allendale Road, King of Prussia, PA 19406. Persons desiring to review documents at the Region I Office, should call Ms. Sheryl Villar at (610) 337–5239 several days in advance to assure that the documents will be readily available for review.

Dated at Rockville, Maryland this 11th day of May, 1995.

For the Nuclear Regulatory Commission.

Michael F. Weber,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–12469 Filed 5–19–95; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Panel Meeting on Fracture Flow and Transport in Arid Regions

Pursuant to its authority under section 5051 of Public Law 100–203, the Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board's (the Board) Panel on Hydrogeology & Geochemistry will hold a meeting June 26 and 27, 1995. The meeting, which is open to the public, will be held at the Holiday Inn Crowne Plaza, San Francisco Airport, 600 Airport Boulevard, Burlingame, California 94010; (Tel) 415–340–8500; (Fax) 415–340–0599.

The meeting will begin at 1:00 p.m. and recess at 6:30 p.m. on Monday, June 26, it will reconvene at 8:00 a.m., on Tuesday, June 27, and adjourn at approximately 1:00 p.m.

On the first day, the panel will hear presentations on waste isolation in arid regions; focus will be on the common features that the control subsurface flow and transport in this type of environment. On the second day, the panel will hear what critical data is needed to characterize and model flow and transport in fractured unsaturated rocks, whether these data can be obtained in a reasonable amount of time, and what their limitations might be. A round-table discussion then will explore the impact of fast flow pathways on site suitability issues, including computations for ground-water travel time and total system performance assessment.

As with all the Board's meetings, time will be set aside on the agenda for comments and questions from the public. To ensure that everyone wishing to speak is offered time to do so, the board encourages those who have comments to sign the Public Comment Register which will be located at the sign-in table each day of the meeting. Written comments for the record also may be submitted to the board staff at the sign-in table.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987 to evaluate the technical and scientific validity of activities undertaken by the DOE in its program to manage the disposal of the nation's high-level radioactive waste and spent nuclear fuel. In that same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for its suitability as a potential location for a permanent repository for the disposal of that waste.

Transcripts of the meeting will be available on computer disk on a library-loan basis in paper format from Davonya Barnes, Board staff, beginning August 22, 1995. For further information, contact Frank Randall, External Affairs, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, Suite 910, Arlington, Virginia 22209; (703) 235–4473.

Dated: May 17, 1995.

William Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 95–12481 Filed 5–19–95; 8:45 am]

BILLING CODE 6820–AM

POSTAL RATE COMMISSION

[Order No. 1056 and Docket No. A95–11]

Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. § 404(b)(5)

Issued May 16, 1995.

Before Commissioners: Edward J. Gleiman, Chairman; W. H. ''Trey'' LeBlanc III, Vice-Chairman; George W. Haley; H. Edward Quick, Jr.; Wayne A. Schley; *In the Matter of:* South Westerlo, New York 12163 (Raye C. Saddlemire, Petitioner

Docket Number: A95–11

Name of Affected Post Office: South Westerlo, New York 12163

Name(s) of Petitioner(s): Raye C. Saddlemire

Type of Determination: Closing

Date of Filing of Appeal Papers: May 11, 1995

Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders:

(a) The Postal Service shall file the record in this appeal by May 26, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

May 11, 1995—Filing of Appeal letter

May 16, 1995—Commission Notice and Order of Filing of Appeal

June 5, 1995—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)]

June 15, 1995—Petitioner's Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b)]

July 5, 1995—Postal Service's Answering Brief [*see* 39 CFR 3001.115(c)]

July 20, 1995—Petitioner's Reply Brief should Petitioner choose to file one [*see* 39 CFR 3001.115(d)]

July 27, 1995—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 C.F.R. 3001.116]

September 8, 1995— Expiration of the Commission's 120-day decisional schedule [*see* 39 U.S.C. § 404(b)(5)]

[FR Doc. 95–12496 Filed 5–19–95; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35721; File No. SR–NASD–95–7]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to a Query-Based Vendor Fee for Distribution of Certain Market Information

May 16, 1995.

I. Introduction

On February 3, 1995, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The NASD seeks to establish a fee of $.01/query for delivery on a non-continuous basis of certain market information. The fee will take effect within 90 days of this order and will be incorporated into Schedule D to the NASD By-Laws, Part VIII, Section C.

Notice of the proposed rule change appeared in the **Federal Register** on February 27, 1995.[3] No comments were received in response to the Commission release. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

In its filing with the Commission, the NASD indicated that the purpose of this rule change is to establish a single fee for members and vendors wishing to provide basic, real-time market data to low volume users. Specifically, the service will provide real-time inside bid/ask and last sale information for securities included in The Nasdaq Stock Market (''Nasdaq''), various Nasdaq indices, and similar quotation and transaction information on over-the-counter (''OTC'') equity securities.[4]

The NASD submitted this proposal in response to requests from several member firms seeking to provide retail customers with a cost-effective alternative to calling their brokers for current market information.[5] Typically, these investors are not interested in subscribing to a costly service offered by a commercial vendor which frequently includes analytic information, ticker displays, and dynamically-updated quotation and transaction information. With the information to be available through this new service, individual investors will be able better to monitor the value of a portfolio, track intra-day activity in a given stock to facilitate an investment decision, or observe a market trend based on periodic queries for the current level of a popular stock index.

The service covered by this proposal will be limited to ''snapshots'' of real-time information furnished in response to a discrete query by the end user; this information will not be dynamically updated. The end user, therefore, will have to make individual queries to obtain, for example, the most current quotation/last sale information on his/her portfolio of securities at various times during the trading day. This characteristic differentiates the instant service from most vendor offerings, which provide a continuous broadcast of real-time information with dynamic updating to authorized display devices. On the other hand, this new service will not require the end user to purchase expensive dedicated hardware to obtain the information.

The firm or vendor providing access to the service to end users will be responsible for monitoring query traffic and remitting the appropriate amount to NSMI. Vendors will provide the service pursuant to a contract with NSMI, under which NSMI will be permitted to conduct periodic audits to ensure payment of all monies due.

III. Discussion

The Commission believes that the NASD's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, therefore, has determined to approve the rule change. Specifically, the Commission believes that the proposed rule change is consistent with the requirements of Sections 11A(a)(1)[6] and 15A(b)(5)[7] of the Act. Section 11A(a)(1) contains the Congressional findings and objectives respecting a national market system. Among other things, the Congress advocated the application of new technologies to effect the widespread dissemination of quotation and transaction information to investors. Section 15A(b)(5) requires the equitable allocation of reasonable dues, fees, or other charges among persons using any facility or system which the NASD operates or controls.

The proposed service and related fee are designed to accommodate the information needs of individual investors, particularly small investors who do not require the breadth of market data and analytic information that institutional investors and market makers typically require. Using a standard personal computer or other telecommunications device, individual investors will now be able to access from their broker or a commercial vendor real-time market information regarding Nasdaq and OTC equity securities. Accordingly, the Commission finds that this new service will further the objectives of Section 11A of the Act by employing the latest technology to provide widespread dissemination of inside bid/ask and last sale information to investors.

Further, this service will allow firms and vendors to provide individual investors cost-effective access to market data without requiring users to acquire expensive hardware. Currently, non-professionals must rely on stale market data or pay a subscriber fee of $4/month/interrogation device for receipt of inside bid/ask and last sale prices[8] *plus* the cost of vendor supplied equipment. The NASD's experience is that these costs tend to discourage subscription by low-volume users. The Commission believes that the $.01/query fee is an equitable allocation of a reasonable fee and that it will be affordable to individual investors. The Commission, therefore, finds that the proposal is consistent with the Section 15A(b)(5) of the Act.

IV. Conclusion

For the reasons stated above, the Commission finds that the proposed rule change is consistent with the requirements of the Act.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] Securities Exchange Act Release No. 35393 (Feb. 17, 1995), 60 FR 10625 (Feb. 27, 1995).

[4] The computer facilities that support the operations of Nasdaq are owned and operated by The Nasdaq Stock Market, Inc. (''NSMI''), a wholly-owned subsidiary of the NASD. Among other things, NSMI is responsible for the collection, processing, and the distribution of real-time quotation and transaction data originated by broker-dealer participants in Nasdaq and the OTC Bulletin Board (''OTCBB'') service.

[5] While this service is designed primarily in response to requests of member firms, any commercial data vendors that might wish to offer this type of service will also be accommodated.

[6] 15 U.S.C. 78k–1(a)(1).

[7] *Id.* § 78*o*–3(b)(5).

[8] *NASD Manual,* Schedules to the By-Laws, Schedule D, Part VIII, Sec. A(8)(a), (CCH ¶ 1850).

proposed rule change SR–NASD–95–7 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12459 Filed 5–19–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 02/72–0560]

LEG Partners SBIC, L.P.; Notice of Issuance of a Small Business Investment Company License

On Friday, December 16, 1994, a notice was published in the **Federal Register** (Vol. 59, No. 241, FR 65115) stating that an application had been filed by LEG Partners SBIC, L.P., at 230 Park Avenue, 21st Floor, New York, NY 10169, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) for a license to operate as a small business investment company.

Interested parties were given until close of business Monday, January 2, 1995 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/72–0560 on April 6, 1995, to LEG Partners SBIC, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 16, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–12479 Filed 5–19–95; 8:45 am]

BILLING CODE 8025–01–M

[License No. 08/78–0150]

North Dakota Small Business Investment Company. L.P.; Issuance of a Small Business Investment Company License

On January 24, 1995, a notice was published in the **Federal Register** (60 FR 4653) stating that an application had been filed by North Dakota Small Business Investment Company, 502 First Avenue North, P.O. Box 1389, Fargo, North Dakota 58107, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) for a license to operate as a small business investment company.

Interested parties were given until close of business February 8, 1995 to submit their comments to SBA. No negative comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 08/78–0150 on May 9, 1995, to North Dakota Small Business Investment Company, L.P. to operate as a small business investment company.

The Licensee has initial private capital of $5.1 million, and Mr. David R. Schroder will manage the fund. No individual investor will own more than 10% of the licensee.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 16, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–12435 Filed 5–19–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 95–44]

Retraction of revocation Notice

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General Notice.

SUMMARY: The following Customs broker license number was erroneously included in a list of revoked Customs brokers licenses in the Monday March 27, 1995, **Federal Register** Vol. 60, No 58.

Tory Erickson—12605

License 12605, issued in the Los Angeles Customs district, remains a valid license.

Dated: May 16, 1995.

Philip Metzger,

Director, Trade Compliance.

[FR Doc. 95–12465 Filed 5–19–95; 8:45 am]

BILLING CODE 4820–02–P

[T.D. 95–43]

Retraction of Revocation Notice

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: The following Customs broker license number was erroneously included in a list of revoked Customs brokers licenses in the Friday, April 28, 1995, **Federal Register** Vol. 60, No. 82.

Regina M. Farnin—11771

License 11771, issued in the Los Angeles Customs district, remains a valid license.

Dated: May 16, 1995.

Philip Metzger,

Director, Trade Compliance.

[FR Doc. 95–12466 Filed 5–19–95; 8:45 am]

BILLING CODE 4820–02–P

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement: Coal Receiving Systems—Kingston Fossil Plant

AGENCY: Tennessee Valley Authority.

ACTION: Notice of intent.

SUMMARY: The Tennessee Valley Authority (TVA) will prepare an Environmental Impact Statement (EIS) for a proposed coal receiving system at its Kingston Fossil Plant located at the confluence of the Clinch and Emory Rivers near Kingston in east Tennessee. Coal is currently delivered to Harrisman, Tennessee by both Norfolk Southern and CSX railroads and then is transferred to a Norfolk Southern rail line for shipment to the plant. This two-line transfer increases TVA's fuel transportation costs. As a result, TVA is exploring alternative ways to deliver fuels to the plant site. These alternatives include overland conveying systems (both straight-line and flexible) and a new rail spur.

DATES: Comments on the scope of the EIS must be received on or before June 30, 1995. TVA anticipates holding a public meeting in Kingston or Harriman in June to discuss the project and obtain comments on the scope of the EIS. The time and location of this meeting will be announced in local news media.

ADDRESSES: Written comments should be sent to Dale Wilhelm, National Environmental Policy Act Liaison, Tennessee Valley Authority, WT 8C, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499.

FOR FURTHER INFORMATION CONTACT: David Robinson, Fossil Fuels, Tennessee Valley Authority, 1101

[9] 17 CFR 200.30–3(a)(12).

market Street, LP 5H, Chattanooga, Tennessee 37402–2801, telephone (615) 751–2502.

SUPPLEMENTARY INFORMATION: TVA currently receives four million tons of coal per year via rail shipment to its Kingston Fossil plant located at the confluence of the Clinch and Emory rivers in east Tennessee near the towns of Kingston and Harriman. Coal is shipped to Harriman, Tennessee by both Norfolk Southern and CSX, and is then transported over a short Norfolk Southern spur to a TVA-owned line and into the rail car storage yard at the Kingston plant. The costs associated with this additional transfer and transport over a short spur line have encouraged TVA to assess other methods of transporting the coal into the plant. Transportation system and economic studies resulted in the identification of several alternative solutions to this situation. All the feasible solutions involved the construction of a new transportation system to move coal from Harriman to the plant site.

Preliminary field evaluations have indicated that reasonable alternatives to provide this coal transport access include the use of a straight-line conveyor, a flexible conveyor, or a new rail spur terminating at the coal stockpiles. TVA will also consider the ''no action'' alternative which would be a continuation of shipments over the Norfolk Southern spur from Harriman. Alternatives that are considered uneconomical or infeasible include use of barges, and a slurry pipeline. These latter alternatives would not be further assessed.

Alternative transportation system routes that have initially been identified originate primarily northeast of Harriman, parallel the Emory River for about a mile before dropping almost straight south to the plant site. TVA invites the public to comment on the initial routing alternatives and to suggest other possible alternatives.

Proposed Issues to Be Addressed

The EIS will discuss the proposed need for the project and describe the existing environmental, cultural, and recreational resources. It will describe TVA's siting and location process for the transport system and associated facilities and potential impacts on the above resources resulting from construction, operation, and maintenance. Specifically TVA will evaluate potential impacts to vegetation, wildlife, aquatic ecology, endangered and threatened species, wetlands and wetland wildlife, aesthetics and visual resources, land use, and noise associated with construction and operation of the system. These factors and others identified during the scoping process as well as engineering and economic considerations will be used to select the preferred alternative for coal transport into the plant from the CSX line.

Scoping Process

The scoping process will include interagency and public scoping. The public is invited to submit written comments on the scope of this analysis by June 30 and/or attend the public meeting that will be announced in area news media prior to the meeting. Federal and state agencies to be included in the interagency scoping are: U.S. Army Corps of Engineers; the U.S. Coast Guard, the U.S. Fish and Wildlife Service; and various State of Tennessee agencies including the Tennessee Wildlife Resources Agency, the Department of Environment and Conservation, and the Tennessee Historical Commission, among others.

Based on the scoping comments, TVA will develop a range of alternatives to be assessed in the EIS. Following analysis of the environmental consequences of each alternative, TVA will prepare a draft EIS for public review and comment. Notice of availability of the draft EIS will be announced, comments on the draft solicited, and information about possible future public meetings will be published at a future date. TVA expects to release a final EIS in mid 1996.

Dated: May 12, 1995.

Kathryn J. Jackson,

Senior Vice President/Resource Group.

[FR Doc. 95–12488 Filed 5–19–95; 8:45 am]

BILLING CODE 8120–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 98

Monday, May 22, 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).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 2, 1995.

PLACE: 2033 K St., N.W., Washington, D.C. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–12610 Filed 5–18–95; 3:00 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 9, 1995.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–12611 Filed 5–18–95; 3:00 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 16, 1995.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–12612 Filed 5–18–95; 3:00 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 23, 1995.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–12613 Filed 5–18–95; 3:00 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 30, 1995.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–12614 Filed 5–18–95; 3:00 pm]

BILLING CODE 6351–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: 60 Fed. Reg. 24967 May 10, 1995.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 P.M. (Eastern Time) May 22, 1995.

CHANGE IN THE MEETING: The closed session has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: May 17, 1995.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 95–12546 Filed 5–18–95; 11:26 am]

BILLING CODE 6750–06–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Thursday, May 25, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed acquisition of automated data processing equipment within the Federal Reserve System.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. 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; May 18, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–12539 Filed 5–18–95; 10:28 am]

BILLING CODE 6210–01–P

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

By telephone vote on May 16–17, 1995, a majority of the members contacted and voting, the Board of Governors voted to add to the agenda of its June 5, 1995, meeting, closed to public observation, consideration of new international mail rates and services. (See 60 FR 24673, May 9, 1995).

The Board determined that pursuant to section 552b(c)(3) of Title 5, United States Code, and section 7.3(c) of Title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information which is specifically exempted from disclosure by section 410(c)(2) of title 39, United States Code.

The Board further determined that the public interest does not require that the Board's discussion of these matters be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation pursuant to section

552b(c)(3) of Title 5, and section 410(c)(2) of title 39, United States Code; and section 7.3(c) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 95–12609 Filed 5–18–95; 3:00 pm]

BILLING CODE 7710–12–M

TENNESSEE VALLEY AUTHORITY (MEETING NO. 1476)

TIME AND DATE: 9 a.m. (EDT), May 24, 1995.

PLACE: TVA Knoxville Office Complex, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on April 19, 1995.

Action Items

New Business

C—Energy

C1. Certification of financial assurance for decommissioning letter to the Nuclear Regulatory Commission, as required by Federal regulations, prior to TVA receiving an operating license for Watts Bar Nuclear Plant Unit 1.

C2. Public auction of Red Bird Coal Reserve Lease to allow for the mining and removal of all seams above and including the No. 8 seam underlying approximately 784 acres of the Red Bird Coal Reserves, Tract No. XEKCR–16L, in Bell and Harlan Counties, Kentucky, and delegation of authority to the Vice President, Fuel Supply and Engineering, or his designee, to administer the terms of the lease.

E—Real Property

E1. Public auction sale of a portion of Ocoee No. 1 Access Railroad right-of-way property (Tract Nos. OCR–57 through OCR–74) in Polk County, Tennessee.

E2. Grant of a permanent easement for sewerline and sewage pump station affecting approximately 0.43 acre of land on Chickamauga Lake (Tract No. XTCR–185PS) in Hamilton County, Tennessee.

E3. Grant of Permanent easement to Arab Water Works Board for a raw water pump station affecting approximately 0.008 acre of land on Guntersville Lake (Tract No. XTGR–144PS) in Marshall County, Alabama.

E4. Land exchange by the United States Department of Agriculture, Forest Service, involving 1.47 acres of former TVA land on Hiwassee Lake (a portion of Tract No. XTFBR–1) in Cherokee County, North Carolina, for 9.45 acres of private land of equal value.

E5. Abandonment of easements over Tract Nos. CGL–2 through CCL–10, a portion of Tract No. CGL–11, and CGL–12 through CGL–44 on the Cleveland-Georgia State Line Transmission Line right-of-way in Bradley County, Tennessee.

E6. Abandonment of an easement over a portion of Parcel M on the Norris-Knoxville Transmission Line easement in Anderson County, Tennessee.

E7. Relocation of an easement affecting approximately 9.21 acres of TVA's Elk Mills-Mountain City 69–kV transmission line right of way (Tract Nos. MCT–79, –80, and portions of MCT–78 and –81) in Johnson City, Tennessee.

E8. Public auction sale of a portion of the East Cleveland Ocoee No. 1 69-kV transmission line property (Tract No. XOR–11) in Bradley County, Tennessee.

F—Unclassified

F1. Filing of condemnation cases.

F2. Grant of an exclusive license under Patent No. 4,885,021 to Jimmie L. Elrod, with rights to sublicense, of a process for manufacturing an improved urea product.

Information Items

1. Revision to the style of the power contract with the City of Knoxville.

2. Filing of a condemnation case.

3. New investment manager and proposed new Investment Management Agreement between the Tennessee Valley Authority Retirement System and Western Asset Management Company.

4. Grant of easement to the City of Franklin, Tennessee for a road right-of-way.

5. Supplement to Contract No. 91NNP–44970C with Raytheon Constructors, Incorporated, and Contract No. TV–82466V with Raytheon Engineers & Constructors (Ebasco Division), to continue completion support for Watts Bar Unit 1.

FOR MORE INFORMATION CONTACT: Please call TVA Public Relations at (615) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: May 17, 1995.

William L. Osteen,

Associate General Counsel and Assistant Secretary.

[FR Doc. 95–12542 Filed 5–18–95; 8:45 am]

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Federal Register

Monday
May 22, 1995

Part II

Department of Agriculture

Forest Service

Hydropower Applications

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AA47

Hydropower Applications

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed policy and procedures; request for public comment.

SUMMARY: The Forest Service proposes to revise current policy and procedures, implemented in February 1987, concerning administration of hydropower authorizations and the processing of proposals for hydropower projects affecting National Forest System lands. This notice contains the proposed revision, clarifies the current policy, and modifies procedures. These revisions are necessary to make agency policy and procedures consistent with regulatory changes by the Federal Energy Regulatory Commission (FERC) and to address issues raised in appeals related to authorizing hydropower projects. This proposed revision also includes revised fee structures that developers would pay for hydropower projects on National Forest System lands exempted from FERC licensing. The fees were revised to ensure that the United States receives fair market value for the use of National Forest System lands for hydropower development. Public comment is invited.

DATES: Comments must be received in writing on or before July 21, 1995.

ADDRESSES: Send written comments to Director of Lands (2770), 4th Floor, South Wing, Auditors Building, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this proposed policy in the Office of the Director of Lands, 4th Floor, South Wing, Auditors Building, 201 14th Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:30 p.m. Those wishing to inspect comments are encouraged to call ahead (202–205–1367) to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Questions about this proposal or requests for the entire Forest Service Handbook 2709.15, Hydropower Handbook, should be addressed to J. Kenneth Myers, Assistant Director, Realty Management Group, Lands Staff 202–205–1248.

SUPPLEMENTARY INFORMATION:

Background and Need for Policy

Presently, there are more than 240 non-Federal hydropower projects on National Forest System lands that are either licensed or exempted from licensing by the Federal Energy Regulatory Commission (FERC). Hydropower developers must receive authorization from both FERC and the Forest Service to construct and operate projects on National Forest System lands. The Forest Service is authorized under the Federal Power Act (16 U.S.C. 791 *et seq.*) to set mandatory terms and conditions in a FERC license necessary to protect National Forest System resources. The Forest Service also has authority under the Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1701) to issue special use authorizations for the occupancy and use of National Forest System lands for hydropower purposes. Both the Forest Service and FERC must review applications for proposed hydropower projects for adequacy and prepare environmental analyses under the National Environmental Policy Act (42 U.S.C. 4371 *et seq.*).

Hyrdopower development proposals affecting National Forest System lands nearly quadrupled in 1981 as a result of legislation promoting the construction of energy projects utilizing renewable resources, namely, the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 260) and the Energy Security Act of 1980 (Pub. L. 96–294; 42 U.S.C. 8855). In 1984, the Supreme Court in *Escondido Mutual Water Co.* v. *LoJolla Band of Mission Indians,* 466 U.S. 765 (1984) (hereafter ''Escondido ruling''), clarified the role of the Secretary of Agriculture in the licensing of hydropower projects on National Forest System lands. The Escondido ruling makes it clear that when National Forest System lands are to be occupied by a hydropower project, the Secretary may impose conditions on a FERC license necessary for the adequate protection and utilization of the National Forest. This affirmation of the Secretary's authority was incorporated into a February 1987 revision of Forest Service Manual Chapter 2770, which sets our broad direction to Forest Service managers on how to respond to applications for FERC licenses. Simultaneously, the agency issued a new Handbook (FSH 2709.15) in February 1987 to provide field direction on hydropower licenses and permits.

In August 1989, the forest Service initiated a process to identify the topics or aspects of the agency's hydropower project direction that need revision.

Numerous modifications to existing policy and procedures were identified during the process. As a result, the agency is proposing a revision of all hydropower direction in the Manual and Handbook. A discussion of the important modifications follows. Because of the length of the Handbook, only the proposed Manual direction and the following parts of the Handbook are set forth at the end of this **Federal Register** notice: (1) The Forest Service conditions for a FERC license, (2) special use authorization provisions for licensed projects, (3) direction on charging fees to hydropower developers, and (4) direction on rehabilitating dams in wilderness areas. Those interested in reviewing a copy of the entire Handbook may obtain a copy by calling the **FOR FURTHER INFORMATION CONTACT** listed in the beginning of this notice.

Modifications to Existing Policy and Procedures

1. Recognition of Hydropower as an Appropriate Use of National Forest System Lands

Current Forest Service policy recognizes hydropower as an appropriate use of National Forest Service land but the policy is not clearly stated.

In the proposed Manual revision, this agency policy is rewritten and clarified. These changes appear in the draft Forest Service Manual (FSM) in sections FMS 2770.2 and 2770.3. In summary, (1) energy is a recognized use of National Forest System lands; (2) hydropower is a valuable energy resource and a legitimate use of National Forest System lands; (3) sites with hydropower development potential are unique and rare; (4) the Forest Service will favorably consider hydropower development that does not conflict with other important uses or allocations of National Forest System resources; and (5) potential hydropower use should be carefully considered in the forest planning process.

2. Resource Balance

The Forest Service must balance energy development with protection and use of National Forest System resources. Furthermore, the agency strives to mitigate adverse environmental impacts whenever possible. The Forest Service often sets instream flow requirements and requires other measures necessary for the adequate protection and utilization of National Forest System resources. Consistent with the Escondido ruling, FERC is precluded from requiring a less stringent instream flow than the Forest Service's required flow even if their information indicates less stringent flows are justified and in the public interest.

Consistent with its responsibility to administer National Forest System lands

in the public interest, the Forest Service reviews and considers recommendations of other agencies, as well as the licensee, in developing its position. The agency, however, will not simply include recommendations of other agencies as part of its mandatory conditions. Independent analysis of all recommendations by the Forest Service is necessary to put in perspective the project's impact against the Forest Service's general responsibility to protect all National Forest System resources. The Manual direction is being revised to reflect the Forest Service's obligation to balance resource needs in arriving at decisions related to hydropower development. The proposed revisions appear in the proposed Manual in FSM 2770.3 and 2773.2.

3. Relicensing Policy

The Manual lacks specific Forest Service policy relicensing hydropower projects and the role of the agency.

Under the proposed revision, the Forest Service would use the authority under section 4(e) of the Federal Power Act to condition the license of a project being relicensed. The responsibility has been affirmed by FERC. The proposed policy would recognize that such projects have been part of the environment for 50 years or more and that the Forest Service should not attempt, by virtue of its conditioning authority, to recreate the pre-license environment. However, the agency would mitigate unacceptable impacts to resources. The proposed changes appear in the Manual in FSM 2776.

4. Unlicensed Projects

The Forest Service does not have a policy regarding unlicensed hydropower projects. Before 1976, the Federal Power Commission (now FERC) allowed the Forest Service to authorize by a special use authorization minor hydropower projects. This authority was withdrawn in 1976; however, several unlicensed projects still exit on National Forest System lands. The agency proposes policy and guidance regarding the special use authorizations for unlicensed projects which would encourage their owners to obtain appropriate authorization for FERC. This proposed change appears in the Manual in FSM 2772.24. The agency shall not authorize amendments to these projects unless they first comply with FERC's regulations.

5. Cooperative Forest Service/FERC Environmental Assessments

Until recently, the Forest Service and FERC prepared separate environmental assessments but prepared environmental impact statements as cooperating agencies. The Forest Service has recently adopted an environmental analysis process that is generally conducted cooperatively with FERC. The new process is explained in the proposed Manual in FSM 2773.

6. Recreation Plans and Development

The Forest Service proposes to clarify direction regarding recreation development and other recreation mitigation and enhancement needs associated with hydropower project development.

A new Manual section (FSM 2774) has been developed, in accordance with section 4(e) of the Federal Power Act, addressing recreation development at hydropower projects. This proposed section clarifies the licensee's full responsibility for the recreation needs resulting from project development and operation. And, even though the Forest Service could operate recreation facilities at a hydropower project according to a written agreement with the licensee, the licensee would remain financially responsible for the operation, as well as for the construction, maintenance, and replacement of the recreation facilities. Several items related to recreation plan development, operation, liability, and user fees may be the subject of voluntary and consensual agreement between the Forest Service and the licensee. These items may include, but are not limited to, licensee responsibility for construction, operation, maintenance, and replacement of recreation facilities on National Forest System lands, collection of fees to offset Forest Service operating costs, and the need for recreation planning for lands beyond the area directly influenced by the project.

7. Wild and Scenic Rivers

The Forest Service proposes to update the direction relating to hydropower development affecting designated and potential Wild and Scenic Rivers. The authority for this direction is section 7 of the Wild and Scenic Rivers Act (16 U.S.C. 1271–1287). The Forest Service proposes to prepare eligibility determinations for rivers not in the Wild and Scenic Rivers System that are affected by a hydropower proposal. Such determinations shall be prepared in a timely manner, usually accompanying the initial 4(e) report. Rivers found eligible for inclusion through this process would then be studied by the Forest Service for suitability. This Wild and Scenic River suitability study would be completed within 18 months or in conjunction with the environmental document for the hydropower project. While not legally bound to do so, it has been FERC's practice to refrain from acting upon the license application until completion of the suitability study if the Forest Service makes timely determinations. Under the proposed policy, for rivers found suitable under this process, the Forest Service shall forward recommendations for Wild and Scenic River designation to the Secretary of Agriculture for review and submission to Congress. Once a suitability determination is made and for a period not to exceed three years after Congress has received the formal recommendation for Wild and Scenic River designation from the Secretary, the Forest Service shall use its authority under section 4(e) of the Federal Power Act to protect a suitable river from impacts that would ''invade or unreasonably diminish the values'' which make it eligible and suitable for inclusion in the Wild and Scenic Rivers System. If Congress fails to take action to protect the proposed river within three years, the Forest Service shall manage the river as a multiple-use resource and resume consideration of the original hydropower proposal. The proposed changes appear in the Manual in FSM 2775.1

For Congressionally designated rivers and designated study rivers, the Manual has been updated to clarify the procedures for section 7 determinations pursuant to the Wild and Scenic Rivers Act. The updated direction is in the Manual in FSM 2775.1

8. Term of the Special Use Authorization.

Current Forest Service direction for a special use authorization of a hydropower project exempted from the FERC licensing requirements does not address the amortization or financing period of the project.

The Forest Service proposes to revise its direction for special use authorizations for exempt projects to require the issuing officer to consider the amortization and financing periods of a project in determining the term of the special use authorization. The proposed change appears in the Manual in FSM 2772.4.

9. Fees

A proposed Forest Service policy on hydropower fees for licensed projects was published in the **Federal Register** in 1984 (49 FR, p. 23902, June 8, 1984). Due to the length of time since that notice, the agency is again seeking comments on a revised fee structure

proposed in section 65.3 of the Handbook.

a. Fees for Projects Exempt from Licensing

In 1987, the Forest Service implemented policy that set fair market value for use of National Forest System lands by hydropower projects exempted from licensing by FERC at three percent of the gross power sales from the project. This was based upon a market survey of land rental fees charged for hydropower use on private land. Upon administrative appeal, that policy was rescinded pending public notice and opportunity to comment. This notice seeks that involvement. In the interim, the Forest Service has been charging fair market value for the use of National Forest System lands, as determined by appraisal. Fees for the few projects that receive an exemption from licensing from FERC are contained in section 65.3 of the Handbook.

b. Fees for Licensed Projects

To date, Forest Service policy has been that it has the authority to collect fees for hydropower projects licensed by FERC. The Forest Service, however, presently waives the collection of fees for these projects since FERC already collects fees for the use of National Forest System land; although the fees collected by FERC for run-of-the-river projects (projects that operate whereby instantaneous inflow to the project equals instantaneous outflow) are often far below the market value of the use of those lands for power purposes.

The Forest Service proposes that, for licensed projects, fees shall not be charged because to do so may be inconsistent with the Federal Power Act (16 U.S.C. 803(e)) (FSH 2709.15, sec. 65.2).This position is consistent with the Federal Land Policy and Management Act (43 U.S.C. 1702(a)(9)) which does not require the collection of fees where another statute, in this case the Federal Power Act, also provides for fee collection.

10. New Mandatory 4(e) License Conditions

The Forest Service is proposing to update and revise those conditions required to be incorporated in all licenses issued by FERC for projects occupying National Forest System lands. These conditions would be applied to all proposed projects that would occupy National Forest System lands. Once these conditions have gone through the public notice process and are included in the final Handbook, they will not be subject to appeal under Department of Agriculture administrative appeal regulations at 36 CFR 215 and 251. The proposed revisions of mandatory license conditions appear in the draft Handbook in section 55.6, exhibit 01.

11. New Special Use Authorization Provisions

The Forest Service proposes to revise the special use authorization conditions for hydropower projects (FSH 2709.15, sec. 77, ex. 01). These revisions are based on issues raised in appeals related to the open-ended nature of special use authorization conditions. Those provisions identified as mandatory will no longer be subject to appeal if they are incorporated into the final notice of policy.

12. Other License and Special Use Authorization Conditions

Other proposed conditions which may be used or adapted for use for a proposed project have also been developed in standardized form (Form FS 2700–4g) and are proposed in the Handbook. These conditions may be applied to projects as site-specific needs dictate. Their application is appealable, since the authorized Forest Officer has the discretion to require them. These conditions can be found in the Handbook in section 55.6, exhibit 01, and in section 77, exhibit 01.

13. Open-ended Nature of the Special-use Authorization

Under existing procedures, the licensee of a FERC-licensed hydropower project on National Forest System lands obtains a special use authorization from the Forest Service after FERC issues a license. (The FERC license contains an explicit clause to this effect as a condition of the license.) This procedure places the licensee in the awkward position of accepting a license without knowing what conditions the special use authorization may impose on the project's operation.

The Forest Service proposes to revise the Handbook procedures to limit the use of open-ended Forest Service conditions in the license (issued by FERC) and in the special use authorization issued by the Forest Service (Form FS–2700–4g); instead, the Forest Service would provide prospective licensees with a special use authorization prior to, and contingent upon, issuance of a license. This reversal of the special use authorization process will ensure that licensees will know ahead of time the requirements and costs associated with the special use authorization throughout the term of the license. In order to guard against modification in the design or operation of the project subsequent to issuance of the special use authorization, the special use authorization would contain a provision which states that it is to become effective only if the project is licensed substantially as it was proposed during the time the Forest Service was developing the conditions for the special use authorization. These changes would require modification of the Forest Service special use authorization (FSH 2709.15, sec. 77, ex. 01, Form FS–2700–4g) and of the FERC license conditions currently required by the Forest Service (FSH 2709.15, sec. 55.6, ex. 01, condition 101).

14. Revocation of the Special Use Authorization

Current policy provides for revocation of a hydropower project special use authorization based on breach of the terms or conditions therein or for reasons to further the public interest.

Since FERC already has procedures in place which permit revocation of the license upon a public interest determination, the Forest Service believes that revocation of a special use permit on the basis of the public interest is redundant and adds unnecessary uncertainty to operations under the license. Therefore the Forest Service proposes to eliminate public interest as a basis for revocation of the special use authorization. The proposed change appears in the Handbook in section 77, exhibit 01, condition V.B.

15. Modification of the Special Use Authorization

At any time during the license term, which varies from 30 to 50 years, FERC may reopen and amend the license if it is in the public interest. Furthermore, FERC must review the project as a new proposal when the licensee applies for a license renewal when the license term ends. Currently, FERC licenses contain a mandatory condition under section 4(e) of the Federal Power Act that allows the Forest Service to unilaterally change the terms of special use authorizations for hydropower projects after 30 years, subject to loosely defined guidelines.

Forest Service special use regulations (36 CFR 251) provide for revision of special use authorization conditions at specified intervals to reflect changing times and conditions if the term of the special use authorization exceeds 30 years.

Based on its review, the agency proposes to provide for revision of conditions in hydropower project special use authorization only if the project is amended or when the license terminates and the relicensing process is

initiated. In those cases where the Forest Service determines that special use authorization revision is necessary and appropriate prior to license termination or project amendment, the agency proposes to petition FERC to reopen the license. If FERC grants a Forest Service petition, FERC will be able to balance the need to amend the license against the hardship such amendment would cause the licensee. The Forest Service believes this system is more equitable than the current unilateral right of the agency to periodically change a special use authorization if its term is greater than 30 years. Under this proposal, the Forest Service would no longer require a section 4(e) condition for reopening the FERC license at intervals. This proposed change appears in the draft Handbook in section 77, exhibit 01, condition I.D.

16. Continuation of the Special Use Authorization During Annual Licenses

The current Forest Service special use authorization does not provide for any interim authorization between termination of the original license and issuance of a new license through the relicensing process. During this period, a hydropower project operates on an annual license, which generally is granted and renewed by FERC as a matter of course until relicensing is completed.

The Forest Service proposes to modify the terms and conditions of the special use authorization for hydropower projects to provide that it remains in force for a particular project during relicensing as long as (1) FERC issues annual licenses and (2) there is not a critical need to immediately modify the authorization to provide for protection and management of National Forest System resources before the issuance of a new license and special use authorization. The proposed change appears in the draft Handbook in section 77, exhibit 01, condition II.A.

17. Improvement Relocation

The current special use authorization for hydropower projects requires the licensee to move hydropower and appurtenant facilities, if necessary, to accommodate future government access needs. This provision subjects the license to uncertainty regarding project costs. Accordingly, the Forest Service proposes to modify this provision slightly. Rather than speaking solely to relocation of facilities, the proposed direction would recognize that modification of hydropower facilities also may be appropriate under certain circumstances. The special use authorization also would make explicit that this provision would apply only in furtherance of Federal Government purposes. In other words, the licensee would not incur additional costs to accommodate other forest users absent a Federal need. Instead, other forest users would have to pay for facility relocation or modification expenses resulting from their actions or needs. The proposed change appears in the Handbook in section 77, exhibit 01, condition III.I.

18. Nonexclusive Use of National Forest System Lands

The Forest Service may permit other uses of National Forest System lands within FERC-licensed project boundaries which do not materially interfere with the hydropower project. To this end, the special use authorization expressly prohibits exclusive use of National Forest System lands for project purposes and authorizes other nonconflicting uses on lands within a FERC-licensed project boundary. On the other hand, FERC typically authorizes licensees to exclude other uses from lands within the project boundary and holds the licensee responsible for accidents occurring therein. Due to this inconsistency between the Forest Service and FERC requirements concerning exclusive use of project lands, licensees contend that they may be held liable in tort claims for injuries occurring on project lands by users over which they had no knowledge or control.

The agency agrees that the licensee should not be held liable for injuries or damage caused by the actions of another Forest Service permittee if the licensee had no knowledge of or control over the other permittee. The Forest Service does not believe it is in the interest of sound management of National Forest System lands to change its policy of authorizing nonconflicting uses within the licensed boundary; however, the agency does believe it is appropriate to revise the standard terms and conditions of the special use authorization for licensed or relicensed projects to permit the exclusion of the public from certain areas within the project boundaries for safety reasons. This proposed revision appears in the draft Handbook in section 77, exhibit 01, as condition I.G.

19. Plan Approvals, Amendments, and Approval Authority

Current license and special use authorization provisions reserve to the Forest Service authority to approve project construction, design and mitigation plans. Based on this authority there is the potential for delays and additional costs resulting from (1) required Forest Service approval of plans, (2) Forest Service authority to modify plans, (3) Forest Service authority to require amendments to the project, (4) Forest Service authority to suspend construction operations for noncompliance with the terms of the special use authorization, and (5) Forest Service final approval authority. There is some question regarding the extent to which the Forest Service can exercise control over a FERC license through this reserved authority.

In order to provide the licensee greater certainty regarding project operation, the Forest Service proposes to modify its standard 4(e) license condition that currently allows the Forest Service to impose changes in the operation and location of project facilities once a project has been licensed and issued a special use authorization. The intent of this proposal is to limit the discretion of the Forest Service by requiring Forest Service consistency in the agency's review and approval of project plans. For example, if the Forest Service had initially approved the concept of a powerhouse on the south side of a stream, it should not require the licensee to move the powerhouse to the north side during review of the final plan absent compelling information (justifying the change) not available during the initial review.

The proposed license conditions also provide for expedited higher level resolution of disputes regarding Forest Service approval of plans and Forest Service imposed suspensions. While the Forest Service will consult with FERC and the licensee on such disputes to the extent possible, it ultimately is and will remain the Forest Service's responsibility to make the final determination when licensee actions affect surface resources on National Forest System lands. Note that FERC has responsibility for dam safety and overall public safety, and therefore the Forest Service should not interfere with FERC's responsibilities in these areas. These changes appear in the Handbook in section 55.6, exhibit 01, conditions 102, 105, and 106.

20. Annual Review of Project

A standard license condition used by the Forest Service requires the licensee to meet annually with the Forest Service and review the project with a subsequent report to FERC. In order to reduce the amount of paperwork and reviews and to increase flexibility, the Forest Service proposes to modify the condition to require a meeting only every 5 years or for a period mutually agreeable to the Forest Service and the

licensee. The proposed change is in the draft Handbook in section 55.6, exhibit 01, condition 104.

21. Project Rehabilitation in Wilderness

The existing Manual and Handbook do not address hydropower project maintenance and rehabilitation in units of the National Wilderness Preservation System. These projects were in place before the establishment of the wilderness area. Direction would be incorporated in the Hydropower Handbook with this proposed revision. Maintenance and rehabilitation of hydropower projects in wilderness is necessary for safety and other reasons but it would be achieved subject to the provisions and intent of the Wilderness Act (16 U.S.C. 1131–1136). Decisions on access to the project would consider, among other things, the type of rehabilitation, the most reasonable and efficient method to conduct such work, the manner in which the original project was constructed, and ways in which to minimize the impact on wilderness values. Due to the restrictions imposed by the Wilderness Act, project rehabilitation must often be done by primitive means and will be more costly than similar project maintenance and rehabilitation outside designated wilderness. Nevertheless, necessary project rehabilitation would be allowed. The proposed revision is in the handbook, section 64.7.

Environmental Impact

This proposed policy would establish direction to Forest Service employees on the review, authorization, and administration of hydropower proposals on National Forest System lands. The environmental impacts of proposed projects will be addressed in environmental documents specific to each proposed project. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180, Sept. 18, 1992) excludes from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The agency's preliminary assessment is that this policy falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. A final determination will be made upon adoption of the final policy.

Controlling Paperwork Burdens on the Public

This policy does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR 1320 and, therefore, imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) do not apply. The Forest Service uses information provided to FERC as a basis for reviewing hydropower project impacts on National Forest System lands. Any further additional information is covered by the Forest Service's special use regulations (36 CFR part 251).

Regulatory Impact

This proposed policy has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant rule. The policy will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, use fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this proposed policy is not subject to OMB review under Executive Order 12866.

Moreover, this proposed policy has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act. In short, little or no effect on the National economy will result from this policy, since this action consists primarily of technical and administrative changes to existing policy and procedures. In fact, it may reduce costs to the Government and users of the National Forest System.

Takings Executive Order

This proposed policy has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that this proposed policy does not pose the risk of taking of Constitutionally protected private property.

First, special use authorizations are not private property compensable under the Fifth Amendment if taken by the Government. The special use authorization is a benefit or privilege bestowed on a private individual to use National Forest System lands. In the event that special use authorizations are found to have certain contractual rights associated with them, those rights are consensual in nature and require the prior informed consent of the parties to form the agreement. Such consensual agreements generally do not result in takings claims against the Government. Finally, the proposed policy does not purport to modify the existing special use authorizations. Instead, only special use authorizations that will be issued after the date this guidance is adopted will be subject to the revisions and clarification described herein.

Comments Invited

The proposed policy and procedures for hydropower uses of National Forest System lands would replace existing policy and procedures contained in the Forest Service Manual (FSM 2770) and Forest Service Handbook (FSH 2709.15). The text of the Manual and sections of the Handbook containing the Forest Service standard license 4(e) conditions and the Forest Service special use authorization conditions for licensed projects are set out at the end of this notice. Single copies of the entire Handbook are available free of charge upon request to the **FURTHER INFORMATION CONTACT** listed at the beginning of this notice. The Forest Service invites written comments and will analyze and consider those comments in the development of the final notice of policy which will be published in the **Federal Register**.

Dated: May 15, 1995.

David G. Unger,

Associate Chief.

Proposed Manual Revision

Note: The Forest Service organizes its directive system by alpha-numeric codes and subject headings. Only those sections of the Forest Service Manual and Handbook that are the subject of this notice are set out here. The audience of this direction is Forest Service employees charged with reviewing, processing, and approving hydropower proposals on National Forest System lands.

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Chapter 2770—Federal Power Act Projects

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Title 2700—Land Uses Management

Chaper 2770—Federal Power Act Projects

This chapter covers the review of proposals for hydropower projects; the use of authority granted by section 4(e) of the Federal Power Act (16 U.S.C. 797(e)) to set conditions in licenses for hydropower projects issued by the Federal Energy Regulatory Commission (FERC) for the protection and utilization of National Forest System lands; the granting of special-use authorizations for hydroelectric projects; and the granting of special-use authorizations for primary transmission lines subject to licensing by FERC that are partly or wholly on National Forest System land. The chapter also covers the relationship of the Forest Service and FERC during project planning, construction, and operation.

2770.1—Authority

See FSM 2701.1 for statutory authorities that govern the general issuance and administration of special use authorizations on National Forest System lands. The following statutes and regulations specifically govern the issuance and administration of hydropower projects on National Forest System lands:

1. *The Federal Power Act of August 26, 1935 (49 stat. 847; 16 U.S.C. 797).* This act grants the Forest Service the authority to require conditions in a Federal Energy Regulatory Commission (FERC) license for a hydropower project on National Forest System lands.

2. *The Wild and Scenic Rivers Act of October 2, 1968 (82 Stat. 906; 16 U.S.C. 1271–1287).* This act, specifically in sections 7(a), 7(b) and 5(d), sets forth Forest Service responsibilities for determining acceptability for projects that impact designated and study wild and scenic rivers. Section 7 gives the Secretary of Agriculture the authority to determine whether a proposed project would be on or directly affect a wild and scenic river or would degrade or unreasonably diminish the values for which the river was designated. Under section 5(d), the Forest Service is authorized to study rivers for suitability for designation as wild and scenic.

3. *Title V. Section 501, Federal Land Policy and Management Act of October 21, 1976, as amended (90 Stat. 2743; 43 U.S.C. 1761–1771).* Title V of the Federal Land Policy and Management Act (FLPMA) authorizes the Secretary of Agriculture to issue, renew, or grant permits or easements to occupy, use, or traverse National Forest System lands for the generation, transmission, and distribution of electric power. Under section 501, as amended by the Energy Policy Act of October 24, 1992 (106 Stat. 2776; 42 U.S.C. 13201), permits or easements are not required for the continued operation of projects licensed by FERC or exempted as of October 24, 1992, unless additional project area or the project had received a permit or easement under section 501 of FLPMA at some time in the past.

4. *Title 36, Code of Federal Regulations, Part 297, Subpart A.* This regulation provides direction concerning projects affecting wild and scenic rivers administered in whole or in part by the Secretary of Agriculture.

2770.2—Objectives

1. To facilitate hydropower production where it is compatible with the purposes for which a National Forest was created or acquired.

2. To ensure that planning, construction, and operation of hydropower projects are performed in a manner that provides adequate protection and utilization of National Forest System lands and resources.

3. To ensure that Forest Service planning and the evaluation of the hydropower proposals recognize the rarity of sites which are suitable for potential hydropower development because of a unique combination of resources and circumstances.

2770.3—Policy

1. Hydropower development is an appropriate use of National Forest System land, unless one or more of the following circumstances exist:

a. Hydropower development is inconsistent with and would interfere with the purposes for which the affected area was created or acquired as determined by the following: The Organic Administration Act, the Multiple Use-Sustained Yield Act, subsequent acts making special designations within the National Forest System, and legislation or Presidential proclamation specifically establishing a National Forest.

b. Hydropower development is inconsistent with the management direction in the Forest land and resource management plan, and significant adverse effects on the

management and utilization of National Forest System resources cannot be mitigated sufficiently to achieve plan consistency with the Forest plan.

c. The project is not in the public interest (FSM 2771.25)

2. Weight energy resource development with the protection and utilization of other National Forest resources when determining what mitigation is necessary to provide the best balance of protection and utilization of those resources.

3. Cooperate and coordinate activities in the development of the Nation's energy resources for hydropower with the Federal Energy Regulatory Commission (FERF); Federal, State, and local resource agencies; tribal governments; coordinating bodies, such as the Northwest Power Planning Council; and potential developers.

2770.4—Responsibility

2770.41—Chief

1. For projects proposed in designated wilderness areas or other special areas which require Presidential approval:

a. The Chief reserves authority to approve reports and sign correspondence that make recommendations to the Secretary for approval of projects when the Forest Service considers them to be in the public interest, and

b. The Chief may deny approval for projects when the Forest Service considers them not to be in the public interest (FSM 1923 and FSM 2323).

2. The Chief also reserves the authority to approve a Forest Service recommendation to FERC that the Federal Government take over a project whose license period is ending (FSM 2771.33).

2770.42—Director of Lands, Washington Office

Except for the authority reserved to the Chief (FSM 2770.41), the Director of Lands, Washington Office has authority and responsibility to:

1. Approve reports and sign correspondence to the Federal Energy Regulatory Commission (FERC) relating to activities under the Federal Power Act, as amended.

2. Represent the Department of Agriculture in contacts with FERC at the National level in matters relating to hydropower projects (FSM 1043).

3. Coordinate the review of matters pertaining to hydropower projects with other agencies of the Department.

4. Control the assignment of Forest Service personnel as witnesses in FERC hearings, secure Office of the General Counsel review, and approve testimony prior to its being filed with FERC.

5. Review prior to signature, any Regional Forester decision for hydropower project proposals involving section 7 of the Wild and Scenic Rivers Act. (See review and routing procedures in FSH 2709.15, sec. 24.41)

6. Review prior to signature, any Regional Forester decision involving section 4(e) of the Federal Power Act, except when the Director specifically waived such a review because the Regional Forester has staff sufficiently experienced in hydropower procedures. (See review and routing procedures in FSH 2709.15, sec. 52.2)

7. Approve recommendations to FERC for the Federal Government to take over hydropower project facilities (FSM 2771.33).

2770.43—Regional Forester

The Regional Forester has authority and responsibility to:

1. Subject to the delegations of authority to the Washington Office Director of Lands in FSM 2770.42, paragraphs 5 and 6, approve reports and signed correspondence to FERC on behalf of the Secretary of Agriculture relating to licensing activities under the Federal Power Act, as amended, including reports under section 4(e) of the Federal Power Act, except as noted in the following paragraph 8. This authority may not be redelegated.

2. Establish Region-wide quidelines for analysis and administration of hydropower projects on National Forest System lands.

3. Coordinate with FERC staff as necessary.

4. Maintain an information base for use in managing Federal Power Act project activities.

5. Respond to FERC on behalf of the Secretary of Agriculture on applications for licenses. Coordinate review of applications for FERC licenses, field investigations, and preparation of 4(e) reports.

6. Respond to FERC on behalf of the Secretary of Agriculture on applications for preliminary permits and exemptions.

7. Establish procedures for contacting licensees or special-use holders at least 5 years prior to the expiration of their license or special-use authorization to ascertain their intentions concerning continuation of the project.

8. For projects proposed in wilderness areas or other areas which require Presidential approval:

a. Prepare, for the Chief's review, the environmental impact statement (EIS) necessary for the Secretary to make recommendations to the President concerning such projects.

b. Approve reports recommending to the Chief approval of projects when the Forest Service considers them to be in the public interest.

c. Approve reports and sign correspondence for denial of approval when the Forest Service considers projects not to be in the public interest.

The authority to sign the recommendation to the Chief or to deny approval for a project may not be redelegated.

9. Subject to the delegation of authority to the Washington Office Director of Lands (FSM 2770.42, para. 5 and 6) approve reports and sign correspondence to FERC on behalf of the Secretary of Agriculture relating to decisions made under section 7 of the Wild and Scenic Rivers Act for hydropower projects.

10. As appropriate, authorize Forest Supervisors to correspond directly with FERC on all administrative and construction matters during construction and operation of a project.

11. Issue special-use authorizations for hydropower projects that have been licensed or exempted from licensing by FERC. The authority to issue special-use authorizations for these projects may be redelegated to the Forest Supervisor, but the authority may not be redelegated by the Forest Supervisor to lower level officials.

2770.6—Federal Energy Regulatory Commission (FERC) Responsibility and Authority

Forest Service officers must coordinate actions regarding hydropower matters with the Federal Energy Regulatory Commission (FERC). Review the information regarding FERC in FSH 2709.15, chapter 10.

2771.—Forest Service Involvement With FERC on Hydropower Projects

For a summary of the typical steps involved in the hydropower approval and administration process, see FSH 2709.15, sec. 28.

2771.1—Response to Applications

2771.11—Response to License Applications

Use the 4(e) report (FSM 2771.2) to state the official position of the Secretary regarding the licensing of specific projects affecting National Forest System land and resources (FSH 2709.15, ch. 50). Where appropriate, include comments on the effects of the project on the programs of the Department of Agriculture. Also, see FSM 2774.5 for coordination with license applicants on recreation project plans.

2771.12—Response to Preliminary Permit Applications

The Regional Forester must provide comments to FERC on potential problems, concerns, and conditions for applications for preliminary permits on projects affecting National Forest System lands and resources. Do not prepare a 4(e) report for a preliminary permit; submit these comments through correspondence.

2771.13—Response to Exemption Applications

The Regional Forester shall identify potential problems and provide comments and recommendations to FERC on applications for exemptions. Incorporate standard and special conditions required on exemptions in the special-use authorization. Do not prepare 4(e) report for an exemption; submit these comments through correspondence.

2771.2—Requirements

2771.21—Section 4(e) Reports

Respond to a Federal Energy Regulatory Commission (FERC) notice that an application for license is ready for environmental analysis with a report pursuant to section 4(e) of the Federal Power Act (hereafter called a 4(e) report) for any project that would occupy National Forest System land. An original and 8 copies of the 4(e) report must be provided to FERC within 60 days of the FERC notice. FERC's regulations allow FERC to consider 4(e) conditions filed after the 60-day deadline as recommendations rather than mandatory conditions. The exception is when FERC grants the Forest Service an extension of time because of extenuating circumstances or because the Forest Service and FERC are conducting a cooperative environmental analysis under the National Environmental Policy Act (NEPA). In these cases the Forest Service must provide preliminary 4(e) reports within the 60-day timeframe and final 4(e) conditions within 45 days after the cooperative NEPA analysis is completed (FSH 2709.15, sec. 13.32).

Regional Foresters shall transmit draft 4(e) reports (preliminary and final) to the Washington Office Director of Lands for procedural review prior to the Regional Forester's decision and transmittal to FERC in conformance with the review and routing procedures in FSH 2709.15, section 52.2. However, if the Washington Office Director of Lands notifies the Regional Forester that such reviews are not necessary because of sufficient Regional staff experience in hydropower matters, the Regional Forester may send 4(e) reports to FERC without Washington Office review. The Regional Forester shall send copies of the signed 4(e) reports to the Washington Office Director of Lands.

The 4(e) report should provide FERC with:

1. A statement of the conclusion as to the project's consistency or interference with the purposes for which the National Forest was created or acquired, and as appropriate, advice on whether the project is in the public interest (FSM 2771.24 and 2771.25 and FSH 2709.15, sec. 27).
2. Appropriate comments regarding the project application for license.
3. Conditions (FSM 2771.22) to be included in the FERC license necessary for the adequate protection and utilization of the National Forest System lands and resources (FSH 2709.15, ch. 50).
4. The appropriate environmental documentation and documentation of decision in support of the conditions that the Forest Service will require in the license 4(e) conditions) and in the special-use authorization (FSH 2709.15, ch. 30).
5. A copy of the special-use authorization that will be issued if the project is licensed (FSH 2709.15, sec. 77). See FSH 2709.15, chapter 50, for instructions on responding to FERC under various situations.

2771.22—Section 4(e) Conditions

For a project which would occupy National Forest System lands, the Forest Service may impose conditions through the 4(e) report the FERC must make part of any license it issues for the project. Such conditions must be reasonable and necessary for the adequate protection and utilization of National Forest System lands and resources.

Do not impose the recommendations of other agencies as 4(e) conditions without an independent analysis by the Forest Service so that they become Forest Service conditions. Generally, limit 4(e) license conditions to those measures that have substantial effects on the economics or siting of the project. Other conditions of a more routine nature relating to project impacts on National Forest Systems lands may be imposed through the special-use authorization (FSM 2772.3). (See FSH 2709.15, sec. 21.4, for limits on the scope of 4(e) conditions for amendments to a license see also FSH 2709.15, sec. 52.23, 55.1, and 55.6). Chapter 70 of the Handbook contains direction on the forms to complete for various special-use permits for hydropower projects. (See FSH 2709.15, sec. 77, ex. 01 through 04).

2771.23—Projects Exempted From Licensing

An exemption from licensing (FSH 2709.15, sec. 12) by FERC does not grant or imply a grant to any land-use rights to the exemptee. Advise FERC of substantial concerns regarding potential effects of exempt project proposals on National Forest resources. Make an independent determination of whether to authorize such projects (FSM 2772.2).

2771.24—National Forest Purposes

FERC may not license projects which it finds would be inconsistent and that would interfere with the purposes for which the National Forest was created or acquired (section 4(e) of the Federal Power Act). Those purposes are defined in the Organic Administration Act of 1897 (16 U.S.C. 473 et. seq.) and expanded by the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528 et. seq.) and subsequent acts (FSM 2701.1). In addition, some National Forest enabling legislation or proclamations state specific purposes. Since Congress has the authority to change or expand the National Forests, those purposes do not have to have been stated at the time the National Forest was originally reserved or acquired to be ''purposes for which they were created or acquired.'' Specific legislation (the Wilderness Act for example; 16 U.S.C. 1131–1136) and specific designations (Research Natural Areas for example) also determine the purposes for which portions of the National Forests are created or acquired.

Through the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1601 *et seq*; as amended by the National Forest Management Act of 1976), Congress requires land and resources management planning to determine management direction for the National Forests. Such plans must be consistent with the purposes for which those lands were created or acquired. Therefore, also use the Forest land and resource management plan in determining the consistency of a project with the purposes for which the National Forest was created or acquired. Fully disclose to FERC in the 4(e) report, a recommendation concerning the nature and extent of any significant inconsistency or interference the project would cause for those purposes. FERC makes the decision whether to authorize the project through licensing. In so doing, FERC makes the actual determination regarding whether the project is inconsistent with or would interfere with the purposes for which the National Forest was created or acquired.

2771.25—Recommendation That Project is Not Public Interest

The Forest Service is not responsible for determining or recommending whether a hydropower project (with an application for license) is in the public interest. Consider making such a recommendation to FERC if the available information supports such a conclusion. Make sure the 4(e) report fully explains the nature and extent of reasons for the Forest Service recommendation. Use the Forest land and resource management plan as a basis for evaluating the needs of the public.

FERC makes the actual determination of whether the project is in the public interest under section 10(a) of the Federal Power Act.

2771.3—Coordination

2771.31—Other Actions Within Project Boundaries

Do not initiate non-project related resource management activities or authorize use by others on lands covered by a hydropower project use authorization or license unless it is determined that such activities or uses will not adversely affect project operations and will not conflict with the terms and conditions of the project special-use authorization or license. Also, prior to granting special-use authorizations to third parties, the authorized officer must review with the Federal Energy Regulatory Commission (FERC) and the affected licensee proposed non-project uses within the boundaries of licensed projects.

2771.32—Project Surrender, Termination, or Abandonment

FERC is responsible for procedures for termination, surrender, and abandonment of licensed projects (18 CFR Part 6). See FSM 2772.5 for termination requirements for Forest Service special-use authorizations (36 CFR 251.60).

2771.33—Federal Takeover of Project Facilities With Expired License

Federal takeover of a project whose license period is ending is a rarely used process which requires Congressional action. If warranted, the Forest Service may file a recommendation with FERC that the United States exercise its right to take over a hydropower project no earlier than five years before the license expires and no later than the end of the comment period for a notice of an application for a new license, a nonpower license, or an exemption. The Forest Service rarely would propose to the Federal Energy Regulatory Commission (FERC) that the United States take over a project. The Chief must approve a Forest Service recommendation for the Federal Government to take over project facilities. If a project is taken over, the Federal Government must compensate the licensee for the net investment. See Title 18, Code of Federal Regulations, Part 16, Subpart C, sections 16.14 through 16.17, for procedures for recommending to FERC for Federal takeover of a project. See FSM 2716.4 for direction regarding Forest Service takeover of unlicensed projects by default, surrender, abandonment, and so forth.

2771.4—Federal Power Act and Powersite Withdrawals

(For further direction see FSH 2709.15, sec. 21.8.)

2771.41—Exchange Within Federal Power Act and Powersite Withdrawals

Lands withdrawn for power purposes within licensed project boundaries are available for disposal through exchange or other means only after:

1. FERC vacates or amends the withdrawal, and thus opens (restores) the lands for exchange and other related actions, or

2. FERC makes a determination that the lands may be conveyed subject to a reservation in the patent or deed under section 24 of the Federal Power Act.

2771.42—Retraction of Licensed Project Boundaries and Withdrawals

When a project boundary contains National Forest System lands that are in excess of what is needed for the project, the authorized officer should formally request that the licensee and FERC retract the boundary; then, request FERC to vacate (terminate) the withdrawal of these excess lands.

When withdrawn lands are associated with an inactive project (that is, one not currently authorized or being considered by FERC for some type of action), request FERC to vacate the withdrawal.

2772—Special-Use Authorizations

FSH 2709.11, Special Uses Handbook, provides direction on the authorization and administration of special uses on National Forest System land. Chapters 60 and 70 of FSH 2709.15, Hydropower Handbook, provide detailed instructions for special-use authorizations related to hydropower projects on the following forms: Form FS–2700–4e, Special-Use Permit Exempted or Unlicensed Hydropower Project; Form FS–2700–4g, Special-Use Permit, Licensed Hydropower Project; and Form FS–2700–4f, Special-Use Permit, Hydropower Investigation.

2772.1—Applications

Applicants for Federal Energy Regulatory Commission (FERC) licenses, preliminary permits, and exemptions from licensing must also apply to the Forest Service for authorization when projects involve National Forest System land (36 CFR 251 Part B; FSM 2772.25). Authorizing officers should encourage applicants to file applications for special use authorizations with the Forest Service concurrently with filing a FERC license or exemption application.

2772.2—Authorization of Projects

Project special-use authorizations shall become effective only after the project is licensed or exempted from licensing by FERC.

2772.21—Authorization of Licensed Projects

Issue special-use authorizations for all hydropower projects licensed by FERC in accordance with FSM 2772.25. If the Forest Service determines that a project (whose proponent is seeking a license) should not be constructed on National Forest System land, then the Forest Service must advise FERC, before the licensing decision is made, that the project is inconsistent or would interfere with National Forest purposes or that it would not be in the public interest. Promptly notify the Washington Office Director of Lands is issuance of a special-use authorization to a project licensed by FERC might violate a law or cause unacceptable damage to National Forest System resources before preparing a section 4(e) report.

2772.22—Denial of Special-Use Authorization to Licensed Project

Licensed projects may not be denied a special-use authorization (FSM 2772.21)

2772.23—Authorization of Projects Under Preliminary Permits

The Forest Service may issue investigative special use permits to authorize studies to be carried out by prospective applicants that have received a FERC preliminary permit. An investigative special-use permit (FS–2700–4f) may be issued to allow investigation of potential projects. This type of permit must contain conditions necessary for resource protection commensurate with the scope of investigation (FSH 2709.15, sec. 62.11 and 74).

2772.24—Authorization of Projects Exempt From Licensing

For a project exempted from licensing by FERC, the Forest Service may issue a special-use authorization (Form FS–2700–4e) if it determines the project is an appropriate use of National Forest System lands and is in the public interest. (See FSH 2709.15, sec. 53.2, for additional information on exemptions.)

2772.25—Requirement To Have Special-use Authorization

Pursuant to the Federal Land Policy and Management Act (FLPMA) of October 21, 1976, the holder of a FERC license or a hydropower project proponent who is exempt from licensing also must obtain a Forest Service special-use authorization. This requirement to have a special-use authorization applies to original licenses (first license for project) and new licenses issued as a result of relicensing. However, pursuant to the Energy Policy Act of 1992 (42 U.S.C. 13201), a special use authorization is not required for the continued operation of licensed or exempted projects that had not received a authorization under section 501 of FLPMA at any time prior to the passage of the Act unless FERC determines that additional National Forest System lands would be affected. Before passage of FLPMA, FERC licensees were not required to have a Forest Service special-use authorization. See FSH 2709.15, section 63.1, for direction regarding the reasonable and orderly phase-in of FLPMA requirements in regard to licensed and relicensed projects.

A special-use authorization is also required for the use of National Forest System lands affected by a material license amendment, even if the current license was issued prior to passage of FLPMA. See FSH 2709.15, section 63.1 for direction regarding the reasonable and orderly phase-in of FLPMA requirements in regard to amendments of license.

2772.3—Conditions

Special-use authorizations for licensed projects (Form FS–2700–4g) shall authorize the occupancy and use of National Forest System lands. In addition to the mandatory standard provisions (FSH 2709.15 sec. 72), the special-use authorization shall include those conditions and requirements which are necessary for comprehensive and compatible use of land, water, and hydropower resources consistent with the purposes for which the National Forests are managed (FSM 2772.5, and FSH 2709.15, sec. 62.13 and 72). These conditions, however, should not duplicate what is already required in the FERC license.

1. In the Forest Service special-use authorization for a FERC-licensed project (Form FS–2700–4g), do not include conditions and requirements that:

a. Substantially affect power production capability (through limits on water use or through high costs), or

b. Substantially affect facility siting. Such requirements are to be imposed through conditions in the section 4(e) report (FSM 2771.21).

2. The limitations on conditions in special use authorizations in the preceding paragraph 1 do not apply to:

a. A Federally owned dam under the jurisdiction of the Forest Service, or

b. A project exempted from licensing by FERC.

Special-use authorizations for projects exempted from licensing (Forms FS–2700–4e) by FERC must also include conditions to protect the public interest normally covered by the FERC license (FSH 2709.15, sec. 12, 62.12, and 73).

An investigation special-use permit (Form (FS–2700–4f) may be issued to allow investigation of potential projects. This type of permit must contain conditions necessary for resource protection commensurate with the scope of investigation (FSH 2709.15, sec. 62.11 and 74).

2772.4—Term

For FERC-licensed projects, issue a special-use authorization (Form FS–2700–4g) for the same term as the license. For projects exempted from licensing by FERC, the authorized Forest Service officer shall determine the term of the permit (Form FS–2700–4e), up to 30 years. Temporary facilities and investigations may be authorized for up to 3 years (Form FS–2700–4f) (FSH 2709.15, sec. 62.1).

2772.5—Revocation or Suspension of Special-Use Authorization

A special-use authorization for a FERC-licensed project (Form FS–2700–4g) has a term matching that of the license and normally is not revoked unless and until the license terminates. However, a special-use authorization for a licensed project may be revoked or suspended for breach of its conditions, if negotiations to remedy the breach in consultation with FERC such as those outlined in FSH 2709.15, section 64, fail to obtain the compliance of the holder (see also FSM 2771.32). Special-use authorizations for FERC-exempted projects may be revoked in accordance with 36 CFR 251.60.

2772.6—Special Use Authorization Fees

See FSH 2709.15, section 65 for policy on charging fees for:

1. Investigation permits,

2. Licensed project authorizations, and

3. Exempted project authorizations.

2773—Environmental Analysis

2773.1—Environmental Analysis and Documentation

(FSM 1950, FSH 1909.15, FSH 2709.15, ch. 30.) If an environmental impact statement (EIS) is to be prepared, FERC usually will be the lead Federal agency. Line officers should request FERC to designate the Forest Service as a cooperating agency when National Forest System lands are affected. When an environmental assessment (EA) is to be prepared, the Forest Service and FERC will usually perform a cooperative environmental analysis and prepare a cooperative EA.

2773.11—Licensed Projects

The Federal Energy Regulatory Commission (FERC) is responsible for National Environmental Policy Act (NEPA) compliance for projects licensed by FERC. The Forest Service is responsible for NEPA compliance on decisions regarding the determination of the conditions imposed through the 4(e) report (FSM 2771.21); and special-use permit conditions necessary for the protection and utilization of National Forest System lands; and compatibility decisions under Section 7 of the Wild and Scenic Rivers Act.

2773.12—Projects Exempted From Licensing

When National Forest System lands are involved, the Forest Service is responsible for NEPA compliance for projects exempt from licensing by FERC.

2773.2—Mitigation

Determine the effects of the project as proposed and the effects of identified alternatives. Devise alternatives which provide for mitigation of adverse resource impacts. Analyze alternatives and their associated resource protection measures, and balance resource protection needs and resource utilization needs.

1. Identify measures necessary for the adequate protection and utilization of the National Forest and

a. Include the measures in the 4(e) report which will then be incorporated into the license; as appropriate, require implementation plans as a 4(e) condition or as a condition of the special-use authorization to provide site-specific details for applying those measures on the ground; and/or

b. Include them as appropriate in the special-use authorization.

2. The effects of a project should be known before authorization is granted through the license or special-use authorization. Therefore, determine resource protection measures in the environmental analysis before authorization. The license or special-use authorization may require plans to implement the mitigation measures, but in general, the plans would not be used to determine the impacts (FSH 2709.15, sec. 55.23).

3. Required mitigation measures must be reasonable and necessary for the adequate protection and utilization of the National Forest and should be designed to prevent unnecessary impacts to forest resources. As noted in FSM 2271.22, do not require, through 4(e) conditions, measures that do not meet that standard.

4. Tradeoffs in uses of the National Forest can be evaluated and certain enhancement measures may be required through 4(e) conditions for the adequate protection and utilization of the National Forest. For example, in allowing an important hydropower development, a resource or use (such as dispersed recreation) may be severely impacted or eliminated from the affected area—an unmitigated impact. Through evaluation of the project, another related resource or use (such as developed recreation) may be enhanced by actions or developments (such as campgrounds) the licensee could provide. Such enhancements may be required through section 4(e) conditions as offsetting the impacts of the development. Carefully negotiate such enhancements with the potential licensee to obtain agreement if possible. In cases where it may be difficult to substantiate project impacts with the need for enhancement, be aware that such measures may be challenged by the potential licensee for their imposition as 4(e) conditions. Seek the advice of the Washington Office Lands Staff before requiring offsetting enhancement without the potential licensee's consent.

5. Developing offsite resources as mitigation for resources lost by development in the project area is acceptable as called for by a balanced evaluation of the effects of the project. However, it is not necessary that resource losses be mitigated by such offsite replacement. Determine whether offsite replacement is appropriate based on the evaluation of effects of the project and the balancing of the hydropower needs with resource needs; consider whether potentially lost resources are unique or in short supply; and determine the feasibility of replacing the resources. See FSM 2276.1, for offsite mitigation direction regarding projects in relicensing.

2774—Recreation Uses at Hydropower Projects

(See also FSM 2314 for additional direction.)

2774.1—Licensee Responsibility

Licensees and exemptees are responsible for providing recreation and interpretive facilities to mitigate (FSM 2773.2) the recreation pressures induced by the construction and operation of the hydropower facilities. That induced recreation need is often the result of reservoir construction or stream flow alterations that create a water attraction or new access to existing roads (such as by snow removal). These attractions may invite the recreating public to existing locations in increased numbers, to new places, and to places or at times not previously used.

Require developers of hydropower facilities that induce or displace recreational use of the National Forest to provide facilities and otherwise mitigate those increases and losses in recreation use in an appropriate manner, consistent with the Forest land and resource management plan. Specify necessary facilities and mitigation measures as conditions in the 4(e) report submitted to FERC (FSH 2709.15, ch. 50). Forest Service requirements for recreation facilities and mitigation measures must be reasonable and necessary for the adequate protection and utilization of the National Forest and its resources (Federal Power Act, sec. 4(e); 16 U.S.C. 797(e)).

Hold the licensee or exemptee responsible for construction, operation, maintenance, and replacement of recreation facilities that accommodate project-induced use or mitigate impacts from projects constructed through licenses or exemption issued by the Federal Energy Regulatory Commission (FERC). Do not relieve the licensee of the obligation to provide those facilities and to cover the costs for facility operation, maintenance, and replacement.

See FSH 2709.15, section 24.2, for additional direction on Forest Service and licensee responsibilities; in particular, see section 24.22 regarding displaced recreation uses.

2774.2—Facility Operation, Maintenance, and Replacement

Control licensee's construction, operation, maintenance, and replacement of recreation facilities on National Forest System lands through the project special-use authorization (FSM 2772, FSH 2709.15, ch. 60).

Negotiation is the preferred method of determining which party should assume operation and maintenance of licensee-constructed project recreation facilities (FSM 2774.2). If negotiations fail, the Forest Service may require the licensee to turn over operation and maintenance of these facilities on National Forest System lands to the Forest Service as long as the standards of FSH 2709.15, section 24.31 are met.

When it is desirable for the Forest Service to operate the recreation facilities (FSH 2709.15, sec. 24.3), negotiate a memorandum of understanding (FSH 2709.15, sec. 42.2) with the licensee for such operation at the licensee's expense. Ownership of facilities is not necessary for the Forest Service to operate facilities through a memorandum of understanding or license conditions. Use a collection agreement to allow the licensee to make payments for Forest Service operation, maintenance, and replacement of facilities.

Licensees may be allowed to operate Forest Service-owned facilities through the authority of the Granger-Thye Act (16 U.S.C. 580(d); see FSM 2711.7). The licensee may improve National Forest facilities and the facilities operated by the licensee under authorization of the Forest Service project special-use authorization by adding appropriate conditions from the standard Granger-Thye permit (FSM 2713.12a).

Negotiate shared financial responsibility with the licensee when facilities are constructed which accommodate both project induced recreation and non-project induced recreation.

See FSH 2709.15, section 24.3, for additional direction on determining who is responsible for operating, maintaining, and replacing recreation facilities.

Generally, do not accept ownership of recreation facilities constructed by the licensee. Such acceptance may make the Forest Service responsible for operation and maintenance of the facility, as well as replacement. If the licensee desires to transfer ownership to the Forest Service, ensure that the transfer agreement specifies the licensee's continuing responsibility, including replacement of facilities as appropriate. In addition, make sure that project-induced facilities remain within the project boundary so that they remain within the jurisdiction of the FERC license.

2774.3—Campgrounds

Campgrounds constructed on National Forest System lands, regardless

of who builds, operates, or maintains them, are to be identified and managed as National Forest campgrounds. They are subject to Forest Service standards and to National programs, such as the ''Golden Age and Golden Access Passports.''

Monitor literature produced by the licensee to ensure that campgrounds are identified as National Forest campgrounds and as licensed and/or operated by the licensee as required by a condition of the special use authorization or FERC license.

2774.4—Signs

Recreation facility signs must be from the Forest Service family of signs for campgrounds (FSM 7160 and FSH 7109.11). Give visible and equal credit in such signs to the licensee for its role in the campground development, construction, and operation, as appropriate. The licensee is responsible for the cost of such signs.

Interpretive signs for the project are the responsibility of the licensee, except to the extent they interpret the Forest Service mission or activities.

Coordinate with FERC and the licensee with regard to placement and design of signs required by FERC for the project.

2774.5—Project Recreation Plan

As part of the application for a FERC license, a project applicant normally prepares a project recreation plan to address future recreation needs associated with the project. The Forest Service should work with a license applicant to ensure that the applicant's plan adequately anticipates and plans for future recreation needs. In the plan, develop and include criteria or measurable events that will trigger future additional facility needs.

Do not use open-ended special-use authorization or 4(e) conditions for the FERC license to require unspecified future recreation developments; however, provide flexibility for modifying the project recreation plan if unanticipated needs for different recreation developments arise in the future. Keep in mind that costs for any future modifications must be within the total cost of the future recreation expansion required in the license.

2774.6—Recreation Planning During Relicensing

Recreation guidelines for relicensing existing FERC-licensed projects are the same as for original licenses. Needs induced by the project are the responsibility of the licensee, regardless of when those needs were originally induced or who is currently meeting those needs.

The Forest Service has constructed many recreation facilities in the past to accommodate recreation induced by FERC-licensed projects when the licensee would not construct the facilities. During relicensing, use appropriate 4(e) conditions (FSH 2709.15, ch. 50) to require the licensee to assume appropriate financial responsibility for those facilities constructed by the Forest Service, unless the Forest Service has reasons to retain this responsibility (see also related direction in FSM 2774.2 and FSH 2709.15, sec. 24.15).

2775—Special Management Areas

2775.1—Projects Proposed in Wild and Scenic Rivers Areas

Rivers and study rivers designated for protection under sections 3 or 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1271 *et seq.*) may not be used for hydropower projects on or directly affecting such rivers. Hydropower projects not on or directly affecting a designated wild and scenic river, but having some indirect affects on the river, may be permitted only where they do not invade or unreasonably diminish the existing wild and scenic river values (this provision also affects rivers designated for study under section 5(a) of the Wild and Scenic River Act).

By law, the Secretary of Agriculture must make the determination of whether a project is ''on or directly affecting'' the designated river or would ''invade or unreasonably diminish the values for which the river was designated,'' in accordance with section 7 of the Wild and Scenic Rivers Act. This is called a section 7 determination. This authority has been delegated to the Regional Forester, who must make this determination prior to issuance of an exemption or license by FERC on rivers administered by the Department of Agriculture. See FSM 2354.04 and 2770.4 for the delegation of authority for making this determination. For further direction on wild and scenic rivers, see FSH 2709.15, sec. 25; 36 CFR Part 297; and FSH 1909.12, ch. 8.

2775.11—Projects Proposed on All Other Waterways

The proposed use of rivers on National Forest System lands for hydropower projects must be consistent with the requirements of section 5(d) of the wild and Scenic Rivers Act which Authorizes the Forest Service to study the Suitability of rivers for wild and scenic protection through the forest planning process. Therefore, the Regional Forester must ensure that eligibility determinations have been completed for all National Forest rivers proposed for use by hydropower projects by the time of the interim 4(e) report (FSH 2709.15, sec. 25; FSM 2354). If the river is not eligible for inclusion in the Wild and Scenic Rivers System, note that fact in the interim 4(e) report to FERC. If the river is eligible for inclusion in the Wild and Scenic Rivers system, ask FERC to delay the licensing decision until the suitability determination for inclusion in the Wild and Scenic Rivers System has been completed as outlined in FSH 2709.15, section 25.3. This requirement to complete eligibility requirements and, if the river is eligible, to complete suitability determinations applies to rivers identified on the Nation-wide Rivers Inventory and to rivers identified for consideration through Forest land and resource management plans (FSM 1924).

2775.12—Wild and Scenic Rivers on Lands in Conservation Units in Alaska

Dams and hydropower plants on a designated wild and scenic river in Alaska would not be an appropriate use and could not be licensed by FERC if they are ''on or directly affecting'' the river (Wild and Scenic Rivers Act, sec. 7, and sec. 1107 of the Alaska National Interest Lands Conservation Act (ANILCA; 94 Stat. 2464; 16 U.S.C. 3167)). A transportation or utility system, including linear facilities associated with a hydropower project, may use lands within the boundaries of a designated river in Alaska National Forests when the following conditions are met (16 U.S.C. 3167(b)):

1. Facilities do not interfere with or impede the streamflow of and transportation on the river.

2. The transportation or utility system (linear facilities, such as pipelines, ditches, tunnels and powerlines; 16 U.S.C. 3162(4)) is located and constructed in an environmentally sound manner.

2775.2—Projects Proposed in Designated Wilderness Areas.

(FSM 2320), and FSH 2709.15, sec. 26.) A new hydropower project may occupy land in a wilderness only if the President approves (16 U.S.C. 1133(d)(4)). The Secretary of Agriculture is responsible for a recommendation to the President to approve a hydroelectric use in a designated wilderness. The Chief is responsible for the recommendation to the Secretary to approve such a hydroelectric use. The Regional Forester is responsible for evaluating such a proposal. The

Secretary, Chief, or Regional Forester (FSM 2770.4) may determine that a proposal is not in the public interest and dismiss the project proposal.

Even though the Forest Service is responsible for initiating a recommendation for a project in wilderness, the Federal Energy Regulatory Commission (FERC) is responsible for the environmental impact statement (EIS) needed to evaluate proposed licensing of the project (FSM 2773). Such an EIS generally is prepared with the cooperation of the Forest Service through the Regional Forester.

If the Chief determines that a proposed project in wilderness is in the public interest, the Chief transmits the EIS, along with the recommendation, to the Department of Agriculture for the Secretary's recommendation to the President for a decision. If the President approves the project and the associated use of the wilderness, the Regional Forester must submit a 4(e) report to FERC consistent with that decision.

A special-use authorization (Form FS–2700–4f) for study of a potential hydropower development and other non-ground-disturbing activities in a wilderness may be issued without Presidential approval (FSM 2772.3, and FSH 2709.15, sec. 62.11 and 74).

Existing facilities in wilderness areas that have been properly authorized by a FERC license continue to be authorized by that license. See FSH 2709.15, section 64.7, for further guidance on administering existing projects in the wilderness.

2775.3—Project Proposed in Roadless Study Areas

Roadless study areas include legislatively unreleased Roadless Area Review and Evaluation II (RARE II) areas, further planning areas, and Congressionally mandated wilderness study areas (FSM 1923 and FSM 2320).

When roadless study lands are included in an application for license for a proposed hydropower project, advise FERC through an interim 4(e) report (or other appropriate correspondence) of the study and pending land allocation decision. Recommend that FERC:

1. Reject the application for license and advise the applicant to reapply if the lands in question are allocated to non-wilderness uses that would not conflict with hydropower development, or

2. Delay the licensing decision until the land allocation decision is made, preferably through the Forest land and resource management plan. If the land use decision must be made before the forest land and resource management plan can be implemented, conduct a suitable analysis in compliance with the National Environmental Policy Act (FSM 1920; FSH 1909.12 and 1909.15).

Generally, grant investigation special-use authorizations (Form FS–2700–4f) in these areas only for study and other non-ground-disturbing activities.

2775.4—Projects Proposed in Research Natural Areas

Most surface hydropower facilities would be incompatible with the purposes of a research natural area (FSM 4063). However, the research natural area management plan may allow for hydropower or similar uses; in this case, evaluate a proposed project and respond to FERC in a 4(e) report. Coordinate advice to FERC and the issuance of any special-use authorizing actions within the research natural area with the Research Station Director.

1. If a proposed hydropower project is incompatible with the purposes of the research natural area, then:

a. In response to a notice of application to FERC for license, or in the 4(e) report, inform FERC that such surface uses would be incompatible with the purposes of the research natural area.

b. Do not issue a special-use authorization for a project exempted from licensing by FERC when the project includes surface lands within a research natural area boundary.

2. When the Station Director believes that the hydropower values that would be forgone are of greater public benefit than keeping the research natural area fully protected, the Station Director may request, with Regional Forester concurrence, that the Chief reconsider or modify the designation order establishing the research natural area (see direction on authority of Station Directors in FSM 4062).

3. In general, do not issue an investigation special-use authorization (Form FS–2700–4f) to a project proposing to use lands of a research natural area; however, a non-ground disturbing investigation special-use authorization may be issued in situations such as:

a. The research natural area's management plan allows actions which include or are similar to those proposed by the hydropower project;

b. There would be no direct or indirect modification to the ecological processes of the research natural area; for example, a tunnel under the research natural area might not adversely affect the area; or

c. The Station Director anticipates that a proposed hydropower development may have significant public benefits.

2775.41—Projects Proposed in Candidate Research Natural Areas

When candidate research natural area lands are included in an application for license for a proposed hydropower project, advise FERC of the study and pending land allocation decision. Recommend that FERC:

1. Reject the application for license and advise the applicant to reapply if these lands are allocated to non-research natural area uses that would not conflict with hydropower development, or

2. Delay the licensing decision until the land allocation decision is made, preferably through the Forest land and resource management plan. If the land use decision must be made before the land and resource management plan can be implemented, conduct a suitable analysis in compliance with the National Environmental Policy Act (FSM 1920; FSH 1909.12 and 1090.15).

Issue investigation special-use authorizations (Form FS–2700-4f) for candidate research natural areas where no ground disturbance will take place. Coordinate the issuance of any special-use authorizing actions within the candidate research natural area with the Research Station Director.

2775.5—Projects Proposed in Other Special Areas

1. Other special areas may be established by the Forest land and resource management plan or unit plan for which the Forest Service may determine that a proposed hydropower development would not be compatible. Special interest areas established by the Forest Service may include:

a. Scenic, geological, botanical, zoological, and paleontological areas (FSM 2360.2).

b. Cultural resources areas (FSM 2361).

c. National scenic or historic trails (FSM 2353.4).

d. Other special land allocations established through the forest land and resource management plan or other procedure where hydropower development would be incompatible.

2. Other special land allocations may have been established by legislation, such as national recreation areas, where hydropower development may be incompatible.

3. When hydropower use would be incompatible with the management and purposes for establishing the special area, take the following actions:

a. In response to a notice of application to FERC for license, inform FERC in the 4(e) report that such use

would be incompatible with National Forest purposes of the special management area (FSH 2709.15, sec. 26.4).

b. In response to an application for special-use authorization for a project exempted from licensing by FERC, do not issue a special-use authorization for such a project that includes lands within the special management area.

4. When project impacts can be adequately mitigated to protect the management and purposes for establishing the special management area, impose appropriate conditions on the license and special-use authorization through the 4(e) report or through the special-use authorization alone for a project exempted from licensing.

2775.51—Projects Proposed in Study Special Areas

When study special management area lands are included in an application for license for a proposed hydropower project, advise FERC of the study and pending land allocation decision. Recommend that FERC:

1. Reject the application for license and advise the application to reapply if the lands in question are allocated to non-special area uses that would not conflict with hydropower development, or

2. Delay the licensing decision until the land allocation decision is made, preferably through the Forest land and resource management plan. If the land use decision must be made before the Forest land and resource plan can be implemented, conduct a suitable analysis in compliance with the National Environmental Policy Act (FSM 1920; FSH 1909.15).

Issue investigation special-use authorizations (Forms FS–2700–4f) for study special areas, and as appropriate, carefully regulate potential ground disturbance.

2775.6—Projects Proposed in State-Designated Special Areas

The States may designate special areas, such as State wild and scenic rivers, wild trout streams, and State game refuges, which may include National Forest System land. State laws may prohibit State permits for hydropower projects on these special areas, but these laws are not binding on Federally authorized projects. However, in the spirit of cooperation, give such State laws and areas very careful analysis when considering hydropower projects. Under section 4(e) of the Federal Power Act, the Forest Service is not authorized to:

1. Impose conditions on the license to ensure protection of the State's designated special areas; or

2. Impose conditions on the license to protect other State interests not directly a result of the need for ''adequate protection and utilization of the National Forest.''

However, the Forest Service and the State may request that FERC provide protections which promote the interest of the state-designated area.

2775.7—Projects Proposed in National Monuments

FERC is prohibited from licensing a project that would occupy lands of a national monument administered by the Forest Service or other Federal agency (41 Stat. 1353; 16 U.S.C. 797(a)); such action would require an act of Congress.

2776—Relicensing

In general, follow the same procedures for projects whose owners are applying for a new license under relicensing procedures as used for those for projects whose applicants are applying for an original license. The procedural differences apply mainly to the project owners, not the Forest Service (sec. 15 of the Federal Power Act, 16 U.S.C. 808; 18 CFR Part 16, subpart B, sec. 16.8 through 16.13).

2776.1—Section 4(e) Conditions in Relicensing

The Forest Service may specify 4(e) conditions in a new license issued by FERC under relicensing procedures. Such conditions must be reasonable and necessary for the adequate protection and utilization of the National Forest as it exists at the time of relicensing.

Existing projects provide public benefits and have been in place long enough to be the ''normal'' situation where they exist. Therefore avoid disruption of these projects and carefully evaluate the need for change. However, it is essential to require reasonable measures to protect the environment. For example, it may be reasonable to provide fish passage over a dam, but not to restore a stream fishery that was converted to a lake fishery. Do not seek in relicensing offsite replacement of resources lost during the original licensing decision.

Generally, limit the resource protection measures to those which the project could afford to provide and still operate; avoid as much as possible actions that would cause projects to operate in a marginal economic condition.

2776.2—Removal of Project

If special circumstances indicate a project that is under consideration for relicensing should be removed, recommend in a 4(e) report to FERC that no new license be issued and that the area be restored. Do not use the conditioning authority under section 4(e) of the Federal Power Act to force removal of a project. See FSM 2771.33, for direction regarding Federal takeover of a project.

Proposed Handbook Revision

Following are the sections of the Hydropower Handbook (FSH 2709.15) cited in this **Federal Register** notice. For a copy of the entire Handbook, call the **FOR FURTHER INFORMATION CONTACT** listed at the beginning of the notice. This Handbook provides detailed direction to Forest Service personnel for evaluating hydropower project proposals and for coordinating with the Federal Energy Regulatory Commission (FERC). See FSM 2770 for policy and overall direction on Forest Service hydropower matters.

64.7—Administration of Projects in Wilderness Areas

Facilities in wilderness areas that have been properly authorized by a FERC license will continue to be authorized by that license. When FERC relicenses a project, the Forest Service issues a companion special-use authorization (Form FS–2700–4g), usually under the Federal Land Policy and Management Act (FLPMA) (FSM 2770.1). Since FLPMA authority cannot be used for facilities in a wilderness, use the Organic Act (16 U.S.C. 551) for the Forest Service authorization of that portion of the project in the wilderness.

These hydropower projects are considered as valid existing rights and administered as such under section 4(c) of the Wilderness Act of September 3, 1964 (16 U.S.C. 1133(c); FSM 2775.2).

Existing special use authorizations may be modified for maintenance and reconstruction work on projects in wilderness areas. Any modifications to such facilities must be made in conformance with the requirements of the license and any special-use authorization, and section 4(c) of the Wilderness Act, except that modifications to increase storage capacity or similar improvements must receive Presidential approval (sec. 4(d)(4) of the Wilderness Act).

Hydropower dams in wilderness areas must meet the requirements of Federal and State law, including the Wilderness Act, the Dam Safety Act (33 U.S.C. 467a–367n), the Federal Power Act, the

law and regulation that provides for the special use authorization, and the terms of the authorization. The Wilderness Act provides for the maintenance of existing dams and related facilities in wilderness areas if they are valid existing rights.

Maintenance can include work that will improve the safety of the dam, such as enlarging the spillway or increasing the freeboard on the dam. In some instances the installation of a water measuring device may be added when required by State law and when there is no suitable location available outside of the wilderness area.

FSM 2320 provides direction for evaluating proposed improvements and reconstruction of facilities, including access alternatives to the dam or water conveyance system. Consideration of proposals for work on dams and related access should be made on a case-by-case basis using the NEPA process (FSM 1950), balancing wilderness values with licensee rights and public safety. Historic methods of access and economics also should be considered in the analysis.

Hydropower projects licensed by FERC do not qualify for an easement under the Act of October 27, 1986 (Pub. L. 99–5545, the ''Ditch Bill''; FSM 2770.1) which amended parts of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761(c)).

65—Special-Use Authorization Fees

Fees may be charged for investigation special use permits (Form FS–2700–4f), as well as for project special use authorizations.

65.1—Investigation Permit Fee

Unless the market conditions indicate that a higher fee is appropriate, charge $200.00 for the term of a hydropower investigation permit (Form FS–2700–4f).

65.2—Licensed Project Authorization Fee

Waive the fee for this type of authorization since FERC already charges fees for the use of National Forest System land.

The holder shall pay a fee, as described in section 65.31, for areas outside the license boundary that are under temporary permit.

65.3—Exempted Project Authorization Fee

65.31—Fee for Construction Period (Minimum Operation Fee)

Charge the annual minimum fee of 10 percent of the land value of the area under permit for periods when power is not being sold. At the option of the Regional Forester, determine such land value by appraisal or other sound business practices. The holder shall pay the minimum fee in advance at the beginning of each year. Calculate the fee for temporary permits issued for temporary areas outside the main permit area at 10 percent, annually, of the land value of the area under those permits.

65.32—Operation Fee

Unless local market conditions indicate otherwise, the holder shall pay a fee of 3 percent of the gross power sales from the start of project operation until the end of the fifth year. From the start of the sixth year to the end of the tenth year, the holder shall pay a fee of 5 percent of the gross power sales. The fee from the start of the eleventh year until the end of the term of the authorization may increase up to 10 percent. Determine the final rate through a reevaluation of the market, during the tenth year.

The holder pays the minimum operation fee (sec. 65.31) in advance each year and that amount is credited toward the operation fee. The holder does not start paying the quarterly operation fees each year until the year's accumulated operation exceeds the minimum operation fee. The holder pays the operation fee quarterly, within 45 days of the end of each quarter, unless the average annual fee is less than $2,000 (in which case the holder pays at the end of the year).

65.33—Fee Adjustment of Mixed Ownership

Adjust the operation fee when the Federal Government land under permit is less than 90 percent of the total linear distance actually occupied by the project excluding access roads and transmission lines. Make the adjustment by measuring slope-distance length of the project from the outlet of the lowest powerhouse tailrace to the upstream edge of the impoundment created by the diversion. The percentage of that length that is on Government land is the percentage of the total fee that is due the Government. For example, if the government owns 800 feet of a 1,000-foot-long project, the initial operation fee would be 80 percent of 3 percent of the gross power sales or 2.4 percent of the gross power sales.

If there is more than one diversion, include the additional lengths of those other diversions from the point of intersection with those already measured in the total length.

65.34—Transmission Line Fee

The holder shall pay a separate fee for the area under permit for the transmission line portion of the project if such a line is the only facility under permit or if the transmission line exceeds 2,500 feet on National Forest System land to the point of interconnection with an existing transmission line. A separate special use authorization for a transmission line greater than 2,500 feet is not necessary, but may be used at the discretion of the authorizing officer; that is, the authorizing officer has the discretion to charge an additional fee for the transmission line within the hydropower permit, instead of issuing a separate transmission line permit for lines over 2,500 feet. Determine fees by the procedures for transmission line fees (see also sec. 62.24).

65.35—Conduit Exemption Fee

While conduit exemptions cannot be issued for projects that occupy Federal lands, FERC grants exemptions to such projects as long as the powerhouse is not on Federal lands and there is no new construction on Federal lands; for example when the powerhouse would be on non-Federal lands and the existing water pipeline or ditch on Federal lands does not need modification.

Regardless of FERC's action, treat the project in its entirety when calculating fees. Consistent with section 65.33, measure the linear distance of the water system from the powerhouse to the upper end of the diversion or to the next powerhouse, if any. The percentage of that length that is on National Forest System land is the percentage of the total fee that would be charged.

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HYDROPOWER HANDBOOK

Section 55.6 - Exhibit 01

Forest Service Standard 4(e) License Conditions

Enclosure II

LICENSE CONDITIONS NECESSARY FOR PROTECTION AND UTILIZATION OF THE <NAME> NATIONAL FOREST IN CONNECTION WITH THE APPLICATION FOR LICENSE PROJECT NO. <No.>

I. GENERAL

License articles contained in the Commission's Standard Form L-<no.> issued by Order No. 540, dated October 31, 1975, cover those general requirements that the Secretary of Agriculture, acting by and through the Forest Service, considers necessary for adequate protection and utilization of the land and related resources of the _____ National Forest under the purposes for which the _____ National Forest is administered. For the purposes of section 4(e) of the Federal Power Act (16 U.S.C. 797(e)), the purposes for which National Forest System lands were created or acquired are the protection and utilization of those resources enumerated in the Organic Administration Act of 1897 (30 Stat. 11), the Multiple-Use Sustained Yield Act of 1960 (74 Stat. 215), the National Forest Management Act of 1976 (90 Stat. 2949), and any other law specifically establishing a unit of the National Forest System or prescribing the management thereof (such as the Wilderness Act or Wild and Scenic Rivers Act), as such laws may be amended from time to time, and as implemented by regulations and approved Forest Plans prepared in accordance with the National Forest Management Act. Energy production (hydropower) is one of those resources (96 Stat. 2957). Therefore, pursuant to section 4(e) of the Federal Power Act, the following conditions covering specific requirements for protection and utilization of National Forest System lands shall also be included in any license issued.

II. MANDATORY PROVISIONS APPLICABLE TO ALL PROJECTS OCCUPYING NATIONAL FOREST SYSTEM LANDS

Condition No. 101 - Requirement To Obtain a Forest Service Special-Use Authorization.

The licensee shall comply with the special-use authorization which the licensee shall obtain from the Forest Service for the occupancy and use of National Forest System lands. The licensee shall obtain the executed authorization before beginning land disturbing, land clearing, or spoil producing activities on National Forest System lands or within one year of license issuance if no construction or reconstruction was proposed in the application for license or new license.

The Licensee may commence land-disturbing activities authorized by the License and special-use authorization no sooner than 60 days following the date the licensee files the Forest Service special-use authorization or endorsement regarding such authorization with the Commission, unless the Commission prescribes a different commencement schedule.

National Forest System lands within the project boundaries shall be managed by the Forest Service under the laws, rules, and regulations applicable to the National Forest System. The terms and conditions of the Forest Service special-use authorization are enforceable by the Forest Service under the laws, rules, and regulations applicable to the National Forest System. The violation of such terms and conditions also shall be subject to applicable sanctions and enforcement procedures of the Commission at the request of the Forest Service. In the event that there is a conflict between any provisions of the license and Forest Service special-use authorization, the special-use authorization shall prevail to the extent that the Forest Service, in consultation with the Commission, deems necessary to protect and utilize National Forest System resources.

Condition No. 102 - Forest Service Approval of Final Design

Before any ground-disturbing actions occur on National Forest System land, the Licensee shall obtain the written approval of the Forest Service for all final plans not previously approved by the Forest Service or which were not part of the approved project license exhibits (if such exhibits were given to the Forest Service for review). For the purposes of this license, (1) final plans are only those plans which show project facilities in complete and accurate detail in relation to the ground surface, which are accompanied by on-the-ground staking of the project facilities, and which have been reviewed and approved in writing by the Forest Service, and (2) the only final plans included are those relating to ground disturbance and to facility locations and appearance, which the Forest Service identifies as affecting the protection and utilization of the National Forest System lands. As part of the written approval for plans not previously approved, the Forest Service may require, within the scope of the licensed project and initial approvals of the Forest Service, adjustments in final plans with regard to facility locations and appearance to preclude or mitigate impacts and to assure that the project is compatible with on-the-ground conditions.

The Forest Service shall have up to 60 days from the date of plan(s) submittal to exercise approval authority. If the Forest Service is unable to proceed with consideration of such plans due to adverse weather or other reasons beyond the control of the Forest Service, the Forest Service shall promptly inform the licensee and the Commission of the problems, and the running of the 60-day period shall be delayed until the problems are resolved.

Condition No. 103 - Approval of Changes After Initial Construction

In addition to any Commission approval or license provisions to make changes to the project, the licensee shall obtain written approval from the Forest Service prior to making any changes in the location of any constructed project features or facilities, or any changes in the uses of Forest Service administered lands and waters, or any departure from the requirements of any approved exhibits filed with the Commission. Following receipt of such approval from the Forest Service, and not less than 60 days prior to initiating any such changes or departure, the Licensee shall file a report with the Commission describing the changes, the reasons for the changes, and showing the approval of the Forest Service for such changes. The Licensee shall file an exact copy of this report with the Forest Service at the same time it is filed with the Commission.

This article does not relieve the Licensee from the requirement for amendment or other requirements of Article 2 or Article 3 of this License. Any changes made pursuant to Articles 2 of 3 of the license shall be also subject to any new terms and conditions that the Secretary of Agriculture may impose in accordance with Section 4(e) of the Federal Power Act.

Condition No. 104 - Consultation

Every five years, beginning the fifth year following the anniversary date of the license, or on a schedule mutually agreed to by the Licensee and the Forest Service, the Licensee shall consult with the Forest Service with regard to project operations, including measures needed to ensure the adequate protection and utilization of the area of the National Forest affected by the project. If a dispute arises regarding needed measures, the Licensee shall, within 60 days following such consultation, file a letter with the Commission documenting the consultation, including any recommendations made by the Forest Service. The Commission reserves the right, after notice and opportunity for hearing, to require changes in the project and its operation that may be necessary to accomplish the adequate protection and utilization of the portion of National Forest System Lands occupied and affected by the project or to accomplish other identified natural resource protection.

Condition No. 105 - Dispute Resolution for Plan Approval

With respect to any plan required by this license to be approved by the Forest Service, if the Forest Service does not act within 60 days of submission of a proposed plan to the Forest Service by the licensee, the proposed plan shall be deemed disapproved.

The licensee may request, in writing, the Regional Forester to review any plan that is disapproved or deemed disapproved by the Forest Service. If the Regional Forester fails to issue a

determination regarding the request for review within 30 days of receiving the licensee's notice of request for review, the disapproval shall be deemed to have been sustained by the Regional Forester.

If the Regional Forester sustains the disapproval, the licensee may request, in writing, review of the decision by the Chief Service, as though the disapproval appealed was an original decision of the Regional Forester.

Condition No. 106 - Dispute Resolution for 4(e) Condition / Special-Use Authorization Administration

In order to expedite the review of disputed Forest Service orders or directions given during construction, the following procedures are to be used.

a. Any orders or directions, made during construction of the project can be immediately referred to the Forest Supervisor for resolution. If the Forest Supervisor fails to act within 5 working-days of written notice by the licensee of its concerns, the original order or directions of the Forest Service shall be deemed to be sustained.

If the licensee disagrees with the decision of the Forest Supervisor, it may request in writing that the appropriate Regional Forester review the decision of the Forest Supervisor. If the Regional Forester fails to act on such request within 15 working-days of receipt, the decision of the Forest Supervisor shall be deemed to be sustained by the Regional Forester.

If the licensee disagrees with the decision made by the Regional Forester, or as deemed made by the Regional Forester, it may request in writing that the Chief review the decision under the applicable administrative appeal procedures of the Forest Service as though the decision was an original decision of the Regional Forester.

b. Any orders or directions given during operation of the project will be resolved using the appeal regulations applicable to holders of special-use authorizations from the Forest Service.

Condition No. 107 - Cultural Resource Protection

The licensee shall not initiate any work, other than that specifically authorized in this license, before (1) consulting with the Forest Service and the appropriate State Historic Preservation Officer (SHPO), (2) conducting a cultural resources survey of these areas, and (3) filing for Commission approval a cultural resources management plan to avoid or mitigate impacts to any significant archeological or historic sites identified during the survey. The survey and plan shall be based on the recommendations of the SHPO and shall be

conducted and prepared by a qualified cultural resources specialist. If the licensee discovers any previously unidentified archeological or historic sites during the course of constructing or developing project works or other facilities at the project, the licensee shall stop all land-clearing, land-disturbing, or spoil-producing activities in the vicinity of the sites, and shall also consult with the SHPO and file for Commission approval a cultural resources management plan to avoid or mitigate impacts to significant resources, prepared by a qualified cultural resources management specialist.

The survey and the plan shall be documented in a report which shall contain the following: (1) a description of each discovered site, indicating whether it is listed or eligible to be listed on the National Register of Historic Places; (2) a description of the potential effect on each discovered site; (3) proposed measures for avoiding or mitigating the effects; (4) documentation of the nature and extent of consultation; and (5) a schedule for mitigating effects and conducting additional studies. The Commission may require changes to the plan or the report.

The licensee shall not begin land-clearing, land-disturbing, or spoil-producing activities, other than those specifically authorized in this license, or resume such activities in the vicinity of a site discovered during construction, until informed by the Commission that the requirements of this article have been fulfilled.

III. ADDITIONAL PROVISIONS

Condition No. 110 - Instream Flow Requirement

During the construction and operation of the facilities authorized by this license, the licensee shall maintain the following instantaneous instream flows or the natural flow, whichever is less, immediately below the diversion in the <Name of Stream>.

<date> through <date> <no.> cubic feet per second (cfs)
<date> through <date> <no.> cfs
<date> through <date> <no.> cfs

The Licensee may temporarily modify instream flows if required by operating emergencies beyond the control of the Licensee. The Licensee may also modify instream flows for short periods upon written consent of the Forest Service.

[OPTIONAL - USE THIS PARAGRAPH AS NECESSARY.]

After notice to and concurrence by the Forest Service, the Licensee shall release down the channel a flushing flow acceptable to the Forest Service in <name of creek> for <no.> consecutive days during the peak runoff period to maintain channel competence and to aggregate and flush the gravel.

[USE THIS PARAGRAPH ONLY IF STANDARD CONDITION 180 IS USED.]
These interim instream flow requirements shall remain in effect until the date that the approved adjusted instream flows provided for in Article 180 are implemented.

Condition No. 111 - Guaranteed Priority Flow Bypass Device and Gaging

The Licensee shall construct, operate, and maintain a guaranteed priority streamflow device, approved by the Forest Service, as part of the diversion/intake structure. Instream flows required by condition 110 shall be automatically released through this device, before any flow can be diverted into the conduit. At least 90 days prior to beginning construction of the diversion structure, the licensee shall file for Commission approval functional design drawings and an implementation schedule for the guaranteed priority streamflow device. Upon Commission approval, the licensee shall implement the schedule. The guaranteed priority streamflow device shall be shown on the as-built drawings filed with the Commission.

The licensee, after consulting with the appropriate State agency, the Forest Service, and the United States Geological Survey, shall develop plans to install and monitor a water measurement control section with an continuous recording gage to demonstrate compliance with the requirements of condition 110 and this article. The licensee shall file with the Commission, at least 90 days prior to the installation of the water measurement control section, plans approved by the Forest Service for the water measurement control section and gaging. The Commission may require changes to the plans.

The licensee shall provide stage-discharge information to the Forest Service prior to commencement of operation of the project. Within 60 days of request, the licensee shall provide the Forest Service with updated stage-discharge charts and/or with a report of streamflow information collected at the water measurement control section and any other applicable stream gage records. The water measurement control section and gage shall be shown on the as-built drawings filed with the Commission.

Condition No. 112 - Fish Screens

Prior to diversion of any flows into the conduit, the licensee shall install and maintain a fish screen device on the intake structure of the diversion to prevent entrainment of fish into the conduit and penstock system. A positive fish screen at the diversion intake structure designed for an approach velocity of ____ feet per second, a channel velocity at least twice the approach velocity, and a smooth transition to a fish bypass pipe at the down stream end of the screen structure shall be incorporated into the diversion.

At least 90 days prior to the installation of the diversion structure, the licensee shall file for Commission approval, Forest Service-approved functional design drawings for the

design of the screen and related devices. The Commission may require modifications to the designs. The screen and related devices shall be shown on the as-built drawings filed with the Commission.

Condition No. 113 - Fish and Wildlife Mitigation Plan

At least 90 days prior to land-clearing, land-disturbing, or spoil-producing activities, the licensee shall file for Commission approval, a fish and wildlife mitigation plan approved by the Forest Service. The plan must be consistent with the standards and guidelines for affected management areas in the _____ National Land and Resource Management Plan. The mitigation plan must include the following.

a. _____
b. _____
c. _____

This plan must identify requirements for construction and mitigation measures to meet Forest Service fish and wildlife habitat objectives and standards. The plan also must include dates for accomplishing these objectives and standards and must identify needs for and timing of any additional studies called for in the license.

Any comments of the <in consultation with FERC, fill in involved agencies, such as US Fish and Wildlife Service, National Marine Fisheries Service, and the State Fish and Wildlife agency> shall be filed with the plan. The Commission may require changes to the plan to ensure adequate protection of the environmental, scenic, and cultural values of the project area. Upon Commission approval, the licensee shall implement the plan.

Condition No. 114 - Sensitive Species Plan

At least 90 days prior to land-clearing, land-disturbing, or spoil-producing activities, the licensee shall file for Commission approval, a sensitive species plan approved by the Forest Service for the protection of _____ located in the project area. The plan must be consistent with the standards and guidelines for affected management areas in the _____ National Land and Resource Management Plan. The mitigation plan must include the following.

a. _____
b. _____
c. _____
d. _____

This plan must identify requirements for construction, operation, and maintenance measures to meet Forest Service objectives and standards as identified in the _____ Forest plan on file with the Commission. A biological evaluation will

be required prior to project construction for each sensitive species.

Any comments of the <in consultation with FERC, fill in involved agencies, such as US Fish and Wildlife Service, National Marine Fisheries Service, and the State Fish and Wildlife agency> shall be filed with the plan. The Commission may require changes to the plan to ensure adequate protection of the environmental, scenic, and cultural values of the project area. Upon Commission approval, the licensee shall implement the plan.

Condition No. 115 - Threatened and Endangered Species Plan

At least 90 days prior to land-clearing, land-disturbing, or spoil-producing activities, the licensee shall file for Commission approval, a plan approved by the Forest Service and U.S. Fish and Wildlife Service, for the protection of _____ _____ located in the project area. The plan must be consistent with the standards and guidelines for affected management areas in the _____ National Land and Resource Management Plan. The mitigation plan must include the following.

a. _____
b. _____
c. _____
d. _____

This plan must identify requirements for construction, operation, and maintenance measures to meet Forest Service and U.S. Fish and Wildlife Service objectives and standards for the recovery of the affected species. A biological evaluation will be required prior to project construction for the affected species.

Any comments of the <in consultation with FERC, fill in involved agencies, such as US Fish and Wildlife Service, National Marine Fisheries Service, and the State Fish and Wildlife agency> shall be filed with the plan. The Commission may require changes to the plan to ensure adequate protection of the environmental, scenic, and cultural values of the project area. Upon Commission approval, the licensee shall implement the plan.

Condition No. 116 - Erosion Control Measures Plan

At least 90 days prior to starting any land-clearing, land-disturbing, or spoil-producing activities, the licensee shall file for Commission approval, a plan approved by the Forest Service to control erosion, stream sedimentation, dust, and soil mass movement consistent with the standards and guidelines for affected management areas in the _____ National Land and Resource Management Plan. Upon Commission approval, the licensee shall implement the plan.

The plan shall be based on actual-site geological, soil, and groundwater conditions and shall include: (1) a description of the actual-site conditions; (2) detailed descriptions, design drawings, and specific topographic locations of all control measures; (3) measures to divert runofff away from disturbed land surfaces; (4) measures to collect and filter runoff over disturbed land surfaces, including sediment ponds at the diversion and powerhouse sites; (5) revegetating disturbed areas outside of the roadbed; (6) measures to dissipate energy and prevent erosion at the tailrace; (7) _____ _____ _____ _____ _____; (8) _____ _____ _____ _____ _____ _____; and (9) a monitoring and maintenance schedule. The Commission may require changes to the plan to ensure adequate protection of the environmental, scenic, and cultural values of the project area.

This plan must identify requirements for construction, operation, and maintenance measures to meet Forest Service erosion control objectives and standards.

Condition No. 117 - Visual Resource Protection

At least 90 days prior to starting any land-clearing, land-disturbing, or spoil-producing activities, the licensee shall file for Commission approval, a plan approved by the Forest Service for the design and construction of the project facilities in order to preserve or enhance the visual quality of the project area, consistent with the standards and guidelines for affected management areas in the _____ National Forest Plan. Upon Commission approval, the licensee shall implement the plan. The Commission may require changes to the plan to ensure adequate protection of the environmental, scenic, and cultural values of the project area.

The plan must address facility configurations and alignments, architectural theme, building materials, color, conservation of vegetation, landscaping, signs, and screening. Project facilities to be covered by this plan include, among other things, clearings, diversion structures, penstocks, pipes, ditches, powerhouses, other buildings, transmission lines and corridors, recreation facilities, and access roads.

In particular, the plan must at least include the following: (1) the powerhouse and associated facilities such as security fences, tailrace, equipment storage, access and parking, and communication equipment; (2) diversion structure and associated facilities such as access and parking, power sources for sensing and monitoring equipment, and inlet controls; (3) power transmission line; and (4) pipelines and ditches; and (5) recreation facilities.

Mitigation measures shall include, but are not limited to, (1) surface treatments with colors that will be in harmony with the surrounding landscape, (2) use of non-specular conductors for the transmission lines, (3) use of native plant species to

screen facilities from view, (4) reshaping and revegetating disturbed areas to blend with surrounding visual characteristics, (5) locating transmission facilities to minimize visual impacts, (6) _____ _____ _____ _____; (7) _____ _____ _____; (8) _____ _____ _____ _____.

Condition No. 118 - Project Recreation Plan

At least 90 days prior to starting any land-clearing, land-disturbing, or spoil-producing activities, or as agreed to by the Forest Service, the Licensee shall file for Commission approval, a plan approved by the Forest Service for implementing measures to mitigate project-induced recreation and provide for other recreation needs over the life of the project, consistent with the standards and guidelines for affected management areas in the _____ National Land and Resource Management Plan. The recreation plan must include sited plans for the following.

a. _____
b. _____
c. _____
d. _____

Upon Commission approval, the licensee shall implement the plan. The Commission may require changes to the plan to ensure adequate protection of the environmental, scenic, and cultural values of the project area.

Condition No. 119 - Diversion Operation Plan

At least 90 days prior to starting any land-clearing, land-disturbing, or spoil-producing activities, the licensee shall file for Commission approval, a plan approved by the Forest Service for the operation and maintenance of the diversion, consistent with the standards and guidelines for affected management areas in the _____ National Forest Plan.

The plan must address at least the following: (1) water storage, (2) methods for sediment flushing, (3) methods for removal and disposal of sediment, (4) procedures for flood conditions, (5) methods of erosion prevention in the diversion area and spillway channel, (6) trash and debris removal, (7) _____ _____ _____, (8) _____ _____ _____, and (9) an implementation schedule and maintenance program.

Upon Commission approval, the licensee shall implement the plan. The Commission may require changes to the plan to ensure adequate protection of the environmental, scenic, and cultural values of the project area.

Condition No. 120 - Storage Reservoir Operation Plan

At least 90 days prior to starting any land-clearing,

land-disturbing, or spoil-producing activities, the licensee shall file for Commission approval, a plan approved by the Forest Service for the operation and maintenance of the reservoir, consistent with the standards and guidelines for affected management areas in the _____ National Land and Resource Management Plan.

The plan must address at least the following: (1) water storage and releases, including storage limitations (if any), dates and/or criteria for filling and release; (2) procedures for flood conditions; (3) erosion prevention in the reservoir area and spillway channel; (4) trash and debris removal; (5) _____; (6) _____ _____ _____ _____; (7) _____ _____; and an implementation schedule and maintenance program. Provided, however, that regardless of Forest Service approval or denial, the Commission may overrule the Forest Service and/or the approved storage reservoir operating plan if the Commission finds that measures required or provided for will interfere with dam safety or other public safety needs.

Upon Commission approval, the licensee shall implement the plan. The Commission may also require changes to the plan to ensure adequate protection of the environmental, scenic, and cultural values of the project area.

Condition No. 121 - Transmission Line Burial

The Licensee shall bury the transmission line along ___ <alignment>____. The location and depth of burial of the line are subject to approval by the Forest Service.

Condition No. 122 - Pipeline Road Crossing

The licensee shall construct __<number>__ road crossings over the pipeline/penstock at locations designated by the Forest Service. Such crossings must be designed to meet Forest Service road standards for trucks (describe standards).

Condition No. 123 - General Access Over Pipeline

In order to protect general access, the pipeline/penstock, where buried, shall be buried at a depth to allow heavy equipment to cross-over the conduit and to allow removal of timber by aerial or ground methods.

Condition No. 124 - Coordination With Timber Sale Purchaser

The project area may be under contract to the purchaser of the __<name>__ timber sale. Before starting construction or removing any timber in the project area, the Licensee shall develop an agreement with that timber sale purchaser if the sale has not been closed. The agreement must stipulate the joint use of roads and the method of disposal for timber within the project boundary and under the existing sale contract. The

agreement must be approved by the Forest Service before timber removal may begin. Removal of timber in addition to that already sold to the purchaser, must be authorized by amendment to the purchaser's contract or by a separate timber sale contract sold to the Licensee or another party.

Condition No. 125 - Borrow Pit Requirements

Borrow pits and other excavations are restricted to locations below the high waterline and limited to the location and quantities specified in the approved plans and specifications. The licensee shall make no additional excavations without advance written approval of the Forest Service. After removal of the desired material, the licensee shall grade and shape all excavations as agreed to by the Forest Service.

Condition No. 126 - Winterization

The licensee shall take necessary measures to ensure that a suitable conveyance or channel is adequate to pass the inflow design flood for spring runoff and to prevent erosion or siltation due to the construction.

IV. REGIONAL STANDARD PROVISIONS

Conditions 140 - 159

V. PROJECT SPECIFIC PROVISIONS

Conditions 160 - 179

VI. OTHER SPECIAL PROVISIONS

Condition No. 180 - Instream Flow Modification Study
[THIS CONDITION SHOULD RARELY BE USED. USE ONLY IN CONJUNCTION WITH CONDITION NO. 110. USE ONLY IF LICENSEE REQUESTS FURTHER OPPORTUNITY TO STUDY STREAMFLOW RELEASES.].

At least 90 days prior to starting any land-clearing, land-disturbing, or spoil-producing activities, the licensee shall file for Commission approval, a plan approved by the Forest Service for the study of instream flows, consistent with the standards and guidelines for affected management areas in the _____ National Land and Resource Management Plan. Upon Commission approval, the licensee shall commence the study. The Commission may require changes to the study plan to ensure adequate assessment and protection of the environmental, scenic, and cultural values of the area.

This study must address: (a) the effects of diverting different quantities of water on downstream aquatic and terrestrial habitats; (b) the water requirements of aquatic organisms in the areas affected by diversions, including existing organisms and those that may be introduced; (c) the

effects of project discharges on stream morphology and stability; (d) measures that will ensure the protection and enhancement of water quality and animal and vegetative habitats in the streams and environs; (e) requirements for recreation and aesthetics; and (f) recommendations for instream flow requirements and flow regimes that will achieve the identified measures of protection and enhancement.

Within 6 months following completion of the study, the Licensee shall file the study results with the Commission.

As a result of the study, when and if the licensee and Forest Service agree to changes in the streamflows specified in article 110, the licensee may file with the Commission, a revised article 110 showing the new proposed instream flow requirements. Such filing shall clearly document Regional Forester specific agreement to the new streamflow requirements.

The licensee may not implement the revised instream flow requirements, until approved by the Forest Service, and until the Commission, issues an order approving the revised instream flow requirements.

Condition No. 181 - Sensitive Plant and Habitat Plan

At least 90 days prior to starting any land-clearing, land-disturbing, or spoil-producing activities, the licensee shall file for Commission approval, a Sensitive Plant Habitat Plan approved by the Forest Service and consistent with the standards and guidelines for affected management areas in the _____ National Land and Resource Management Plan. The plan shall be prepared in consultation with the Forest Service and any other affected State or Federal agency. Upon Commission approval, the licensee shall implement the plan. The Commission may require changes to the study plan to ensure adequate assessment and protection of the environmental, scenic, and cultural values of the project area.

This plan shall identify requirements for construction, operation, and maintenance measures to meet Forest Service sensitive plant and habitat objectives and standards as identified in the _____ Land and Resource Management Plan on file with the Commission. The plan shall include a schedule for accomplishing these objectives and standards and shall identify any needs for additional studies. Due to the unknown nature of the project's impacts on the sensitive plant species _____ _____, some of the studies (possibly requiring a year or more) may need to be completed prior to construction, because of the required mitigation measure's effects on the viability of the total project.

The Licensee shall prepare a monitoring plan to determine the effectiveness of the mitigations on sensitive plants. If monitoring indicates to the Forest Service that changes in project structures or operations are necessary to maintain

sensitive species, the Licensee may be required by the Forest Service to file with the Commission a schedule, approved by the Forest Service, for implementing specific changes in project structures or operations.

Condition No. 182 - Slope Stability Protection Plan
[INSTRUCTIONS: THIS CONDITION IS SELDOM NECESSARY; CONDITION 116 SHOULD BE ADEQUATE.]

At least 90 days prior to starting any land-clearing, land-disturbing, or spoil-producing activities, the licensee shall file for Commission approval, a slope stability protection plan approved by the Forest Service and consistent with the standards and guidelines for affected management areas in the _____ National Land and Resource Management Plan. Upon Commission approval, the licensee shall implement the plan. The Commission may require changes to the plan to ensure adequate protection of the environmental, scenic, and cultural values of the project area.

The plan will include a detailed geotechnical design report of all project elements, particularly for facilities in potential geologic hazard areas. The geotechnical design report shall address specific areas and identify the specifications and requirements for construction, operation, and maintenance to meet Forest Service standards.

Condition No. 183 - Restrictions on Access by Road

Road access to _____ will not be permitted. Access will be by pedestrian/two-wheel vehicle with no greater than a 4-foot wide trail. Construction of the powerhouse and penstock will utilize a fully-suspended cable system or helicopter. The cable system will operate within confinement of the penstock corridor. Engineering and design of the cable system must have Forest Service approval.

Condition No. 184 - Easement Acquisition

Prior to selling power produced by this project, the Licensee shall acquire, without contribution or compensation by the United States, easements in the name of the United States for the location of and public access to those portions of the _____ trail, trailhead, parking lot, and picnic facilities _____ to be constructed in accordance with the Licensee's approved Recreation Plan that are not located on National Forest System land. The licensee shall obtain Forest Service approval of the easement language and evidence of unencumbered title to the easements prepared by a certified title examiner prior to execution of the easements.

Condition No. 185 - Traffic Management and Public Safety

At least 90 days prior to starting any land-clearing,

land-disturbing, or spoil-producing activities, the licensee shall file for Commission approval, a plan approved by the Forest Service for traffic management and public safety associated with construction in the roadbed. The plan must be consistent with the standards and guidelines for affected management areas in the _____ National Land and Resource Management Plan. Upon Commission approval, the licensee shall implement the plan. The Commission may require changes to the plan to ensure adequate protection of the environmental, scenic, and cultural values of the project area. The plan shall provide for (1) suspension of penstock construction during the winter ski season from _____ to _____ __; during the big-game rifle hunt in _____ of each year (including a short pre- and post-season period); during summer recreation season weekends and holidays from _____ to _____; and (2) safe passage of public traffic during permitted construction periods, with traffic delays not to exceed 1 hour.

Condition No. 186 - Siting of Facilities

The facilities covered by this license shall be located generally as described in the License Application, except (1) as may be described below, (2) as modified by the terms of this license, or (3) as ordered by the Commission for the protection of the environmental, scenic, and cultural values of the project area.

a. _____
b. _____
c. _____

Condition No. 187 - Plan Implementation.

The licensee shall implement the _____ plan filed _____, which is approved and made part of the license. The plan, consisting of pages _____ through _____ and drawings _____ and _____, provides measures for _____.

Section 77 - Exhibit 01

FS-2700-4g (07/93)
OMB No. 0596-0082
(Expires: 6/30/96)

U.S. DEPARTMENT OF AGRICULTURE Forest Service	Holder No. _ _ _ _-_ _	Issue Date _ _/_ _/_ _	Expir. Date _ _/_ _/_ _
	Type Site(s) _ _ _ _ _ _	Authority _ _ _	Auth. Type _ _ _ _
SPECIAL-USE PERMIT FOR LICENSED HYDROPOWER PROJECT Act of October 21, 1976 (P.L. 94-579) 36 CFR 251.50 et seq. (Ref. FSM 2770)	Region/Forest/District _ _/ _ _ / _ _		State/County _ _/ _ _ _
	Cong. Dist. _ _	Latitude _ _-_ _-_ _	Longitude _ _ _-_ _-_ _

_____ of _____
(Holder Name) (Billing Address - 1)

_____ _____ _____ _____
(Billing Address - 2) (City) (State) (Zip Code)

(hereinafter called the Holder) is hereby authorized to use or occupy National Forest System lands, to use subject to the conditions set out below, on the _____ National Forest <<or _____ unit of the National Forest System. OPTIONAL>>

This permit covers <<# OF ACRES>> acres and/or <<# OF MILES OR WIDTH IN FEET X LENGTH IN FEET OF USE AUTHORIZED>> and is described as (e.g. NW1/4 NW1/4, Section 26, T24N, R16E, W.M.; Tract 419-A; MS 309 ID; etc.) as shown on the location map attached to and made a part of this permit, and is issued for the purpose of: _____

_____

_____

The above described or defined area shall be referred to herein as the "permit area".

TERMS AND CONDITIONS

I. AUTHORITY AND GENERAL TERMS OF THE PERMIT

A. Authority. This permit is issued pursuant to the authorities enumerated at Title 36, Code of Federal Regulations, Section 251 Subpart B, as amended. This permit, and the activities or use authorized, shall be subject to the terms and conditions of the Secretary's regulations and any subsequent amendment to them.

B. Authorized Officer. The authorized officer is the Forest Supervisor or a delegated subordinate officer.

C. Permit. This permit is an authorization for the use of federally owned land and does not grant any permanent, possessory interest in real

property, nor shall this permit constitute a contract for purposes of the Contract Disputes Act of 1978 (41 U.S.C. 611). Loss of the privileges granted by this permit by revocation, termination, or suspension is not compensable to the holder.

D. Permit Amendment, Licensed Project. (K44) The Regional Forester may review the terms and conditions of this permit upon any modification of project facilities affecting National Forest System lands and requiring an amendment to the license for this project. At such time, the Regional Forester may incorporate in the permit such new terms, conditions, and stipulations as existing or prospective conditions may warrant; provided, that such new terms, conditions, or stipulations shall not unreasonably reduce the use herein authorized and are consistent with the license issued by the Federal Energy Regulatory Commission. Changes in this permit needed because of modifications not requiring an amendment to the license for this project shall be limited to those items and resources affected by the modification.

E. Existing Rights. This permit is subject to all valid rights of third parties. The United States is not liable to the special use authorization holder for the exercise of any such right.

F. Nonexclusive Use. Unless expressly provided in additional terms, this permit is not exclusive. The Forest Service reserves the right to use or allow others to use any part of the permit area for any purpose, provided such use does not interfere with public safety or the rights and privileges hereby authorized or authorized under the Federal Power Act.

G. Public Access and Use. (X19) Unless specifically limited under additional terms to this permit, the holder agrees to allow the public free and unrestricted access to and use of the permit area at all times for all lawful purposes. To facilitate public use of the permit area, all existing roads or roads as may be constructed by the holder shall remain open to the public, except for roads as may be closed by joint agreement of the holder and the authorized officer.

H. Forest Service Right of Entry and Inspection. The Forest Service shall have free and unrestricted access at all times, including the right to enter into all buildings, dwellings, and other facilities to ensure compliance with the terms and conditions of this permit. In addition, the Forest Service may enter the authorized facilities for any purpose or reason consistent with any right or obligation of the United States under any law or regulation.

I. Assignability. This permit is transferable as provided for under condition II. H. of this permit; 36 CFR 251.59.

J. Permit Limitations. Nothing in this permit allows or implies permission to build or maintain any structure or facility, or to conduct any activity unless specifically provided for in this permit. Any use not specifically identified in this permit must be approved by the authorized officer in the form of a new permit or permit amendment.

K. Water Rights. This permit does not confer to the holder any ownership of or right to the use of water.

II. TENURE AND ISSUANCE OF A NEW PERMIT

A. Termination at the End of the Authorized Period, Licensed Project. (K32) Unless canceled or terminated by the authorized officer, the term of this permit shall be concurrent with Federal Energy Regulatory Commission license for this project and this permit shall become void on the termination date shown in the ENDORSEMENT section at the end of this permit; provided, however, that this permit will be automatically extended during annual license extensions granted under the Federal Power Act while the Federal Energy Regulatory Commission is considering the granting of a new license unless the authorized officer determines and provides the holder with written notice that such automatic extensions are to be denied and the reasons for the denial.

B. Conditions for Issuance of a New Permit. At the expiration or termination of an existing permit, a new permit may be issued to the holder of the previous permit or to a new holder subject to the following conditions:

1. The authorized use is compatible with the land use allocation in the Forest Land and Resource Management Plan.

2. The permit area is being used for the purposes previously authorized.

3. The permit area is being operated and maintained in accordance with the provisions of the permit.

4. The holder has shown previous good faith compliance with the terms and conditions of all prior or other existing permits, and has not engaged in any activity or transaction contrary to Federal contracts, permits, laws, or regulation.

C. Discretion of Forest Service, Licensed. (K48) Notwithstanding any provisions of any prior or other permit, the authorized officer may prescribe new terms, conditions, and stipulations when a new permit is issued.

III. RESPONSIBILITIES OF THE HOLDER

A. Plans. (K47) Consistent with Article 102 of the Federal Energy Regulatory Commission license for this project, all proposals for construction, reconstruction, substantial change, or alteration shall be submitted by the holder for approval to the authorized officer issuing this permit. This includes all final plans affecting surface resources and any changes to approved plans, or to plans in the approved project license, related to the location or appearance of project features and temporary facilities, that are identified by the Forest Service as affecting the protection and utilization of National Forest System lands. The proposed action may commence only after the authorized officer has approved, in writing, the plans, specifications, and written construction stipulations, which stipulations shall become part of this permit for the period of time deemed necessary by the authorized officer. The authorized officer shall have up to 60 days from the date

of plan or change submittal to exercise approval authority. If the authorized officer is unable to proceed with consideration of such plans or changes due to adverse weather or reasons beyond the control of the Forest Service, the authorized officer shall promptly inform the licensee of the problems, and the running of the 60-day period shall be delayed until the problems are resolved.

B. Maintenance. The holder shall maintain the improvements and permit area to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer, and consistent with applicable Federal, State, and local health and safety and other requirements. For example, trash, debris, unusable machinery, etc., will be disposed of separately; other materials will be stacked, stored neatly, or within buildings. Disposal will be at an approved existing location, except as otherwise agreed to by the authorized officer.

C. Hazard Analysis. (K33) The holder has a continuing responsibility to identify and abate hazardous conditions on the permit area which could affect the improvements or pose a risk of injury to individuals. Avalanches, rising waters, high winds, falling limbs or trees, and other hazards are natural phenomena in the forest that present risks to the holder's property that the holder hereby assumes. The holder is responsible for inspecting its site, right-of-way, and the immediate adjoining area for dangerous conditions and, after securing permission from the Forest Service, is responsible for removing such hazards. However, if a hazard poses a substantial immediate danger to life or property, the holder may remove the hazard in accordance with a Forest Service approved plan for such emergency actions, while immediately notifying the authorized forest officer.

D. Safety. (K13) The holder shall carry out all operations in a skillful manner, having due regard for the safety of employees and the public, and in accordance with applicable Occupational Safety and Health Administration and Environmental Protection Agency regulations shall safeguard unsafe areas. The holder shall regularly inspect its facilities as directed by 18 CFR Part 12 regulations, meet all the requirements of those regulations, and provide further effective safety measures as needed for safety protection.

E. Compliance with Laws, Regulations, and other Legal Requirements. The holder, in exercising the uses authorized by this permit, will assume responsibility for compliance with the regulations of the Department of Agriculture and all Federal, State, county, and municipal laws, ordinances, or regulations which are applicable to the area or operations covered by this permit. The obligations of the holder under this permit are not contingent upon any duty of the Forest Service to inspect the premises. A failure by the Forest Service, or other governmental officials, to inspect is not a defense to noncompliance with any of the terms and conditions of this permit.

F. Fire Prevention and Suppression. The holder shall take all reasonable precautions to prevent and suppress forest fires. Open fires are prohibited except with written permit from the authorized officer or the authorized officer's agent.

G. Change of Address. The holder shall immediately notify the authorized officer of a change in address.

H. Change in Ownership of the Authorized Improvements. This permit is transferable to the extent necessary to conform with of the license. The holder shall immediately notify the authorized officer when a change in ownership of the improvements is pending. Notification by the present holder and potential owner shall be executed using Form FS-2700-3, Special Use Application and Report, or Form FS-2700-3a, Request for Termination of and Application for Special-Use Permit. Upon receipt of the proper documentation, the authorized officer may issue a permit to the new owner of the improvements.

I. Relocation of Improvements. (K29) The holder accepts this permit with the express understanding that should future location of government improvements or road rights-of-way require the relocation or adjustment of the holder's linear-type improvements (such as transmission lines, penstocks, pipelines, ditches, or roads) or other actions to accommodate the Federal Government's need for reasonable protection and use of public property, the holder shall, as mutually agreed by the government and the holder and at the holder's expense, accomplish such relocation, adjustment, or other actions, within 180 days following written request to take such action, or on a schedule approved by the Forest Service in writing.

J. Pollution. (K19) The holder shall discharge no waste or byproduct if it contains any substances in concentrations that would result in violation of Federal or State laws, including water quality standards set forth at the time of licensing by the State; would impair present or future beneficial uses of water; would cause pollution, nuisance, or contamination; or would otherwise unreasonably degrade the quality of any lands or waters. During the construction and operation of the project, the holder shall protect project water quality by using the best management practices established by the Forest Service and the State.

K. Esthetics. (K6) In its actions, the holder shall conserve the scenic and esthetic values of the area under this permit consistent with the uses granted herein during construction, operation, and maintenance of the project improvements.

L. Signs. (K11) The holder shall erect no signs or advertising devices on the area covered by this permit without prior approval of the Forest Service as to location, design, size, color, and message. The holder shall maintain or renew erected signs as necessary to neat and presentable standards. The holder shall coordinate the placement of signs required by the license or the Commission with the authorized forest officer. All signs for holder-provided project recreation facilities shall be constructed to Forest Service specifications (i.e., from the Forest Service "family of signs") and shall give equal representation to the holder and the Forest Service.

M. Pesticides. (K23) Pesticides may not be used to control undesirable woody and herbaceous vegetation, aquatic plants, insects, rodents, trash fish, etc., without the prior written approval of the Forest Service. The holder shall submit a request for approval of planned uses of

pesticides. The report must cover annual planned use and be updated as required by the Forest Service. The holder shall provide information essential for review in the form specified. Exceptions to this schedule may be allowed only when unexpected outbreaks of pests require control measures that were not anticipated at the time the report was submitted. In such an instance, an emergency request and approval may be made.

On National Forest System lands, the holder shall use only those materials registered by the U. S. Environmental Protection Agency for the specific purpose planned. The holder must strictly follow label instructions in the preparation and application of pesticides and disposal of excess materials and containers.

IV. LIABILITY

A. Risk of Loss. The holder assumes all risk of loss of the property. Loss to the property may result from, but is not limited to, theft, vandalism, fire, avalanches, rising waters, winds, falling limbs or trees, and acts of God. If the authorized improvements are destroyed or substantially damaged, the authorized officer shall conduct an analysis to determine whether the improvements can be safely occupied in the future and whether rebuilding should be allowed.

B. Damage to Property of the United States. The holder has an affirmative duty to protect from damage the land and property of the United States. Damage includes, but is not limited to, fire suppression costs and all costs associated with or resulting from the release or threatened release of a hazardous substance occurring during or as a result of the holder's activities on the property.

1. The holder shall pay the United States for damages occurring under the terms of this permit or under any law or regulation applicable to the National Forests, whether caused by the holder, or by any agents or employees of the holder. The holder shall be liable for all injury, loss, or damage, including fire suppression or cleanup of hazardous wastes, associated with the holder's use or occupancy without regard to the holder's negligence. Compensation shall include, but is not limited to, the value of resources damaged or destroyed, the costs of restoration, cleanup, or other mitigation, fire suppression or other types of abatement costs, and all administrative, legal and other costs in connection therewith.

2. With respect to roads, the holder shall be liable for damages to all roads and trails of the United States open to public use caused by the holder's use to the same extent as provided under condition IV. B. The holder shall fully repair all damage to National Forest roads and trails caused by the holder in the exercise of the privileges granted by this permit.

C. Indemnification and Liability of the United States. The holder shall comply with all applicable federal, state, and local laws and regulations, including but not limited to the Federal Water Pollution Control Act, 33 U.S.C. 1251, the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., and the Comprehensive Environmental Response, Control, and Liability Act, 42 U.S.C. 9601 et seq. The holder shall

indemnify, defend, and hold the United States harmless for any violations incurred under any such laws and regulations or for any judgments, claims, or demands assessed against the United States as a result of or associated with the holder's activities past, present, or future. The holder's indemnification of the United States shall include any damage to life or property arising from the holder's occupancy or use of Federal lands. The United States has no duty to inspect the permit area or to warn of hazards and, if the United States does inspect the permit area, it shall incur no additional duty nor any liability for hazards not identified or discovered through such inspections.

D. Damage - High Hazard Clause. (K10) The holder is hereby made liable for all injury, loss, or damage, including but not limited to fire suppression costs, directly or indirectly resulting from or caused by the holder's use and occupancy of the area covered by the permit, regardless of whether the holder is negligent or otherwise at fault, provided that the maximum liability without fault shall not exceed $1,000,000 for any one occurrence, and provided further that the holder shall not be liable when such injury, loss, or damage results wholly, or in part, from a negligent act of the United States, or from an act of a third party not involving the facilities of the holder.

Determination of liability for injury, loss, or damage, including fire suppression costs, in excess of the specified maximum, shall be according to the laws governing ordinary negligence.

[INSTRUCTIONS: Use for project with an above-ground powerline, above-ground or moderate to high risk pipeline, dam (other than small diversion dam), exposed transformers, or powerhouse subject to vandalism.]

V. TERMINATION, REVOCATION, AND SUSPENSION

A. General. For purposes of this permit, "termination", "revocation", and "suspension" refer to the cessation of uses and privileges under the permit.

"Termination" refers to the cessation of the permit under its own terms without the necessity for any decision or action by the authorized officer. Termination occurs automatically when, by the terms of the permit, a fixed or agreed upon condition, event, or time occurs. For example, the permit terminates at expiration. Terminations are not appealable.

"Revocation" refers to an action by the authorized officer to end the permit because of noncompliance with any of the prescribed terms. Revocations are appealable.

"Suspension" refers to a revocation which is temporary and the privileges may be restored upon the occurrence of prescribed actions or conditions. Suspensions are appealable.

B. Revocation or Suspension. (K49) The Forest Service may suspend or revoke this permit in whole or part for:

1. Noncompliance with Federal, State, or local laws and regulations.

2. Noncompliance with the terms and conditions of this permit.

3. Abandonment or other failure of the holder to otherwise exercise the privileges granted.

C. Opportunity to Take Corrective Action. Prior to revocation or suspension for cause pursuant to condition V. B., the authorized officer shall give the holder written notice of the grounds for each action and a reasonable time, not to exceed 90 days, to complete the corrective action prescribed by the authorized officer.

D. Removal of Improvements. Upon abandonment, revocation, termination, or expiration of this authorization, the holder shall remove within a reasonable time prescribed by the authorized officer all structures and improvements, except those owned by the United States and shall restore the site. If the holder fails to remove all structures or improvements within the prescribed period, they shall become the property of the United States and may be sold, destroyed or otherwise disposed of without any liability to the United States. However, the holder shall remain liable for all cost associated with their removal, including costs of sale and impoundment, cleanup, and restoration of the site.

E. Revocation of License. (K53) Revocation of the license for the project covered by this permit by the Federal Energy Regulatory Commission may result in revocation of this permit by the Regional Forester.

VI. OTHER PROVISIONS

A. Members of Congress. No Member of or Delegate to Congress or Resident Commissioner shall benefit from this permit either directly or indirectly, except when the authorized use provides a general benefit to a corporation.

B. Nondiscrimination. (K42) In connection with the performance of work under this permit, including construction, maintenance, and operation of the facility, the holder shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, or handicap in accordance with the Civil Rights Act of 1964, as amended.

C. Appeals and Remedies. Any discretionary decisions or determinations by the authorized officer are subject to the appeal regulations at 36 CFR 251, Subpart C, or revisions thereto.

D. Removal and Planting of Vegetation. This permit does not authorize the cutting of timber or other vegetation. Trees or shrubbery may be removed or destroyed only after the authorized officer, or authorized officer's agent, has approved, and has marked or otherwise designated that which may be removed or destroyed. Timber cut or destroyed shall be paid for by the holder as follows: Merchantable timber at appraised

value and young-growth timber below merchantable size at current damage appraisal value, **provided** that the Forest Service reserves the right to dispose of the merchantable timber to others than the holder at no stumpage cost to the holder. Trees, shrubs, and other plants may be planted in such manner and in such places about the premises as may be approved by the authorized officer.

E. Plans, Part of Permit, Licensed. (K51) The holder shall prepare the following plans in consultation with Forest Service and other appropriate agencies.

a. <plan names>
b. _____
c. _____

The holder shall submit these plans for Forest Service approval 90 days prior to any new construction or reconstruction; or within one year of issuance of the Federal Energy Regulatory Commission license, if no construction or reconstruction was proposed in an application for license or new license. The holder shall obtain written Forest Service approval for said plan(s) before beginning any on-the-ground construction and shall strictly follow the provisions of the approved plans and any terms of their approval (stipulations). Said plans shall be attached hereto and marked as Exhibits <letters>, respectively.
[INSTRUCTIONS: Optional use; see section 66 for types of operation plans to consider.]

F. Road Use by Government. (K38) The United States shall have unrestricted use of the said right-of-way and any road constructed thereon for all purposes deemed necessary or desirable in connection with the protection, administration, management, and utilization of Federal lands or resources and shall have the exclusive right to extend rights and privileges for use of the right-of-way and road thereon to States and local subdivisions thereof, as well as to other users, including members of the public, except contractors, agents, and employees of the holder; provided, that the agency having jurisdiction shall control such use so as not unreasonably to interfere with use of the road by the holder or cause the holder to bear a share of the cost of maintenance greater than the holder's use bears to all use of the road.

[INSTRUCTIONS: The Forest Service has this authority regardless of this clause. However, to be clear, use this clause when any power project roads will become part of the forest development road system and when the crest of a dam will function as a roadway. Also use this clause if a subsequent road easement may be issued to the county.]

G. Recreation Facility Construction, Operation, Maintenance, and Replacement. (K45) Consistent with the project recreation plan as approved by the Forest Service, the holder shall construct, operate, maintain, and replace (as necessary) the following recreation facilities on National Forest System lands in accordance with Forest Service specifications:

a. _____
b. _____

c. _____

The holder shall prepare a detailed site plan and applicable construction specifications for each proposed facility on National Forest System land and obtain the approval of the Forest Service before beginning construction on that site. The site plan shall be consistent with the Forest Service design narrative, which contains the site objectives and constraints. In constructing, operating, maintaining, or replacing authorized recreation facilities, the holder shall comply with the site plan and its approved provisions and with all other terms of this permit and with those construction stipulations made part of this permit to allow construction activities.

Upon mutual agreement, the holder may enter into a collection agreement with the Forest Service to have the Forest Service construct, operate, maintain, or replace recreation facilities or services. Work performed by the Forest Service shall be at the holder's expense, to the extent appropriate to the holder's financial responsibility.

[INSTRUCTIONS: Use this condition when recreation construction is contemplated.]

H. Superior Clauses. In the event of any conflict between any of the preceding printed clauses or any provision thereof and any of the following clauses or any provision thereof, the preceding printed clauses shall control.

<ADD HERE ANY CLAUSES MANDATORY FOR THE KIND OF USE AUTHORIZED OR NEEDED TO ADDRESS LOCAL CONDITIONS>

In Witness Whereof, the parties hereto have caused this permit to be duly executed only upon licensing by the Federal Energy Regulatory Commission and subsequent endorsement below. Signed this _____ day of _____ 19___.

Holder	USDA - Forest Service
by_____	by_____
<Name>	<Name>
<Title>	Forest Supervisor
<Company>	__<Name>__ National Forest

- -

Public reporting burden for this collection of information, if requested, is estimated to average 1 hour per response for annual financial information; average 1 hour per response to prepare or update operation and/or maintenance plan; average 1 hour per response for inspection reports; and an average of 1 hour for each request that may include such things as reports, logs, facility and user information, sublease information, and other similar miscellaneous information requests. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB # 0596-0082), Washington, D.C. 20503.

ENDORSEMENT: In accordance with the condition of execution above, this permit is in full force and effect as of this ____ day of _____ 19__. This permit shall terminate on <date of license termination> unless otherwise terminated under the provisions of condition V. or extended under the provisions of condition II. of this permit.

by_____

<Name>
Forest Supervisor
_____ National Forest

CONSTRUCTION STIPULATIONS

The Stipulations, made as of the <day> day of <month>, 19 <year>, by and between <holder>, hereinafter referred to as the holder, and U.S. Department of Agriculture, Forest Service, acting by and through its authorized officer, hereinafter referred to as the Forest Service.

Whereas the holder has been issued a special-use permit dated <date> for the use and occupancy of National Forest land for the use (and maintenance) of a hydropower project, and, whereas, such permit requires that all construction conform with approved plans, specifications, and stipulations.

Now, therefore, the holder hereby agrees to the following terms and conditions, and the Forest Service hereby authorizes the construction to proceed in accordance with these terms and conditions.

CS-1. Fire Plan Part of Authorization (K1)

A project fire plan describing the holder's responsibilities for prevention and suppression of fires, developed by the holder, and subject to Forest Service approval, shall become part of this authorization, as Exhibit <letter> and attached hereto. The holder shall obtain Forest Service approval for said plan before beginning any on-the-ground construction and shall strictly follow the provisions of the approved plan and any terms of its approval (stipulations).

CS-2. Designation of Construction Manager (K2)

The holder shall designate a construction manager for project construction. This individual shall be qualified to represent the holder and shall be present or have a qualified acting representative present at all times while project construction activities are taking place. This individual shall be the person who receives the on-the-ground approvals and directions from the designated Forest Service representative(s).

CS-3. Construction Inspections by Holder--Licensed Project (K3)

The holder shall perform daily (or on a schedule otherwise agreed to by the Forest Service in writing) inspections of holder's operations while they are proceeding. The holder shall document these inspections (informal writing sufficient) and shall deliver such documentation to the Forest Service on a weekly basis. The inspections must specifically include fire plan compliance, public safety, and environmental protection. The holder shall act immediately to correct any items found to need correction.

CS-4. Protection of Wildlife and Plant Species (K5)

If threatened, endangered, or sensitive (as defined in the Forest Service manual) wildlife and plant species are found

during use under this authorization, the holder shall notify the Forest Service and shall take immediate measures to protect said species as directed by the Forest Service.

CS-5. Surveys, Land Corners (K7)

The holder shall protect, in place, all public land survey monuments, private property corners, and forest boundary markers. In the event that any such land markers or monuments are destroyed in the exercise of the privileges authorized by this authorization, depending on the type of monument destroyed, the holder shall reestablish or reference same in accordance with (1) the procedures outlined in the "Manual of Instructions for the Survey of the Public Land of the United States," (2) the specifications of the County Surveyor, or (3) the specifications of the Forest Service. Further, the holder shall ensure that any such official survey records affected are amended as provided by law.

CS-6. Traffic Safety (K8)

When construction is in progress adjacent to or on Forest Service controlled roads open to public travel, the holder shall furnish, install, and maintain temporary traffic controls to provide the public with adequate warning and protection from hazardous or potentially hazardous conditions associated with the holder's operations. Devices must be appropriate to current conditions and must be covered or removed when not needed. Except as otherwise agreed, flagmen and devices must be as specified in the "Manual on Uniform Traffic Control Devices for Streets and Highways" (MUTCD).

CS-7. Site Development Schedule (K14)

As a part of this authorization, the holder shall, in consultation with the Forest Service, prepare a schedule for the progressive development of the permitted site and installation of facilities. Such a schedule shall be prepared 60 days prior to any activity the Forest Service considers to be of a ground disturbing nature on National Forest System lands, and shall set forth an itemized priority list of planned improvements and the planned dates for start-up and completion. This schedule shall be made a part of this authorization. The holder may modify the scheduled date for installation of any improvement authorized, provided the holder notifies the Forest Service of the change; and provided further, that the holder completes all previously scheduled priority resource protection measures by their scheduled due dates.

The holder shall submit all construction plans describing the location and appearance of project features and ground disturbing activities to the Forest Service for approval a minimum of 45 days before anticipated start of construction. These construction plans must have the approval with signature of a registered professional engineer of the appropriate

specialty, and must have the approval of the Forest Service prior to the use of these plans in constructing this project. These plans shall then become part of this authorization as Exhibit <letter>, to be attached hereto.

The holder shall ensure that construction bid invitations are in compliance with this authorization and with all applicable environmental protection standards.

In the actual layout on-the-ground, the holder shall use accurate mapping based on an adequate survey of the land, including the location of special areas such as water courses.

The holder shall furnish to officers of the United States such information as may be required concerning the construction, operation, and maintenance of the project, and any alteration thereof.

When asked by the Forest Service, the holder shall provide for an on-the-ground review with the Forest Service of the plans for any area of concern to the Forest Service at least 7 days prior to beginning construction on that area.

CS-8. Bonds, Performance (K18)

As a further guarantee of the faithful performance of the provisions of this permit and these stipulations, the holder agrees to deliver and maintain a surety bond in the amount of <written number> dollars ($<number>) before land-disturbing activities begin. Before undertaking additional construction or alteration work not provided for at the time the bond amount was set or when the improvements are to be removed and the area restored, the holder shall deliver and maintain a surety bond in an amount set by the Forest Service, which amount shall not be in excess of the estimated loss the Government would suffer upon default in performance of this work. Should the sureties or the bonds delivered under this authorization become unsatisfactory to the Forest Service, the holder shall, within thirty (30) days of demand, furnish a new bond with surety, solvent and satisfactory to the Forest Service.

In lieu of surety bond, and as directed by the Forest Service, the holder may deposit into a Federal depository, and maintain therein, cash in the amounts provided for above, or negotiable securities of the United States having a market value at time of deposit of not less than the dollar amounts provided above.

The Forest Service shall release the holder's surety bond, or return deposits in lieu of bond, thirty (30) days after certification by the Forest Service that installations under the construction and resource protection plans required by this authorization are complete, and upon the holder furnishing proof satisfactory to the Forest Service that all claims for labor and material on said installations have been paid by the

holder or released and satisfied. The holder agrees that all moneys deposited under this authorization may, upon failure on holder's part to fulfill all and singular the requirements herein set forth or made a part hereof, be retained by the United States to be applied to the satisfaction of holder's obligations assumed under the authorization and construction stipulations, without prejudice whatever to any other rights and remedies of the United States.

CS-9. Erosion Control, Topsoil, Revegetation (K20)

The holder shall be responsible for the prevention and control of soil erosion, caused either directly or indirectly by construction or operation of the project, and shall provide preventive and control measures as required by the Forest Service.

The holder shall strip topsoil from construction areas and deposit it in storage piles apart from other excavated material. After removing the desired amount of material, the holder shall evenly spread the stored topsoil over exposed subsoil in appropriate areas to the extent practicable, and shall revegetate the area disturbed.

To the extent practicable on National Forest System lands, the holder shall establish a vegetative cover on all cut and fill slopes, borrow areas, and other disturbed areas capable of growing a vegetative cover of grasses or other suitable vegetation, as required by the Forest Service. The holder shall seed or plant at a time of the year, in a manner, and with species that the Forest Service considers offer the best chance of success. The holder shall repeat such seeding and planting regularly as conditions allow, until such areas are accepted in writing by the Forest Service as satisfactorily revegetated and stabilized.

The holder shall install erosion control measures for adverse weather conditions by ___<date>_____, each year and keep them current with the operation until the Forest Service notifies the holder that the adverse conditions of that season are over.

CS-10. Suspension/Revocation (K27)

The Forest Service may temporarily suspend construction/reconstruction and/or revoke the special-use permit upon breach of any of the conditions herein.

CS-11. Use of Explosives (K37)

a. Where the Forest Service determines that a fire hazard exists, the holder shall use only electronic detonators for blasting, except near high-voltage powerlines. The Forest Service may allow specific exceptions when in the public interest.

b. When using explosives, the holder shall comply with all applicable Occupational Safety and Health Administration (OSHA) Construction Safety Orders to prevent endangerment of life or property and shall comply with the requirements of the Forest Service. The holder shall be responsible for any and all damages resulting from the use of explosives and shall adopt precautions to prevent damage to surrounding objects. The holder shall furnish and erect special signs as directed by applicable OSHA Construction Safety Orders to warn the public of the holder's blasting operations. The holder shall place and maintain such signs so they are clearly evident to the public during all critical periods of the blasting operations, and shall ensure that they include a warning statement to have radio transmitters turned off.

c. The holder shall store all explosives in a secure manner, and shall mark all such storage places in compliance with applicable OSHA Construction Safety Orders and State and local laws and ordinances. In general, do not locate such storage facilities closer than 1,000 feet to a road or any building or camping area.

d. When using explosives, the holder shall adopt precautions to prevent damage to landscape features and other surrounding objects. When directed by the authorized officer, the holder shall leave trees within an within within an area designated to be cleared as a protective screen for surrounding vegetation during blasting operations. The holder shall remove and dispose of trees so left when blasting is complete. When necessary necessary, and at any point of special danger, the holder shall use suitable mats or some other approved method to smother blasts.

CS-12. Unattended Construction Equipment (K39)

The holder shall not place construction equipment on National Forest land prior to actual use or allow it to remain on National Forest land subsequent to actual use. However, the holder shall be allowed reasonable latitude in move-in, move-out, and usually will be allowed to leave equipment in Forest Service-approved areas between consecutive seasons of actual use. After use, the holder shall remove equipment from National Forest System land unless a permit is issued for equipment storage.

CS-13. Soil and Water Protection Implementation Plan Part of Authorization (K46)

The holder shall prepare a plan(s), in consultation with Forest Service and other appropriate agencies, for implementing measures for mitigating impacts to soil and water resources. Such plan(s), consistent with the Forest Service plan for the area and mitigation measures identified in the

environmental analysis for the project, shall include measures for:

a. Control of erosion, stream sedimentation, dust, and soil mass movement, particularly to implement the provisions of condition CS-11 of these stipulations.

b. Treatment and disposal of solid waste and waste water generated during construction of the project.

c. Storage of oil and hazardous substances, and spill prevention and cleanup.

d. Storage and/or disposal of excess construction and tunnel spoils and slide material.

e. Development and restoration of borrow areas.

f. Monitoring water quality during construction and rehabilitation periods.

The holder shall submit this plan(s) for Forest Service approval 90 days prior to any new construction or reconstruction. The holder shall obtain Forest Service approval for said plan(s) before beginning any on-the-ground construction and shall strictly follow the provisions of the approved plan(s) and any terms of its approval (stipulations). Said plan(s) shall be attached hereto and marked as Exhibit(s) _____.

CS-14. Plans, Part of Permit, Licensed (K51)

The holder shall prepare the following plans in consultation with Forest Service and other appropriate agencies.

a. <plan names>
b. _____
c. _____
d. _____

The holder shall submit these plans for Forest Service approval 90 days prior to any new construction or reconstruction; or within one year of issuance of the Federal Energy Regulatory Commission license, if no construction or construction or reconstruction was proposed in an application for license or new license. The holder shall obtain Forest Service approval for such plans before beginning any on-the-ground construction and shall strictly follow the provisions of the approved plans and any terms of their approval (stipulations). Said plans shall be attached hereto and marked as Exhibits <letters>, respectively.

[INSTRUCTIONS: Optional use; see section 66 for types of construction plans to consider.]

CS-15. Cultural Resource Discoveries (X17 edit)

If, prior to or during excavation work, items of potential cultural, historical, archeological, or paleontological value are reported or discovered, or a known deposit of such items is disturbed, the holder shall immediately cease excavation in the area so affected. The holder shall then notify the Forest Service and shall not resume excavation until it receives written approval from the authorized officer.

If necessary for the adequate protection and preservation of the site and its artifacts, the Forest Service may require the holder to provide for the recovery, excavation, and preservation of the site and its artifacts at the holder's expense. At the option of the Forest Service, this authorization may be terminated at no liability by the United States when such revocation is deemed necessary or desirable to preserve or protect archaeological, paleontological, or historic sites and artifacts.

In Witness Whereof, the parties hereto have caused these stipulations to be duly executed on this _____ day of _____ 19___.

Holder

by_____
<Name>
<Title>
<Company>

_____

USDA - Forest Service

by_____
<Name>
Forest Supervisor
__<Name>__ National Forest

_____
(date)

[FR Doc. 95–12337 Filed 5–19–95; 8:45 am]
BILLING CODE 3410–11–C

federal register

Monday
May 22, 1995

Part III

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Coordinating Council on Juvenile Justice and Delinquency Prevention Meeting; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

May 11, 1995.

AGENCY: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of meeting.

SUPPLEMENTARY INFORMATION: A meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention will take place in the District of Columbia, beginning at 1:00 p.m. on Wednesday, June 21, 1995, and ending at 4:00 p.m. on June 21, 1995. This advisory committee, chartered as the Coordinating Council on Juvenile Justice and Delinquency Prevention, will meet at the United States Department of Justice, located at 10th and Constitution Avenue, N.W., Conference Room 5111, Washington, D.C. 20530. The Coordinating Council, established pursuant to section 3(2)(A) of the Federal Advisory Committee Act (5 U.S.C. App. 2), will meet to carry out its advisory functions under section 206 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. This meeting will be open to the public. The public is advised that it must enter the building via the Constitution Avenue Visitors' Center. For security reasons, members of the public who are attending the meeting must contact the Office of Juvenile Justice and Delinquency Prevention (OJJDP) by close of business June 14, 1995. The point of contact at OJJDP is Lutricia Key who can be reached at (202) 307–5911. The public is further advised that a pictured identification is required to enter the building.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 95–12409 Filed 5–19–95; 8:45 am]

BILLING CODE 4410–18–P

Federal Register

Monday
May 22, 1995

Part IV

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Advisory Committee: Notice of Meeting; Recombinant DNA Research: Proposed Actions Under the Guidelines; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee on June 8–9, 1995. The meeting will be held at the National Institutes of Health, Building 31C, 6th Floor, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892, starting on June 8, 1995, at approximately 9 a.m., and will recess at approximately 6 p.m. The meeting will reconvene on June 9, 1995, at approximately 8:30 a.m. and will adjourn at approximately 5 p.m. The meeting will be open to the public to discuss Proposed Actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496) and other matters to be considered by the Committee. The Proposed Actions to be discussed will follow this notice of meeting. Attendance by the public will be limited to space available. Members of the public wishing to speak at this meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, MSC 7052, 6006 Executive Boulevard, Suite 323, Bethesda, Maryland 20892–7052, Phone (301) 496–9838, FAX (301) 496–9839, will provide materials to be discussed at this meeting, roster of committee members, and substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Wivel in advance of the meeting. A summary of the meeting will be available at a later date.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: May 15, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–12406 Filed 5–19–95; 8:45 am]

BILLING CODE 4140–01–M

Recombinant DNA Research: Proposed Actions Under the Guidelines

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: Notice of Proposed Actions Under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496).

SUMMARY: This notice sets forth proposed actions to be taken under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496). Interested parties are invited to submit comments concerning these proposals. These proposals will be considered by the Recombinant DNA Advisory Committee at its meeting on June 8–9, 1995. After consideration of these proposals and comments by the Recombinant DNA Advisory Committee, the Director of the National Institutes of Health will issue decisions in accordance with the NIH Guidelines.

DATES: Comments received by June 1, 1995, will be reproduced and distributed to the Recombinant DNA Advisory Committee for consideration at its June 8–9, 1995, meeting.

ADDRESSES: Written comments and recommendations should be submitted to Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, MSC 7052, 6006 Executive Boulevard, Suite 323, Bethesda, Maryland 20892–7052, or sent by FAX to 301–496–9839.

All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities, National Institutes of Health, MSC 7052, 6006 Executive Boulevard, Suite 323, Bethesda, Maryland 20892–7052, Phone 301–496–9838, FAX to 301–496–9839.

SUPPLEMENTARY INFORMATION: The NIH will consider the following actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules:

I. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Curiel and Alvarez

In a letter dated January 5, 1995, Drs. David T. Curiel and Ronald D. Alvarez of the University of Alabama, Birmingham, Alabama, submitted a human gene transfer protocol entitled: A Phase I Study of Recombinant Adenovirus Vector-Mediated Delivery of an Anti-erbB–2 Single-Chain (sFv) Antibody Gene for Previously Treated Ovarian and Extraovarian Cancer Patients to the Recombinant DNA Advisory Committee for formal review and approval at its March 6–7, 1995, meeting. Due to reviewers' comments before the March 1995 meeting, the protocol was not forwarded to the committee.

In a letter dated April 12, 1995, Drs. David T. Curiel and Ronald D. Alvarez of the University of Alabama, Birmingham, Alabama, submitted a revised protocol to the Recombinant DNA Advisory Committee for formal review and approval at its June 8–9, 1995, meeting.

II. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Curiel

In a letter dated April 13, 1994, Dr. David Curiel of the University of Alabama, Birmingham, Alabama, submitted the human gene transfer protocol entitled: Phase I Trial of a Polynucleotide Vaccine to Human Carcinoembryonic Antigen in Patients with Metastatic Colorectal Cancer to the Recombinant DNA Advisory Committee for formal review and approval at its June 9–10, 1994, meeting. During the June 1994 meeting, the committee approved the protocol by a vote of 10 in favor, 4 opposed, and no abstentions. Approval was contingent on the review and approval by the primary reviewers of a revised Informed Consent document (as approved by the Institutional Review Board). On June 29, Dr. Curiel submitted an Institutional Review Board approved Informed Consent Document. The primary reviewers approved the revised

Informed Consent Document. On September 17, 1994, Dr. Nelson Wivel, Office of Recombinant DNA Activities, National Institutes of Health, informed Dr. Curiel that Dr. Harold Varmus, Director, National Institutes of Health, concluded that the protocol should be reviewed again by the committee when additional preclinical data are available.

In a letter dated April 12, 1995, Dr. David T. Curiel of the University of Alabama, Birmingham, Alabama, submitted a revised protocol to the Recombinant DNA Advisory Committee for formal review and approval at its June 8–9, 1995, meeting.

III. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Paulson and Lyerly

In a letter dated March 31, 1995, Drs. David F. Paulson and H. Kim Lyerly of Duke University Medical Center, Durham, North Carolina, submitted a human gene transfer protocol entitled: A Phase I Study of Autologous Human Interleukin-2 Gene Modified Tumor Cells in Patients with Locally Advanced or Metastatic Prostate Cancer to the Recombinant DNA Advisory Committee for formal review and approval.

IV. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Berchuck and Lyerly

In a letter dated April 10, 1995, Drs. Andres Berchuck and H. Kim Lyerly of Duke University Medical Center, Durham, North Carolina, submitted a human gene transfer protocol entitled: A Phase l Study of Autologous Human Interleukin 2 (IL–2) Gene Modified Tumor Cells in Patients with Refractory Metastatic Ovarian Cancer to the Recombinant DNA Advisory Committee for formal review and approval.

V. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Steiner and Holt

On April 13, 1995, Drs. Mitchell S. Steiner and Jeffrey T. Holt of Vanderbilt University School of Medicine, Nashville, Tennessee, submitted a human gene transfer protocol entitled: Gene Therapy for the Treatment of Advanced Prostate Cancer by In Vivo Transduction with Prostate-Targeted Vectors Expressing Antisense c-myc RNA to the Recombinant DNA Advisory Committee for formal review and approval.

VI. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. McIvor

In a letter dated April 12, 1995, Dr. R. Scott McIvor of the Institute of Human Genetics, University of Minnesota, Minneapolis, Minnesota, submitted a human gene transfer protocol entitled: Gene Therapy for Purine Nucleoside Phosphorylase Deficiency to the Recombinant DNA Advisory Committee for formal review and approval.

VII. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Scardino, Thompson, Woo

In a letter dated April 11, 1995, Drs. Peter T. Scardino, Timothy C. Thompson, and Savio L.C. Woo of Baylor College of Medicine, Houston, Texas, submitted a human gene transfer protocol entitled: Phase I Study of Adenoviral Vector Delivery of the HSV-tk Gene and the Intravenous Administration of Ganciclovir in Men with Local Recurrence of Prostate Cancer After Radiation Therapy to the Recombinant DNA Advisory Committee for formal review and approval.

VIII. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Whitley

In a letter dated April 12, 1995, Dr. Chester B. Whitley of the Institute of Human Genetics, University of Minnesota, Minneapolis, Minnesota, submitted a human gene transfer protocol entitled: Gene Therapy for Scheie Keratopathy to the Recombinant DNA Advisory Committee for formal review and approval.

IX. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Munshi and Barlogie

In a letter dated April 13, 1995, Drs. Nikhil C. Munshi and Bart Barlogie of the University of Arkansas, Little Rock, Arkansas, submitted a human gene transfer protocol entitled: Thymidine Kinase (TK) Transduced Donor Leukocyte Infusions as a Treatment for Patients with Relapsed or Persistent Multiple Myeloma after T-cell Depleted Allogeneic Bone Marrow Transplant to the Recombinant DNA Advisory Committee for formal review and approval.

X. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Fox and Urba

In a letter dated April 12, 1995, Drs. Bernard A. Fox and Walter J. Urba of Chiles Research Institute, Providence Portland Medical Center, Portland, Oregon, submitted a human gene transfer protocol entitled: Adoptive Cellular Therapy of Cancer Combining Direct HLA–B7/β2–Microglobulin Gene Transfer with Autologous Tumor Vaccination for the Generation of Vaccine-Primed Anti-CD3 Activated Lymphocytes to the Recombinant DNA Advisory Committee for formal review and approval.

XI. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Hwu

In a letter dated April 12, 1995, Dr. Patrick Hwu of the National Institutes of Health, Bethesda, Maryland, submitted a human gene transfer protocol entitled: Treatment of Patients with Advanced Epithelial Ovarian Cancer using Anti-CD3 stimulated Peripheral Blood Lymphocytes Transduced with a Gene Encoding a Chimeric T-cell Receptor Reactive with Folate Binding Protein to the Recombinant DNA Advisory Committee for formal review and approval.

XII. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Marasco

In a letter dated April 12, 1995, Dr. Wayne A. Marasco of the Dana-Farber Cancer Institute, Boston, Massachusetts, submitted a human gene transfer protocol entitled: Intracellular Antibodies Against HIV–1 Envelope Protein for AIDS Gene Therapy to the Recombinant DNA Advisory Committee for formal review and approval.

XIII. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Verfaillie

In a letter dated April 12, 1995, Dr. Catherine Verfaillie of the University of Minnesota, Minneapolis, Minnesota, submitted a human gene transfer protocol entitled: Autologous Marrow Transplantation for Chronic Myelogenous Leukemia Using Stem Cells Obtained After In Vivo Chemotherapy Cytokine Priming to the Recombinant DNA Advisory Committee for formal review and approval.

XIV. Proposed Amendments to Appendix B of the NIH Guidelines Regarding Updating the Classification of Microorganisms/Fleming

In a letter dated June 24, 1993, Dr. Diane Fleming, President of the Mid-Atlantic Biological Safety Association requested updating Appendix B, Classification of Microorganisms on the Basis of Hazard. The Mid-Atlantic Biological Safety Association submitted an updated list of the classification of microorganisms for the Committee to

review which included the latest taxonomy and agent risk group classifications as defined by the Centers for Disease Control and Prevention. This request was published for public comment in the **Federal Register** (August 18, 1994, 58 FR 44098).

During the September 9–10, 1993, meeting, the Recombinant DNA Advisory Committee recommended by consensus that the current classification of etiological agents described in the Biosafety in Microbiological and Biomedical Laboratories, 3rd edition, May 1993, U.S. Department of Health and Human Services, should be endorsed by the Committee. The Committee retains the option to adopt any modification to the CDC listing. The Committee recommended that the revised Appendix B, Classification of Microorganisms on the Basis of Hazard, submitted by Dr. Fleming should not be adopted until the Committee received letters of concurrence from both the Centers for Disease Control and Prevention and the NIH Division of Safety.

In a telephone call on October 20, 1994, Dr. Fleming stated that Appendix B, Classification of Microorganisms on the Basis of Hazard, would be reviewed by experts from the Centers for Disease Control and Prevention and the American Society for Microbiology. The revised Appendix B was submitted to the Recombinant DNA Advisory Committee December 1–2, 1994, meeting for review and discussion. During the December 1994 meeting, the Committee recommended publishing the revised Appendix B in the **Federal Register** for public comment, with further review of this proposal and possible approval during the March 6–7, 1995, meeting.

During the March 6–7, 1995 meeting, the Recombinant DNA Advisory Committee deferred approval of the proposed amendments to Appendix B pending additional revisions to the remaining appendices of the NIH Guidelines that are required to adequately accommodate the revised Appendix B. The motion for deferral included a recommendation that a subcommittee consisting of Dr. Straus, Office of Recombinant DNA Activities staff, and *ad hoc* experts would meet for one day to develop the required modifications. The motion passed by a vote of 17 in favor, 0 opposed, and no abstentions.

The Appendix B Subcommittee met on May 5, 1995. The proposed Appendix B reads as follows:

Appendix B. Points to Consider in the Assessment of Risk for Research and Production Involving Human Etiologic Agents and Oncogenic Viruses

Note: Appendix B includes only those biological agents known to infect humans. Information regarding restricted animal and plant pathogens is available from: U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, Import-Export Products Staff, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782; Phone: (301) 436–7830; Fax: (301) 436–8226.

Appendix B reflects the current state of knowledge and should be considered as guidance for establishing an initial, qualitative assessment regarding the safe handling of specific etiologic agents and oncogenic viruses and is not intended to replace a thorough assessment of the potential risk associated with such agents. Although Appendix B is considered to be comprehensive, this information should not be considered all-inclusive. A Task Force of the American Society of Microbiologists (ASM) will conduct an annual review of Appendix B and its recommendations will be presented to the Recombinant DNA Advisory Committee (RAC) as proposed amendments to the NIH Guidelines. The nomenclature reflects conformity with the most recent international agreements on taxonomy and nomenclature of agents at this time.

Appendix B–I. Qualitative Risk Assessment

Appendix B should be considered in conjunction with Appendices G and K in making an initial determination regarding the appropriate level of physical containment necessary to ensure the safe conduct of research or production. Appendix G specifies physical containment for standard laboratory experiments involving healthy adult individuals and defines Biosafety Level 1 (BL1) through Biosafety Level 4 (BL4). Appendix K supersedes Appendix G for large scale (over 10 liters) research or production involving healthy adult individuals and defines Good Large Scale Practice (GLSP) through Biosafety Level 3—Large Scale (BL3–LS).

Appendix B–II. Quantitative Risk Assessment

Appendix B–II–A. An initial qualitative risk assessment should be followed by a thorough quantitative risk assessment of the specific agent strain, immune status of the host relative to the agent in question, and potential agent-host-activity interactions, e.g., potential for aerosol production.

Appendix B–II–B. In the event that additional information is available regarding a specific strain listed in Appendix B, the Principal Investigator (PI) must make an initial qualitative risk assessment. The Institutional Biosafety Committee (IBC) must also make a quantitative risk assessment for experiments described in Section III–A, Experiments that Require IBC Approval, RAC Review, and NIH Approval, and Section III–C, Experiments that Require IBC Approval Before Initiation.

Appendix B–III. Risk Assessment Criteria

Factors to be considered in determining the level of containment include agent factors such as: virulence, pathogenicity, stability, route of spread, communicability, operations(s), quantity, and availability of vaccines or treatment. Changes to the agent which enhance or remove virulence factors should be considered by the PI and IBC which has the authority to raise or lower the containment level for that particular agent (see Sections III–C–2–a and V–B). For strains in which there is increased risk potential, the level of physical containment should be increased over the level that is recommended for the parent strain.

Appendix B–III–A. Agent-Specific Considerations. The following criteria should be considered when making a risk assessment determination for a specific strain:

Appendix B–III–A–1. Any strain isolated directly from a human or animal should be treated as a potentially pathogenic organism until proven otherwise.

Appendix B–III–A–2. Any strain that is known to be more hazardous than the parent (wild-type) strain, e.g., introduction of a drug-resistance trait to a strain that is not known to acquire that trait naturally, if such acquisition could compromise the use of the drug to control that agent, should be handled at a higher containment level (see Section III–A–1).

Appendix B–III–A–3. For any strain that has been genetically modified and is not specifically listed in Appendix B, the PI must make an initial determination regarding the potential risk of the genetically modified agent. The Institutional Biosafety Committee (IBC) must also make a quantitative risk assessment for experiments described in Section III–A, Experiments that Require IBC approval, RAC Review, and NIH Approval, and Section III–C, Experiments that Require IBC Approval Before Initiation.

Appendix B–III–A–4. For agents where more than one species is known

to be pathogenic for humans, Appendix B may include the genus name as well as individual species which are known to be pathogenic. When such a genus is listed in Appendix B, non-pathogenic species and strains are excluded. For parasites, non-infectious life cycle stages are excluded.

Appendix B–III–A–5. Certain attenuated strains or strains that have been demonstrated to have lost known virulence factors, e.g., genes, and that are to be used as: (1) a product, (2) part of a product, (3) or for prophylactic or therapeutic purposes, may qualify for a reduction in containment compared to the Risk Group (RG) assigned to the parent strain (see Sections III–C–2–a and V–B).

Appendix B–III–A–6. Careful consideration should be given to the application of some Risk Group 2 (RG2) agents. RG2 agents may be cultured at BL2 containment, e.g., dengue virus; however, when such agents are used for animal inoculation work or transmission studies, BL3 containment is recommended. Similarly, RG3 agents, e.g., monkey pox, Venezuelan equine encephalitis, and yellow fever viruses should be handled at BL4 containment for animal inoculation and transmission studies.

Appendix B–III–A–7. Individuals working with HIV, SIV, or other bloodborne pathogens should consult the Occupational Exposure to Bloodborne Pathogens, Final Rule (see Appendix B–VI–J). BL2 containment is recommended for activities involving all blood-contaminated clinical specimens, body fluids, and tissues from all humans or from HIV- or SIV- infected or inoculated laboratory animals. Activities such as producing research-laboratory scale quantities of HIV or SIV, manipulating concentrated virus preparations, and conducting procedures that may produce droplets or aerosols, are performed in a BL2 facility, but using the additional practices and containment equipment recommended for BL3. Activities involving industrial-scale volumes or preparation of concentrated HIV or SIV are conducted in a BL3 facility, using BL3 practices and containment equipment (see Appendix B–VI–D).

Appendix B–III–A–8. Specific strains may fall into either a more hazardous Risk Group (RG) or a less hazardous risk group depending on genetic background and natural history. Appendix B is derived from information regarding the parent (wild-type) strain (see Appendices B–VI–B through B–VI–D).

Appendix B–III–B. Laboratory Personnel Considerations. Appendix B is based on the potential effect of a biological agent on healthy adult humans and does not account for instances in which an individual may have increased susceptibility to such agents, e.g., preexisting disease, medications, compromised immunity, pregnancy, or breast feeding.

Appendix B–IV. Classification of Etiologic Agents and Oncogenic Viruses by Risk Group (RG)

The World Health Organization recommends the use of the term Risk Group (RG) to indicate qualitative risk assessment based on agent characteristics (see Appendix B–VI–E). Appendix B is intended to serve as guidance in determining RG classification. The characteristics used for the qualitative risk assessment of biohazardous agents by RG are defined in Appendix B–IV–A. RG are categorized according to their potential risk, i.e., Risk Group 1 (RG1) corresponds to the lowest level of risk and Risk Group 4 (RG4) corresponds to the highest level of risk (see Appendix B–VI–E). Appendix B–IV–B summarizes RG1 through RG4 and the relationship of these categories to Appendix G (see Appendix B–VI–E).

Certain strains specified in RG2, are known to represent minimal risk to humans; therefore, such organisms may be classified within RG1 and handled at BL1 (see Appendices III–C–2–a and V–B). Certain attenuated strains that are commonly used for live vaccines or that have an extensive history of safe laboratory use without harmful effect, may be placed in a lower RG than the parent strain (see Appendices B–VI–C and B–VI–D).

Risk assessment is ultimately a subjective process. Strains that are not listed in RG2 through RG4 are not implicitly classified in RG1; therefore, the PI must make an initial risk assessment determination. The Institutional Biosafety Committee (IBC) must also make a quantitative risk assessment for experiments described in Section III–A, Experiments that Require IBC approval, RAC Review, and NIH Approval, and Section III–C, Experiments that Require IBC Approval Before Initiation. Further guidance regarding the assessment of risk for agents not specifically listed in Appendix B is available from: Centers for Disease Control and Prevention, Biosafety Branch, Office of Health and Safety, Mail Stop F–05, 1600 Clifton Road, N.E., Atlanta, Georgia 30333; Phone: (404) 639–3883; Fax: (404) 639–2294. Biosafety in Microbiological and Biomedical Research Laboratories (see Appendix B–VI–D) and Control of Communicable Diseases in Man (see Appendix B–VI–B) provide additional guidance for determining appropriate containment conditions for specific etiologic agents and oncogenic viruses.

Appendix B–IV–A. Classification of Biohazardous Agents by Risk Group (RG) (see Appendix B–VI–E).

APPENDIX B–IV–A—CLASSIFICATION OF BIOHAZARDOUS AGENTS BY RISK GROUP (RG)

Risk Group 1 (RG1)	No/very low individual risk ..... No/very low community risk.	An agent that is unlikely to cause human disease. Well characterized agents not known to cause disease in healthy adult humans and of minimal potential hazard to laboratory personnel and the environment.
Risk Group 2 (RG2)	Moderate individual risk ..... Low community risk.	Agents which can cause human disease but are unlikely to be a serious hazard to workers, the community or the environment; percutaneous exposure, ingestion, or mucous membrane exposure may cause serious infection; however, effective treatment and preventive measures are available and the risk of spread of infection is limited.
Risk Group 3 (RG3)	High individual risk ..... Low community risk.	Indigenous or exotic agents which usually cause serious human disease but do not ordinarily spread from one infected individual to another. Effective treatment or preventive measures are available.
Risk Group 4 (RG4)	High individual risk ..... High community risk.	Dangerous/exotic agents which can cause serious human disease and can be readily transmitted directly or indirectly from one individual to another. Effective treatment and preventive measures are not usually available.

Appendix B–IV–B. Relationship Between Risk Group (RG) and Appendix G (see Appendix B–VI–E).

Note. Special consideration will be given to large-scale (greater that 10 liters of culture) and aerosol producing operations which may pose additional significant risks and thus may require additional containment (see Appendix K).

APPENDIX B–IV–B—RELATIONSHIP BETWEEN RISK GROUP (RG) AND APPENDIX G (SEE APPENDIX B–VI–E)

Risk group (RG)	Biosafety level	Examples of laboratories	Laboratory practices	Safety equipment
Risk Group 1 (RG1).	Biosafety Level 1 (BL1) (Appendix G–II–A).	Basic teaching laboratories	Good microbiological practices (Appendix G–II–A–1).	Generally not required (Appendix G–II–A–4).
Risk Group 2 (RG2).	Biosafety Level 2 (BL2) (Appendix G–II–B).	(1) primary health services; (2) primary level hospitals; (3) diagnostic, teaching, and research laboratories.	Good microbiological practices, protective clothing, biosafety sign when special provisions required (Appendix G–II–B–2).	Open bench plus biosafety cabinet (Class I,II) for potential aerosols (Appendices G–II–B–3 and G–III–L).
Risk Group 3 (RG3).	Biosafety Level 3 (BL3) (Appendix G–II–C).	Special diagnostic laboratories	Good microbiological practices, protective clothing, biosafety sign, special clothing, controlled assess, directional air flow (Appendix G–II–C–2).	Biosafety cabinet (Class I,II,II) and/or other primary containment for all activities (Appendices G–II–C–3 and G–III–L).
Risk Group 4 (RG4).	Maximum Containment/Biosafety Level 4 (BL4) (Appendix G–II–D).	Dangerous pathogens units	Good microbiological practices, protective clothing, biosafety sign, special clothing, controlled assess, directional air flow, airlock entry, shower exit, special waste disposal (Appendix G–II–D–2).	Biosafety cabinet (Class III) or Class I or II in combination with positive pressure suits ventilated by life-support system, double-door autoclave (Appendices G–II–D–4 and G–II–L).

Appendix B–IV–C. Risk Group 1 (RG1) Agents

Note. It is not appropriate to assume that an unassessed agent belongs in RG1, e.g., vaccine strains which have undergone multiple *in vivo* passages are not considered to be avirulent based only on the fact that they are vaccine strains.

RG1 agents are usually not placed on a list but are assumed to include all bacterial, fungal, viral, rickettsial, chlamydial, and parasitic agents which have been assessed for hazard and that are not included in higher RG. RG1 agents can be used for undergraduate and secondary educational training and teaching laboratories and other facilities in which work is conducted with defined and characterized strains of viable microorganisms that are: (1) not known to cause disease in healthy adult humans, and (2) represent minimal potential hazard to laboratory personnel or the environment under standard conditions. RG1 agents can be handled safely in the laboratory without special apparatus or equipment using techniques generally acceptable for nonpathogenic materials. RG1 includes the following agents: asporogenic Bacillus subtilis or Bacillus licheniformis (see exceptions in Appendix C–IV–A); Escherichia coli-K12 (see exceptions in Appendix C–II–A); Saccharomyces cerevisiae and Saccharomyces uvarum (see exceptions in Appendix C–III–A); Baculovirus vectors (see exceptions in Appendix C–I–A); infectious canine hepatitis viruses; and influenza reference strains A/PR/8/34 and A/WS/33.

Appendix B–IV–C–1. Risk Group 1 (RG1) Low-Risk Oncogenic Viruses (See Appendix B–VI–G)

Adenovirus 7-Simian virus 40 (Ad7–SV40)
Avian leukosis virus
Bovine leukemia virus
Bovine papilloma virus
Chick-embryo-lethal orphan (CELO) virus or fowl adenovirus 1
Dog sarcoma virus
Guinea pig herpes virus
Lucke (Frog) virus
Hamster leukemia virus
Marek's disease virus
Mason-Pfizer monkey virus
Mouse mammary tumor virus
Murine leukemia virus
Murine sarcoma virus
Polyoma virus
Rat leukemia virus
Rous sarcoma virus
Shope fibroma virus
Shope papilloma virus
Simian virus 40 (SV40)

Appendix B–IV–D. Risk Group 2 (RG2) Agents

RG2 includes agents that represent moderate risk to healthy human adults and the environment. RG2 agents may produce disease (varying degrees of severity) as a result of accidental inoculation, injection, or other means of cutaneous penetration. RG2 agents can generally be contained using standard laboratory practices. Some RG2 agents may cause disease as a result of direct contact or respiratory transmission; however, such instances are self-limiting and do not result in serious illness, e.g. the common cold (rhinoviruses). RG2 agents are recommended for use only in facilities where laboratory personnel are trained in the safe handling of these agents (see Appendix G–II–B–2).

Appendix B–IV–D–1. Risk Group 2 (RG2)—Bacteria

Note. When ''spp'' follows the name of a genus, or ''serotype'' follows a species, only those species or serotypes known to be pathogenic to healthy human adults are included.

Acinetobacter baumannii
Actinobacillus spp.
Actinomyces pyogenes
Aeromonas hydrophila
Amycolata autotrophica
Archanobacterium haemolyticum
Arizona hinshawii—all serotypes
Bacillus anthracis (BL3 practices)
Bartonella henselae, B. quintana, B. vinsonii
Bordetella spp. including *B. pertussis* (BL3 practices)
Borrelia recurrentis, B. burgdorferi
Burkholderia (previously Pasteurella spp.) except those listed in Appendix B–IV–E–1 (RG3))
Burkholderia pseudomallei (BL3 practices)
Campylobacter coli, C. fetus spp. fetus, C. jejuni
Chlamydia psittaci (BL3 practices)
Chlamydia trachomatis (BL3 practices)
Chlamydia pneumoniae (BL3 practices)
Clostridium botulinum (BL3 practices), *Cl. chauvoei, Cl. haemolyticum, Cl.*

histolyticum, Cl. novyi, Cl. septicum, Cl. tetani
Corynebacterium diphtheriae, C. pseudotuberculosis, C. renale
Dermatophilus congolensis
Edwardsiella tarda
Erysipelothrix rhusiopathiae
Escherichia coli—all enteropathogenic, enterotoxigenic, enteroinvasive and strains bearing K1 antigen, including *E. coli* O157:H7
Haemophilus ducreyi, H. influenzae
Helicobacter pylori
Klebsiella spp.
Legionella spp. including L. pneumophila (BL3 practices)
Legionella-like organisms
Leptospira interrogans—all serotypes
Listeria spp.
Moraxella spp.
Mycobacterium spp. (except those listed in Appendix B–IV–E–1 (RG3)) including *M. avium complex, M. asiaticum, M. chelonei, M. fortuitum, M. kansasii, M. leprae, M. malmoense, M. marinum, M. paratuberculosis, M. scrofulaceum, M. simiae, M. szulgai, M. ulcerans, M. xenopi*
Mycoplasma spp., except *M. mycoides* and *M. agalactiae* which are restricted animal pathogens (see Appendix B–V–B)
Neisseria gonorrhoea (BL3 practices), *N. meningitidis* (BL3 practices)
Nocardia asteroides, N. brasiliensis, N. otitidiscaviarum, N. transvalensis
Rhodococcus equi
Salmonella spp. and serotypes including *S. arizonae, S. cholerasuis, S. enteritidis, S. gallinarum-pullorum, S. meleagridis, S. paratyphi,* A, B, C, S. *typhi* (BL3 practices), *S. typhimurium*
Shigella spp. (BL3 practices) and serotypes including *S. boydii, S. dysenteriae,* Type 1, *S. flexneri, S. sonnei*
Sphaerophorus necrophorus
Staphylococcus aureus
Streptobacillus moniliformis
Streptococcus spp. including *Streptococcus pneumoniae, S. pyogenes*
Treponema pallidum, T. carateum
Vibrio cholerae, V. parahemolyticus, V. vulnificus
Yersinia enterocolitica, Y. pestis (BL3 practices)

Appendix B–IV–D–2. Risk Group 2 (RG2)—Fungal Agents

Note. When ''spp'' follows the name of a genus, or ''serotype'' follows a species, only those species or serotypes known to be pathogenic to healthy human adults are included.

Blastomyces dermatitidis
Cladosporium bantianum, C. (Xylohypha) trichoides
Cryptococcus neoformans (Droplets/ aerosols require biosafety cabinet)
Dactylaria galopava (Ochroconis gallopavum)
Epidermophyton spp.
Exophiala (Wangiella) dermatitidis
Fonsecaea pedrosoi
Microsporum spp.
Paracoccidioides braziliensis
Penicillium marneffei
Sporothrix schenckii
Trichophyton spp.

Appendix B–IV–D–3. Risk Group 2 (RG2)—Parasitic Agents

Note. When ''spp'' follows the name of a genus, or ''serotype'' follows a species, only those species or serotypes known to be pathogenic to healthy human adults are included.

Ancylostoma spp. human hookworms including *A. duodenale, A. ceylanicum*
Ascaris spp. including *Ascaris lumbricoides suum*
Babesia spp. including *B. divergens, B. microti*
Brugia spp. filaria worms including *B. malayi, B. timori*
Coccidia spp.
Cryptosporidium spp. including *C. parvum*
Cysticercus cellulosae (hydatid cyst, larva of *T. solium*)
Echinococcus spp. including *E. granulosis, E. multilocularis, E. vogeli*
Entamoeba histolytica
Enterobius spp.
Fasciola spp. including *F. gigantica, F. hepatica*
Giardia spp. including *G. lamblia*
Heterophyes spp.
Hymenolepis spp. including *H. diminuta, H. nana*
Isospora spp.
Leishmania spp. including *L. braziliensis, L. donovani, L. ethiopia, L. major, L. mexicana, L. peruvania, L. tropica*
Loa loa filaria
Microsporidium spp.
Naegleria fowleri
Necator spp. human hookworms, including *N. americanus*
Onchoerca spp. filaria including, *O. volvulus*
Plasmodium spp. including simian species, *P. cynomologi, P. falciparum, P. malariae, P. ovale, P. vivax*
Sarcocystis spp. including *S. sui hominis*
Schistosoma spp. including *S. haematobium, S. intercalatum, S. japonicum, S. mansoni, S. mekongi*
Strongyloides spp. including *S. stercoralis*
Taenia solium
Toxocara spp. including *T. canis*
Toxoplasma spp. including *T. gondii*
Trichinella spiralis
Trypanosoma spp. including *T. brucei brucei, T. brucei gambiense, T. brucei rhodesiense, T. cruzi*
Wuchereria bancrofti (filaria)

Appendix B–IV–D–4–a. Risk Group 2 (RG2)—Viruses and Prions (See Appendices B–IV–D–4–b and B–IV–D–4–c)

Note. When ''spp'' follows the name of a genus, or ''serotype'' follows a species, only those species or serotypes known to be pathogenic to healthy human adults are included.

Adenoviruses, human—all types
Arboviruses (see Appendix B–IV–D–4–b)
Arenaviruses (see Appendix B–IV–D–4–b)
Bunyamwera virus
Coronaviruses
Coxsackie A and B viruses
Creutzfeldt-Jacob disease agent (prion)
Echoviruses—all types
Encephalomyocarditis virus (EMC)
Encephalomyelitis viruses (droplets/ aerosols require BL3 practices) (see Appendix B–IV–D–4–b)
Hepatitis A, B (BL3 practices), C (BL3 practices), D, E viruses
Herpesviruses (BL3 practices) including Cytomegalovirus, Epstein Barr, *Herpes simplex* types 1 and 2, and *Herpes zoster,* except Herpesvirus simiae (Monkey B virus) (see Appendix B–IV–F–4 (RG4))
Human Immunodeficiency Virus (HIV) all serotypes (see Appendices B–VI–A–7 and B–IV–J for special requirements)
Human T cell lymphotropic viruses (HTLV) types 1 and 2 (BL3 practices)
Influenza viruses
Kuru (prion)
Lymphocytic choriomeningitis virus (BL3 practices—except neurotropic strains)
Lymphogranuloma venereum agent
Measles virus
Molluscum contagiosum virus
Mumps virus
Orf virus
Papovaviridae including human papilloma viruses
Parainfluenza virus
Paravaccinia virus
Polioviruses—all types, wild and attenuated
Poxviruses—all types such as Cowpox (biosafety cabinet and immunization required), Monkeypox (biosafety cabinet and immunization required) or Vaccinia (biosafety cabinet and immunization required), Camelpox, Milker—s node virus, Molluscum contagiosum virus, Orf, Rabbitpox, Tanapox, and Yabapox except Alastrim, Smallpox, and Whitepox (see Appendices B–V–B and B–VI–H)

Rabies virus (biosafety cabinet and immunization required)—all strains including fixed/attenuated virus except Rabies street virus
Reoviruses—all types
Respiratory syncytial virus
Rhinoviruses—all types
Rubella virus
Simian viruses—all types including simian immunodeficiency virus (BL3 practices), except Herpesvirus simiae (Monkey B virus) and Marburg virus (see Appendix B–IV–F–4 (RG4))
Transmissible Spongioform Encephalopathies (TME)—prions (Creutzfieldt-Jacob; Kuru)
Vesicular Stomatitis Virus, lab adapted strains: VSV-Indiana, San Juan, and Glasgow

Appendix B–IV–D–4–b. Arboviruses and Arenaviruses Assigned to Biosafety Level 2

Note. When laboratory work is conducted with biological agents for which epidemiology and etiology are unknown or incompletely understood, it is presumed that the work presents a biohazard similar to related agents until further information can be provided. This method of risk assessment was used by the American Committee on Arthropod-Borne Viruses (ACAV) Subcommittee on Arbovirus Laboratory Safety for work with arboviruses for which risk information is inadequate or unavailable (see Appendix B–VI–D).

Acado
Acara
Aguacate
Alfuy
Almpiwar
Amapari
Ananindeua
Anhanga
Anhembi
Anopheles A
Anopheles B
Apeu
Apoi
Aride
Arkonam
Aroa
Aruac
Arumowot
Aura
Avalon
Abras
Abu Hammad
Aabahoyo
Bagaza
Bahig
Bakau
Baku
Bandia
Bangoran
Bangui
Banzi
Barmah Forest
Barur
Batai
Batama
Bauline
Bebaru
Belmont
Benevides
Benfica
Bertioga
Bimiti
Birao
Bluetongue
Boraceia
Botambi
Boteke
Bouboui
Bujaru
Bunyamwera
Bunyip
Burg E Arab
Bushbush
Bussuquara
Buttonwillow
Bwamba
Cacao
Cache Valley
Caimito
California enc.
Calovo
Candiru
Cape Wrath
Capim
Caraparu
Carey Island
Catu
Chaco
Chagres
Chandipura
Changuinola
Charleville
Chenuda
Chilibre
Chobar gorge
Clo Mor
Colorado tick fever
Corriparta
Cotia
Cowbone Ridge
Csiro Village
Cuiaba-D'aguilar
Dakar Bat
Dengue-1
Dengue-2
Dengue-3
Dengue-4
Dera Ghazi Khan
East. equine enc. (vaccine recommended)
Edge Hill
Entebbe Bat
Ep. Hem. Disease
Erve
Eubenangee
Eyach
Flanders
Fort Morgan
Frijoles
Gamboa
Gan Gan
Gomoka
Gossas
Grand Arbaud
Great Island
Guajara
Guama
Guaratuba
Guaroa
Gumbo Limbo
Hart Park
Hazara
Highlands J
Huacho
Hughes
Icoaraci
Ieri
Ilesha
Ilheus
Ingwavuma
Inkoo
Ippy
Irituia
Isfahan
Itaporanga
Itaqui
Jamestown Canyon
Japanaut
Jerry Slough
Johnston Atoll
Joinjakaka
Juan Diaz
Jugra
Jurona
Jutiapa
Kadam
Kaeng Khoi
Kaikalur
Kaisodi
Kamese
Kammavan pettai
Kannaman galam
Kao Shuan
Karimabad
Karshi
Kasba
Kemerovo
Kern Canyon
Ketapang
Keterah
Keuraliba
Keystone
Kismayo
Klamath
Kokobera
Kolongo
Koongol
Kotonkan
Kowanyama
Kunjin
Kununurra
Kwatta
La Crosse
La Joya
Lagos Bat
Landjia
Langat
Lanjan
Las Maloyas
Latino
Le Dantec

Lebombo
Lednice
Lipovnik
Lokern
Lone Star
Lukuni
M'poko
Madrid
Maguari
Mahogany Hammock
Main Drain
Malakal
Manawa
Manzanilla
Mapputta
Maprik
Marco
Marituba
Marrakai
Matariya
Matruh
Matucare
Melao
Mermet
Minatitlan
Minnal
Mirim
Mitchell River
Modoc
Moju
Mono Lake
Mont. myotis leuk.
Moriche
Mosqueiro
Mossuril
Mount Elgon Bat
Murutucu
Mykines
Navarro
Nepuyo
Ngaingan
Nique
Nkolbisson
Nola
Ntaya
Nugget
Nyamanini
Nyando
O'nyong-nyong
Okhotskiy
Okola
Olifantsvlei
Oriboca
Ossa
Pacora
Pacui
Pahayokee
Palyam
Parana
Pata
Pathum Thani
Patois
Phnom-Penh Bat
Pichinde
Pixuna
Pongola
Ponteves
Precarious Point
Pretoria
Prospect Hill
Puchong
Punta Salinas
Punta Toro
Qalyub
Quaranfil
Restan
Rio Bravo
Rio Grande
Ross River
Royal Farm
Sabo
Saboya
Saint Floris
Sakhalin
Salehabad
San angelo
Sandfly f. (Naples)
Sandfly f. (Sicilian)
Sandjimba
Sango
Sathuperi
Sawgrass
Sebokele
Seletar
Sembalam
Serra do Navio
Shamonda
Shark River
Shuni
Silverwater
Simbu
Simian hem. fever
Sindbis
Sixgun City
Snowshoe Hare
Sokuluk
Soldado
Sororoca
Stratford
Sunday Canyon
Tacaiuma
Tacaribe
Taggert
Tahyna
Tamiami
Tanga
Tanjong Rabok
Tataguine
Tehran
Tembe
Tembusu
Tensaw
Tete
Tettnang
Thimiri
Thottapalayam
Tibrogargan
Timbo
Timboteua
Tindholmur
Toscana
Toure
Tribec
Triniti
Trivittatus
Trubanaman
Tsuruse
Turlock
Tyuleniy
Uganda S
Umatilla
Umbre
Una
Upolu
Urucuri
Usutu
Uukuniemi
Vellore
Venkatapuram
Vinces
Virgin River
VS-Indiana
VS-New Jersey
Wad Medani
Wallal
Wanowrie
Warrego
West. equine enc. (vaccine recommended)
Whataroa
Witwatersrand
Wonga
Wongorr
Wyeomyia
Yaquinea Head
Yata
Yogue
Zaliv Terpeniya
Zegla
Zika
Zingilamo
Zirqa

Appendix B–IV–D–4–c. Vaccine Strains of Risk Group 3 (RG3) and Risk Group 4 (RG4) Viruses Which May Be Handled at Biosafety Level 2

Chikungunya, strain 131/25
Junin, strain Candid #1
Rift Valley fever, strain MP–12
Venezuelan equine encephalomyelitis, strain TC–83
Yellow fever, strain 17–D

Appendix B–IV–D–4–d. Risk Group 2 (RG2)—Moderate Risk Oncogenic Viruses (see Appendix B–VI–G)

Adenovirus
Adenovirus 2—simian virus 40 (Ad2–SV40)
Epstein Barr virus (EBV)
Feline leukemia virus (FeLV)
Feline sarcoma virus (FeSV)
Gibbon leukemia virus (GaLV)
Herpesvirus (HV) ateles
Herpesvirus (HV) saimiri
Papovaviridae including human papilloma viruses
Simian sarcoma virus (SSV)–1
Yabapox virus

Appendix B–IV–E. Risk Group 3 (RG3) Agents

Note. When ''spp'' follows the name of a genus, or ''serotype'' follows a species, only those species or serotypes known to be pathogenic to healthy human adults are included.

RG3 includes indigenous or exotic agents which may potentially cause serious or lethal disease as a result of inhalation exposure. RG3 includes agents involving special hazards to laboratory personnel or agents derived from outside the United States and require a permit for importation, unless they are specified for higher classification. RG3 includes pathogens which require special containment conditions for facilities in which laboratory personnel have received specialized training in: (1) the safe handling of hazardous agents, i.e., equal to or greater than college level microbiology laboratory training, and (2) handling the specific RG3 agent or similar pathogens that may potentially cause serious or lethal disease. Laboratory personnel shall be supervised by trained scientists who possess significant experience in the safe handling of biohazardous agents and materials.

Appendix B–IV–E–1. Risk Group 3 (RG3)—Bacterial Agents including Chlamydia and Rickettsia

Bartonella spp.
Brucella spp. including B. abortus, B. canis, B. melitensis (USDA restricted), *B. suis*
Burkholderia (Pseudomonas) mallei, B. pseudomallei (see Appendix B–VI–F)
Coxiella burnetii
Francisella tularensis
Mycobacterium bovis, M. tuberculosis
Pasteurella multocida type B—''buffalo'' and others (see Appendix B–VI–F)
Rickettsia akari, R. australis, R. canada, R. conorii, R. prowazekii
R. rickettsii, R, siberica, R. tsutsugamushi, R. typhi (R. mooseri)
Yersinia pestis (antibiotic resistant strains)

Appendix B–IV–E–2. Risk Group 3 (RG3)—Fungal Agents

Coccidioides immitis (sporulating cultures; contaminated soil)
Histoplasma capsulatum, H. capsulatum var. duboisii

Appendix B–IV–E–3. Risk Group 3 (RG3)—Parasitic Agents

None

Appendix B–IV–E–4. Risk Group 3 (RG3)—Viral Agents

Arboviruses and certain other viruses assigned to Risk Group 3 (West Nile and Semliki Forest viruses may be classified up or down depending on the conditions of use and geographical location of the laboratory (see Appendices B–IV–E–5, B–IV–E–6 and B–VI–I).

Lymphocytic choriomeningitis virus (LCM) (neurotrophic strains)
Monkey pox virus—when used *in vitro* (see Appendix B–VI–H)
Rabies Street virus

Appendix B–4–E–5. Arboviruses and Certain Other Viruses Assigned to Biosafety Level 3 (on the Basis of Insufficient Experience)

Adelaide River
Agua Preta
Alenquer
Almeirim
Altamira
Andasibe
Antequera
Araguari
Aransas Bay
Arbia
Arboledas
Babanki
Batken
Belem
Berrimah
Bimbo
Bobaya
Bobia
Bozo
Buenaventura
Cabassue (BL3 facilities/HEPA filtration of exhaust air prior to discharge, vaccine recommended)
Cacipacore
Calchaqui
Cananeia
Caninde
Chim
Coastal Plains
Connecticut
Corfou
Dabakala
Douglas
Enseada
Estero Real
Fomede
Forecariah
Fort Sherman
Gabek Forest
Gadgets Gully
Garba
Gordil
Gray Lodge
Gurupi
Iaco
Ibaraki
Ife
Ingangapi
Inini
Issyk-Kul
Itaituba
Itimirim
Itupiranga
Jacareacanga
Jamanxi
Jari
Kedougou
Khasan
Kindia
Kyzylagach
Lake Clarendon
Llano Seco
Macaua
Mapuera
Mboke
Meaban
Mojui Dos Compos
Monte Dourado
Munguba
Naranjal
Nariva
Nasoule
Ndelle
New Minto
Ngari
Ngoupe
Nodamura
Northway
Odrenisrou
Omo
Oriximina
Ouango
Oubangui
Oubi
Ourem
Palestina
Para
Paramushir
Paroo River
Perinet
Petevo
Picola
Playas
Pueblo Viejo
Purus
Radi
Razdan
Resistencia
Rochambeau
Salanga
San Juan
Santa Rosa
Santarem
Saraca
Saumarez Reef
Sedlec
Sena Madureira
Sepik
Shokwe
Slovakia
Somone
Spipur
Tai
Tamdy
Telok Forest
Termeil
Thiafora
Tilligerry
Tinaroo
Tlacotalpan
Tonate (BL3 facilities/HEPA filtration of exhaust air prior to discharge, vaccine recommended)
Ttinga
Xiburema
Yacaaba
Yaounde
Yoka
Yug Bogkanova

Appendix B–IV–E–6. Arboviruses and Certain Other Viruses Assigned to Biosafety Level 3

Aino

Akabane
Bhanja
Chikungunya (BL3 facilities/HEPA filtration of exhaust air prior to discharge, vaccine recommended)
Cocal
Dhori
Dugbe
Everglades (BL3 facilities/HEPA filtration of exhaust air prior to discharge, vaccine recommended)
Flexal
Germiston (BL3 facilities/HEPA filtration of exhaust air prior to discharge)
Getah
Hantaan
Israel Turkey mening.
Japanese enc.
Junin (BL3 facilities/HEPA filtration of exhaust air prior to discharge, vaccine recommended)
Kairi
Kimberley
Koutango
Louping Ill (BL3 facilities/HEPA filtration of exhaust air prior to discharge) (The importation, possession, or use of this agent is restricted by USDA regulation or administrative policy) (see Appendices B–VI–D and B–VI–F)
Mayaro
Middelburg
Mobala
Mopeia (This virus is presently being registered in the Catalogue of Arboviruses)
Mucambo (BL3 facilities/HEPA filtration of exhaust air prior to discharge, vaccine recommended)
Murray Valley enc.
Nairobi sheep disease (The importation, possession, or use of this agent is restricted by USDA regulation or administrative policy) (see Appendices B–VI–D and B–VI–F).
Ndumu
Negishi
Oropouche (BL3 facilities/HEPA filtration of exhaust air prior to discharge)
Orungo
Peaton
Piry
Powassan
Puumala
Rift Valley fever (Zinga virus) (BL3 facilities/HEPA filtration of exhaust air prior to discharge, vaccine recommended) The importation, possession, or use of this agent is restricted by USDA regulation or administrative policy (see Appendices B–VI–D and B–VI–F).
Sagiyama
Sal Vieja
San Perlita
Semliki Forest
Seoul
Spondweni
St. Louis enc.
Thogoto
Tocio (BL3 facilities/HEPA filtration of exhaust air prior to discharge)
Turuna
Venezuelan equine encephalitis (BL3 facilities/HEPA filtration of exhaust air prior to discharge, vaccine recommended)
Vesicular Stomatitus (alagoas)
Wesselsbron (BL3 facilities/HEPA filtration of exhaust air prior to discharge) (The importation, possession, or use of this agent is restricted by USDA regulation or administrative policy) (see Appendices B–VI–D and B–VI–F).
West Nile
Yellow fever (BL3 facilities/HEPA filtration of exhaust air prior to discharge, vaccine recommended)
Zinga (Rift Valley Fever virus) (BL3 facilities/HEPA filtration of exhaust air prior to discharge, vaccine recommended) The importation, possession, or use of this agent is restricted by USDA regulation or administrative policy (see Appendices B–VI–D and B–VI–F).

Appendix B–IV–F. Risk Group 4 (RG4) Agents

RG4 includes dangerous and exotic agents that pose a high individual risk of aerosol-transmitted laboratory infections (or related agents with unknown means of transmission) which can result in life-threatening disease. RG4 agents require the most stringent containment conditions because they are extremely hazardous to laboratory personnel and may cause serious epidemic disease. RG4 agents can only be used in special facilities in which laboratory personnel have received specialized training in: (1) the safe handling of hazardous agents, i.e., equal to or greater than college level microbiology laboratory training, and (2) handling the specific RG3 agent or similar pathogens that may potentially cause serious or lethal disease. Laboratory personnel shall be supervised by trained scientists who possess significant experience in the safe handling of biohazardous agents and materials.

Appendix B–IV–F–1. Risk Group 4 (RG4)—Bacterial Agents

None

Appendix B–IV–F–2. Risk Group 4 (RG4)—Fungal Agents

None

Appendix B–IV–F–3. Risk Group 4 (RG4)—Parasitic Agents

None

Appendix B–IV–F–4. Risk Group 4 (RG4)—Viral Agents

Absettarov
Central European encephalitis viruses
Crimean hemorrhagic fever (Congo)
Ebola fever virus
Guanarito
Hanzalova
Hemorrhagic fever agents and viruses as yet undefined
Herpesvirus simiae (Monkey B virus)
Hypr
Junin (BL3 containment and practices if vaccinated)
Kumlinge
Kyasanur forest disease
Lassa
Machupo
Marburg
Omsk hemorrhagic fever
Russian spring—summer encephalitis
Tick-borne orthomyxoviridae, Dhori & Thogoto

Appendix B–V. Restricted Pathogens

Appendix B–V–A. Restricted Plant Pathogens

Note. See Appendix P, *Physical and Biological Containment for Recombinant DNA Research Involving Plants.*

Non-indigenous plant pathogens may require special laboratory design, operation, and containment features not generally addressed in Biosafety in the Microbiological and Biomedical Research Laboratories (see Appendix B–VI–D). Information on the importation, possession, or use of these agents is available from: U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, Import-Export Products Staff, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782; Phone: (301) 436–7830; Fax: (301) 436–8226.

Appendix B–V–B. Restricted Animal Pathogens

Note. See Appendix Q, *Physical and Biological Containment for Recombinant DNA Research Involving Animals.*

Non-indigenous domestic livestock and poultry pathogens may require special laboratory design, operation, and containment features not generally addressed in Biosafety in the Microbiological and Biomedical Research Laboratories (see Appendix B–VI–D). The importation, possession, or use of these agents is prohibited or restricted by law or by the U.S. Department of Agriculture regulations and administrative policies. Animal pathogens other than those zoonotic

agents listed in Appendix B may be subject to USDA regulations. Information on the importation, possession, or use of these agents is available from: U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, Import-Export Products Staff, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782; Phone: (301) 436–7830; Fax: (301) 436–8226.

Appendix B–V–C. Organisms Which May Not Be Studied in the United States Except at Specified Facilities

Alastrim (see Appendix B–VI–H)
Small pox (see Appendix B–VI–H)
White pox (see Appendix B–VI–H)

Appendix B–VI. Footnotes and References to Appendix B

Appendix B–VI–A. Appendix B has been adapted from the RG classification recommended by the World Health Organization (see Appendix B–VI–E), the Agent Summary Statements described in Biosafety in Microbiological and Biomedical Laboratories (see Appendix B–VI–D), Control of Communicable Diseases of Man (see Appendix B–VI–B), recommendations of the Task Force of the American Society for Microbiology, and a 1982 draft document of the Centers for Disease Control and Prevention, which includes a more complete risk assessment of human pathogens (Dr. R. Knudsen—personal communication). Appendices B–IV–A and B–IV–B are derived from the World Health Organization Laboratory Biosafety Manual (see Appendix B–VI–E). Appendices B–IV–D–4–b, B–IV–D–4–c, B–IV–E–5 and B–IV–E–6 were obtained directly (electronic transmission) from the Centers for Disease Control and Prevention. The original reference for this classification was Classification of Etiologic Agents on the Basis of Hazard, 4th edition, July 1974 (see Appendix B–VI–C).

Appendix B–VI–B. Benenson, Abram S. ed., Control of Communicable Diseases in Man, 15th edition. 1990. American Public Health Association, Washington, D.C.

Appendix B–VI–C. Center for Disease Control, Office of Biosafety, Classification of Etiologic Agents on the Basis of Hazard, 4th Edition. 1974. U.S. Department of Health, Education and Welfare, Public Health Service.

Appendix B–VI–D. U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention and the National Institutes of Health. Biosafety in Microbiological and Biomedical Research Laboratories, 3rd edition. 1993. Copies available from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (stock # 017–040–00523–7), Phone: (202) 512–2356.

Appendix B–VI–E. World Health Organization Laboratory Biosafety Manual, 2nd edition. WHO Albany, NY ORDER FROM: WHO Publication Centre, USA, (Q Corp) 49 Sheridan Avenue, Albany, New York 12210; Phone: (518) 436–9686 (Order # 1152213) (cost $23.40 plus $3.00 handling).

Appendix B–VI–F. A U.S. Department of Agriculture permit, required for import and interstate transport of pathogens, may be obtained from the U.S. Department of Agriculture, ATTN: Animal and Plant Health Inspection Service, Import-Export Products Office, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782. Telephone; 301–436–7830 or 8499; FAX 301–436–8226

Appendix B–VI–G. National Cancer Institute Safety Standards for Research Involving Oncogenic Viruses, October 1974. U.S. Department of Health, Education, and Welfare (Publication # (NIH) 75–790).

Appendix B–VI–H. All activities, including storage of variola and whitepox, are restricted to the single national facility (World Health Organization Collaborating Center for Smallpox Research, Centers for Disease Control and Prevention, Atlanta, Georgia).

Appendix B–VI–I. Published regulations or guidelines from Federal, State, or local governments must also be taken into account.

Appendix B–VI–J. U.S. Department of Labor, Occupational Safety and Health Administration. 1991. Occupational Exposure to Bloodborne Pathogens, Final Rule (56 FR 64175–64182).

The rest of the NIH Guidelines will have terminology changes (i.e., Class 1, 2, 3, 4 will be changed to Risk Group 1, 2, 3, 4, respectively. Class 5 will become restrictive pathogens.) Cross references will be changed accordingly to revision in Appendix B.

XV. Report From Ad Hoc Review Committee

On March 8 and May 1, 1995, the *Ad hoc* Review Committee met to discuss three major topics for review: (1) domain and mandate of the Recombinant DNA Advisory Committee; (2) composition of the Recombinant DNA Advisory Committee; and (3) Recombinant DNA Advisory Committee's review of human gene transfer protocols. Dr. Nelson Wivel will give a status report on the *Ad hoc* Review Committee.

XVI. Presentation on Fetal Sheep Studies/Zanjani

Dr. Esmail Zanjani of the Veterans Administration Hospital Medical Center, Reno, Nevada, will be giving a presentation on Fetal Sheep Studies. Dr. Zanjani will present results of his experimental work on in utero cell transfer.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally, NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Effective Date: May 9, 1995.

Daryl A. Chamblee,

Acting Deputy Director for Science Policy and Technology Transfer.

[FR Doc. 95–12405 Filed 5–19–95; 8:45 am]

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Federal Register

Monday
May 22, 1995

Part V

The President

Proclamation 6802—Prayer for Peace, Memorial Day, 1995

Federal Register
Vol. 60, No. 98
Monday, May 22, 1995

Presidential Documents

Title 3—

The President

Proclamation 6802 of May 18, 1995

Prayer for Peace, Memorial Day, 1995

By the President of the United States of America

A Proclamation

The essence of America is the quality and breadth of the freedoms guaranteed by the Constitution. Yet far too often in our country's history, the price of preserving these freedoms has been the lives of our Nation's young men and women and the heartbreak of their families and friends. The light and laughter of our lost sons and daughters can never be replaced. But the gift of their courage will always endure. America remembers the sacrifices of those who gave their lives to protect our liberty. For our citizens and for freedom-loving people around the world, they have kept democracy's flame burning brightly.

Forged in revolution and tempered by more than two centuries of fighting injustice, America has grown stronger, determined to safeguard the blessings that have been so hard-won. As we recall the selfless devotion of those who have risen to defend the cause of freedom, we resolve today that their efforts shall not have been in vain. America still holds fast to the principles upon which it was founded, and its people still stand bound together by our common faith in peace. In remembrance of our fallen heroes, we pray that peace will forever grace our land, that it will guide relations between citizens and friendships among nations, and that our people will one day see a time when harmony fills the Earth.

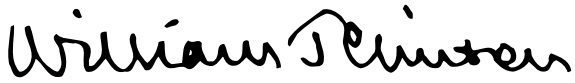
May God comfort all who mourn.

In respect and recognition of the courageous men and women to whom we pay tribute, the Congress, by joint resolution approved on May 11, 1950 (64 Stat. 158), has requested the President to issue a proclamation calling upon the people of the United States to observe each Memorial Day as a day of prayer for permanent peace and designating a period on that day when the people of the United States might unite in prayer.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim Memorial Day, May 29, 1995, as a day of prayer for permanent peace. I designate the hour beginning in each locality at 11 o'clock in the morning of that day as a time to join in prayer. I urge the press, radio, television, and all information media to take part in this observance.

I also request the Governors of the United States and the Commonwealth of Puerto Rico, and the appropriate officials of all units of government, to direct that the flag be flown at half-staff until noon during this Memorial Day on all buildings, grounds, and naval vessels throughout the United States and in all areas under its jurisdiction and control, and I request the people of the United States to display the flag at half-staff from their homes for the customary forenoon period.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of May, 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.



[FR Doc. 95–12668
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H.R. 421/P.L. 104–10

To amend the Alaska Native Claims Settlement Act to provide for the purchase of common stock of Cook Inlet Region, and for other purposes. (May 18, 1995; 109 Stat. 155; 3 pages)

H.R. 517/P.L. 104–11

Chacoan Outliers Protection Act of 1995 (May 18, 1995; 109 Stat. 158; 3 pages)

H.R. 1380/P.L. 104–12

Truth in Lending Class Action Relief Act of 1995 (May 18, 1995; 109 Stat. 161; 2 pages)

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200–End	(869–022–00062–4)	12.00	Apr. 1, 1994
20 Parts:			
1–399	(869–022–00063–2)	20.00	Apr. 1, 1994
400–499	(869–022–00064–1)	34.00	Apr. 1, 1994
500–End	(869–022–00065–9)	31.00	Apr. 1, 1994
21 Parts:			
1–99	(869–022–00066–7)	16.00	Apr. 1, 1994
100–169	(869–022–00067–5)	21.00	Apr. 1, 1994
170–199	(869–022–00068–3)	21.00	Apr. 1, 1994
200–299	(869–022–00069–1)	7.00	Apr. 1, 1994
300–499	(869–022–00070–5)	36.00	Apr. 1, 1994
500–599	(869–022–00071–3)	16.00	Apr. 1, 1994
600–799	(869–022–00072–1)	8.50	Apr. 1, 1994
800–1299	(869–022–00073–0)	22.00	Apr. 1, 1994
1300–End	(869–022–00074–8)	13.00	Apr. 1, 1994
22 Parts:			
1–299	(869–022–00075–6)	32.00	Apr. 1, 1994
300–End	(869–022–00076–4)	23.00	Apr. 1, 1994
23	(869–022–00077–2)	21.00	Apr. 1, 1994
24 Parts:			
0–199	(869–022–00078–1)	36.00	Apr. 1, 1994
200–499	(869–022–00079–9)	38.00	Apr. 1, 1994
500–699	(869–022–00080–2)	20.00	Apr. 1, 1994
700–1699	(869–022–00081–1)	39.00	Apr. 1, 1994
1700–End	(869–022–00082–9)	17.00	Apr. 1, 1994
25	(869–022–00083–7)	32.00	Apr. 1, 1994
26 Parts:			
§§ 1.0-1–1.60	(869–022–00084–5)	20.00	Apr. 1, 1994
§§ 1.61–1.169	(869–022–00085–3)	33.00	Apr. 1, 1994
§§ 1.170–1.300	(869–022–00086–1)	24.00	Apr. 1, 1994
§§ 1.301–1.400	(869–022–00087–0)	17.00	Apr. 1, 1994
§§ 1.401–1.440	(869–022–00088–8)	30.00	Apr. 1, 1994
§§ 1.441-1.500	(869-022-00089-6)	22.00	Apr. 1, 1994
§§ 1.501–1.640	(869–022–00090–0)	21.00	Apr. 1, 1994
§§ 1.641–1.850	(869–022–00091–8)	24.00	Apr. 1, 1994
§§ 1.851–1.907	(869–022–00092–6)	26.00	Apr. 1, 1994
§§ 1.908–1.1000	(869–022–00093–4)	27.00	Apr. 1, 1994
§§ 1.1001–1.1400	(869–022–00094–2)	24.00	Apr. 1, 1994
§§ 1.1401–End	(869–022–00095–1)	32.00	Apr. 1, 1994
2–29	(869–022–00096–9)	24.00	Apr. 1, 1994
30–39	(869–022–00097–7)	18.00	Apr. 1, 1994
40–49	(869–022–00098–4)	14.00	Apr. 1, 1994
50–299	(869–022–00099–3)	14.00	Apr. 1, 1994
300–499	(869–022–00100–1)	24.00	Apr. 1, 1994
*500–599	(869–026–00104–9)	6.00	[4] Apr. 1, 1990

Title	Stock Number	Price	Revision Date
600–End	(869–022–00102–7)	8.00	Apr. 1, 1994
27 Parts:			
1–199	(869–022–00103–5)	36.00	Apr. 1, 1994
200–End	(869–026–00107–3)	13.00	[8]Apr. 1, 1994
28 Parts:			
1-42	(869–022–00105–1)	27.00	July 1, 1994
43-end	(869-022-00106-0)	21.00	July 1, 1994
29 Parts:			
0–99	(869–022–00107–8)	21.00	July 1, 1994
100–499	(869–022–00108–6)	9.50	July 1, 1994
500–899	(869–022–00109–4)	35.00	July 1, 1994
900–1899	(869–022–00110–8)	17.00	July 1, 1994
1900–1910 (§§ 1901.1 to 1910.999)	(869–022–00111–6)	33.00	July 1, 1994
1910 (§§ 1910.1000 to end)	(869–022–00112–4)	21.00	July 1, 1994
1911–1925	(869–022–00113–2)	26.00	July 1, 1994
1926	(869–022–00114–1)	33.00	July 1, 1994
1927–End	(869–022–00115–9)	36.00	July 1, 1994
30 Parts:			
1–199	(869–022–00116–7)	27.00	July 1, 1994
200–699	(869–022–00117–5)	19.00	July 1, 1994
700–End	(869–022–00118–3)	27.00	July 1, 1994
31 Parts:			
0–199	(869–022–00119–1)	18.00	July 1, 1994
200–End	(869–022–00120–5)	30.00	July 1, 1994
32 Parts:			
1–39, Vol. I		15.00	[2]July 1, 1984
1–39, Vol. II		19.00	[2]July 1, 1984
1–39, Vol. III		18.00	[2]July 1, 1984
1–190	(869–022–00121–3)	31.00	July 1, 1994
191–399	(869–022–00122–1)	36.00	July 1, 1994
400–629	(869–022–00123–0)	26.00	July 1, 1994
630–699	(869–022–00124–8)	14.00	[5]July 1, 1991
700–799	(869–022–00125–6)	21.00	July 1, 1994
800–End	(869–022–00126–4)	22.00	July 1, 1994
33 Parts:			
1–124	(869–022–00127–2)	20.00	July 1, 1994
125–199	(869–022–00128–1)	26.00	July 1, 1994
200–End	(869–022–00129–9)	24.00	July 1, 1994
34 Parts:			
1–299	(869–022–00130–2)	28.00	July 1, 1994
300–399	(869–022–00131–1)	21.00	July 1, 1994
400–End	(869–022–00132–9)	40.00	July 1, 1994
35	(869–022–00133–7)	12.00	July 1, 1994
36 Parts:			
1–199	(869–022–00134–5)	15.00	July 1, 1994
200–End	(869–022–00135–3)	37.00	July 1, 1994
37	(869–022–00136–1)	20.00	July 1, 1994
38 Parts:			
0–17	(869–022–00137–0)	30.00	July 1, 1994
18–End	(869–022–00138–8)	29.00	July 1, 1994
39	(869–022–00139–6)	16.00	July 1, 1994
40 Parts:			
1–51	(869–022–00140–0)	39.00	July 1, 1994
52	(869–022–00141–8)	39.00	July 1, 1994
53–59	(869–022–00142–6)	11.00	July 1, 1994
60	(869-022-00143-4)	36.00	July 1, 1994
61–80	(869–022–00144–2)	41.00	July 1, 1994
81–85	(869–022–00145–1)	23.00	July 1, 1994
86–99	(869–022–00146–9)	41.00	July 1, 1994
100–149	(869–022–00147–7)	39.00	July 1, 1994
150–189	(869–022–00148–5)	24.00	July 1, 1994
190–259	(869–022–00149–3)	18.00	July 1, 1994
260–299	(869–022–00150–7)	36.00	July 1, 1994
300–399	(869–022–00151–5)	18.00	July 1, 1994
400–424	(869–022–00152–3)	27.00	July 1, 1994
425–699	(869–022–00153–1)	30.00	July 1, 1994
700–789	(869–022–00154–0)	28.00	July 1, 1994
790–End	(869–022–00155–8)	27.00	July 1, 1994
41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10–17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
1–100	(869–022–00156–6)	9.50	July 1, 1994
101	(869–022–00157–4)	29.00	July 1, 1994
102–200	(869–022–00158–2)	15.00	July 1, 1994
201–End	(869–022–00159–1)	13.00	July 1, 1994
42 Parts:			
1–399	(869–022–00160–4)	24.00	Oct. 1, 1994
400–429	(869–022–00161–2)	26.00	Oct. 1, 1994
430–End	(869–022–00162–1)	36.00	Oct. 1, 1994
43 Parts:			
1–999	(869–022–00163–9)	23.00	Oct. 1, 1994
1000–3999	(869–022–00164–7)	31.00	Oct. 1, 1994
4000–End	(869–022–00165–5)	14.00	Oct. 1, 1994
44	(869–022–00166–3)	27.00	Oct. 1, 1994
45 Parts:			
1–199	(869–022–00167–1)	22.00	Oct. 1, 1994
200–499	(869–022–00168–0)	15.00	Oct. 1, 1994
500–1199	(869–022–00169–8)	32.00	Oct. 1, 1994
1200–End	(869–022–00170–1)	26.00	Oct. 1, 1994
46 Parts:			
1–40	(869–022–00171–0)	20.00	Oct. 1, 1994
41–69	(869–022–00172–8)	16.00	Oct. 1, 1994
70–89	(869–022–00173–6)	8.50	Oct. 1, 1994
90–139	(869–022–00174–4)	15.00	Oct. 1, 1994
140–155	(869–022–00175–2)	12.00	Oct. 1, 1994
156–165	(869–022–00176–1)	17.00	[7]Oct. 1, 1993
166–199	(869–022–00177–9)	17.00	Oct. 1, 1994
200–499	(869–022–00178–7)	21.00	Oct. 1, 1994
500–End	(869–022–00179–5)	15.00	Oct. 1, 1994
47 Parts:			
0–19	(869–022–00180–9)	25.00	Oct. 1, 1994
20–39	(869–022–00181–7)	20.00	Oct. 1, 1994
40–69	(869–022–00182–5)	14.00	Oct. 1, 1994
70–79	(869–022–00183–3)	24.00	Oct. 1, 1994
80–End	(869–022–00184–1)	26.00	Oct. 1, 1994
48 Chapters:			
1 (Parts 1–51)	(869–022–00185–0)	36.00	Oct. 1, 1994
1 (Parts 52–99)	(869–022–00186–8)	23.00	Oct. 1, 1994
2 (Parts 201–251)	(869–022–00187–6)	16.00	Oct. 1, 1994
2 (Parts 252–299)	(869–022–00188–4)	13.00	Oct. 1, 1994
3–6	(869–022–00189–2)	23.00	Oct. 1, 1994
7–14	(869–022–00190–6)	30.00	Oct. 1, 1994
15–28	(869–022–00191–4)	32.00	Oct. 1, 1994
29–End	(869–022–00192–2)	17.00	Oct. 1, 1994
49 Parts:			
1–99	(869–022–00193–1)	24.00	Oct. 1, 1994
100–177	(869–022–00194–9)	30.00	Oct. 1, 1994
178–199	(869–022–00195–7)	21.00	Oct. 1, 1994
200–399	(869–022–00196–5)	30.00	Oct. 1, 1994
400–999	(869–022–00197–3)	35.00	Oct. 1, 1994
1000–1199	(869–022–00198–1)	19.00	Oct. 1, 1994
1200–End	(869–022–00199–0)	15.00	Oct. 1, 1994
50 Parts:			
1–199	(869–022–00200–7)	25.00	Oct. 1, 1994
200–599	(869–022–00201–5)	22.00	Oct. 1, 1994
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CFR Index and Findings Aids	(869–026–00053–1)	36.00	Jan. 1, 1995

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Individual copies		1.00	1995

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1995. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1994. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1994. The CFR volume issued January 1, 1993, should be retained.

[7] No amendments to this volume were promulgated during the period October 1, 1993, to September 30, 1994. The CFR volume issued October 1, 1993, should be retained.

[8] No amendments to this volume were promulgated during the period April 1, 1994 to March 31, 1995. The CFR volume issued April 1, 1994, should be retained.