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[Three Sessions]

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 204

[INS No. 1602–92]

Classification of Certain Scientists of the Commonwealth of Independent States of the Former Soviet Union and the Baltic States as Employment-Based Immigrants

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with requests for comments.

SUMMARY: This rule amends the Immigration and Naturalization Service (''the Service'') regulations by revising the procedures which establish eligibility of certain scientists and engineers from the former Soviet Union for permanent residence under the Soviet Scientists Immigration Act of 1992. This rule is necessary to clearly identify those scientists who qualify under that law for permanent resident status, thereby preventing their migration into the employ of hostile governments seeking to develop weapons that can threaten the world's security.

DATES: This interim rule is effective October 19, 1995. Written comments must be submitted on or before December 18, 1995.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536, Attn: Public Comment Clerk. To ensure proper handling, please reference INS number 1602–92 on your correspondence. Comments are available for public inspection at this location by calling (202) 514–3048 to arrange an appointment.

FOR FURTHER INFORMATION CONTACT: Michael Straus, Senior Adjudications Officer, Immigration and Naturalization Service, Room 3214, 425 I Street NW., Washington, DC 20536, telephone (202) 514–3228.

SUPPLEMENTARY INFORMATION: The Soviet Scientists Immigration Act of 1992 (SSIA), Public Law 102–509, dated October 24, 1992, provides that up to 750 immigrant visas may be allotted under section 203(b)(2)(A) of the Immigration and Nationality Act (Act) to eligible scientists of the independent states of the former Soviet Union and the Baltic states, by virtue of their expertise in nuclear, chemical, biological or other high-technology fields or their current work on nuclear, chemical, biological or other high-technology defense projects. The provisions of the SSIA will terminate on October 24, 1996, or when the Immigration and Naturalization Service has approved a total of 750 petitions on behalf of eligible scientists, whichever date is earlier.

This rule amends § 204.10 which was added by an interim rule, published in the Federal Register on May 27, 1993, at 58 FR 30699–30701. This rule establishes petitioning procedures and eligibility requirements for obtaining SSIA benefits. The Service has concluded that revisions of the previous interim rule are necessary to improve the visa petition process, thereby furthering the goal of preventing hostile governments from employing these scientists with expertise in weapons of mass destruction. The amendments introduced in this rule reflect not only the written comments received during the comment period which ended on June 28, 1993, but also comments offered afterward by private parties and discussions with government officials interested or involved in the adjudication of petitions under the previous interim rule. Because these revisions introduce significant changes in the previous interim rule, the Service is soliciting public comments. The revisions developed in response to particular issues as well as a discussion of the public comments are summarized and discussed below.

Jurisdiction Over an SSIA Petition

One commenter suggested that scientists who leave the territory of the former Soviet Union after the SSIA's enactment should be allowed to apply directly for an SSIA immigrant visa at any U.S. embassy or consulate abroad, without Service approval of a petition, and also be granted an automatic waiver of travel document requirements. A U.S. Embassy or consulate, which is under the authority of the Secretary of State, has no authority to adjudicate an SSIA petition. Under section 4 of the SSIA, the Attorney General has the exclusive responsibility for adjudicating SSIA visa petitions; this authority has not been delegated to the Secretary of State. The decision to waive documentary requirements is wholly within the discretion of the Embassy or consulate where the immigrant visa application is pending.

The legislative history indicates that the SSIA was intended ''to speed the process and remove existing obstacles'' with respect to the immigration of qualified scientists from the former Soviet Union. See Statement of Senator Brown in 138 Cong. Rec. S1249 (daily ed. Feb. 6, 1992). The interim rule allowed applicants, who were in the United States and eligible to apply for adjustment of status under section 245 of the Act, the option of filing Form I–140, Immigrant Petition for Alien Worker, concurrently with Form I–485, Application to Register for Permanent Residence or Adjust Status, either at a service center, or at the local district office having jurisdiction over the alien applicant's place of residence in the United States.

Since the interim rule has been in effect, service centers have been able to promptly adjudicate SSIA petitions. By handling greater numbers of these specialized cases than district offices, the service centers have developed expertise in adjudicating these petitions. This expertise has enabled them to promptly determine whether the alien has a bonafide claim to SSIA benefits. The service centers are also better equipped to capture and report required data concerning the number of approved SSIA petitions. By centralizing the adjudication of SSIA petitions at service centers, the Service can achieve enhanced coordination with other government agencies which may have pertinent information related to a petition. Accordingly, this interim rule provides that the service centers will adjudicate all SSIA petitions, unless specifically designated for local filing by

the Associate Commissioner for Examinations.

Definition of Eligible Scientist

One commenter objected to the requirement in the interim rule that the alien establish exceptional ability in the field, contending that the SSIA does not require a showing of exceptional ability. Section 4(a) of the SSIA provides that ''the Attorney General shall designate a class of * * * scientists, based on their level of expertise, as aliens who possess 'exceptional ability' in the sciences for purposes of section 203(b)(2)(A) of the Act.'' Although, as noted by the commenter, section 4(a) of the SSIA allows allocation of visa numbers from the employment-based second category, it also refers to the ''level of expertise'' relating to exceptional ability. The language of section 4(a) of the SSIA plainly requires exceptional ability in the sciences, as determined by the alien's field of expertise. As noted in the previous interim rule, because these scientists constitute a specialized group, the criteria to establish exceptional ability is limited. If an SSIA applicant satisfies the evidentiary criteria in 8 CFR 204.10(e)(2), he or she meets the exceptional ability requirement.

Two commenters asserted that the interim rule should be expanded to include aliens involved in non-defense projects and that eligibility should not be limited to scientists with expertise related to a defense project. Section 2(3)(B) of the SSIA defines eligible scientists as those who have expertise either in nuclear, chemical, biological, or other high technology fields, or who are working on nuclear, chemical, biological, or other high-technology defense projects. The previous interim rule provided that the petitioner present evidence that the alien has expertise in the specific field as it relates to a defense project. The Service agrees that the rule should be clarified to reflect that the expertise need not be related to a specific defense project, as long as the expertise is in nuclear, chemical, biological, or other high-technology defense fields having clear application to weapons of mass destruction. However, as mentioned in the preamble to the previous interim rule, the SSIA and the legislative history clearly indicate that not every scientist from the former Soviet Union is meant to benefit from this provision. Senator Brown stated that the SSIA covers those scientists who ''have specialized in weapons of mass destruction.'' See 138 Cong. Rec. S1249 (daily ed. Feb. 6, 1992). The phrase ''expertise in other high technology fields'' in the previous interim rule may have been misinterpreted. Congress intended to limit eligibility under the SSIA to scientists or engineers having expertise clearly applicable to the development or use of weapons of mass destruction. For example, a scientist who, in the course of conducting medical research, has developed a bio-chemical agent which can be used in biological warfare may, under center circumstances, be able to establish eligibility for classification under the SSIA. On the other hand, a nuclear power plant engineer who cannot clearly demonstrate the requisite statutory expertise would be ineligible for SSIA classification. This interim rule will, therefore, be amended to clarify these matters. This rule amends the definition of eligible independent states and Baltic scientists to include scientists or engineers who have expertise in a high-technology field which is clearly applicable to the design, development, and production of ballistic missiles, nuclear, biological, chemical, or other high-technology weapons of mass destruction, or who are working on, the design, development, and production of ballistic missiles, nuclear, biological, chemical, or other high-technology weapons of mass destruction.

One commenter suggested that the definition under § 204.10(d) should include scientists involved in research related to the design, development, and production of ballistic missiles. The commenter was of the opinion that the inclusion of the word ''research'' would help to prevent Service adjudicators from interpreting the qualifying activities as being exclusive. The original interim rule cites ''the design, development, and production of ballistic missiles'' as an example of the expertise possessed by the intended beneficiaries of this legislation; namely, ''scientists who have specialized in developing weapons of mass destruction.'' That example, however, is not an exclusive test for eligibility. Neither the May 27, 1993, interim rule nor this interim rule would deny SSIA benefits to a scientist whose work has clear applicability to the development of such weapons, whether that work is characterized as ''research,'' ''design,'' or any other appropriate term.

Another commenter was of the opinion that requiring supporting testimony from recognized experts is impractical because the defense industry in the former Soviet Union remains shrouded in secrecy and persons may face sanctions for revealing information on defense-related projects. According to several commenters and representatives of interested government agencies, some scientists who are most qualified for the benefits of the SSIA currently live under constraints of censorship which hinder them from submitting full documentation of their qualifications, or from procuring testimonials from qualified authorities in their countries.

In order to provide additional opportunities for qualified scientists who may be unable to obtain the necessary written testimony from experts, this rule allows for consultation with other government agencies having expertise in defense matters. The applicant must submit a statement as to how he or she qualifies under the SSIA. In evaluating the claimed qualifications of beneficiaries in such circumstances, the Service may consult other United States Government agencies having expertise in defense matters including, but not limited to, the Department of Defense, the Department of State, and the Central Intelligence Agency. In these cases the Service may, in the exercise of administrative discretion, accept a favorable report in lieu of the documentation prescribed in § 204.10(e)(2) (ii) or (iii).

The previous interim rule at § 204.10(e)(2) prescribed certain documentation to establish a beneficiary's qualifications for classification under the SSIA. The required documentation included written testimony regarding the alien's qualifications from either two recognized national or international experts in the same field or from an official of an agency of the United States Government. Two commenters found this documentary requirement to be excessively restrictive. One commenter suggested that the rule be revised to allow an applicant to submit an opinion from any credible, competent witness, such as a university professor or an individual from private industry who is an expert in the field, or other documentary evidence, such as a true copy of the alien's university diploma, evidence of secret clearance from the former Soviet Government, or a detailed declaration by the alien. The Service does not agree with the recommendation that the documentary requirements should be relaxed. In adjudicating SSIA visa petitions, the service has identified certain problems which need to be addressed to ensure that only qualified scientists are approved under the SSIA. Among other things, the current economic difficulties confronting weapons systems scientists of the former Soviet Union also affect much larger numbers of aliens who are not qualified under the SSIA. The Service has received written statements submitted on behalf of unqualified

individuals which, on their face, indicate that the alien has expertise in nuclear, biological, chemical, or other fields involving weapons of mass destruction. Therefore, additional evidence is required. One commenter suggested that the ''Trudavaya Knizhka,'' an official work document from the former Soviet Union which summarizes one's work experience, be considered acceptable evidence. The Service agrees that the ''Trudavaya Knizhka'' is an important and relevant document. In addition, the applicant should present other relevant documentation, such as evidence of significant awards or publications. This interim rule requires the alien to submit the ''Trudavaya Knizhka,'' evidence of significant awards or publications, and other comparable evidence. If the alien lacks any of these documents, he or she must explain why they are not available.

This rule also regularizes the processing of requests made to United States Government agencies for written testimonials and enhances the reliability of endorsements issued by government agencies. This rule provides that the authority of a United States Government agency to issue endorsements regarding a Soviet scientist's qualifications is vested in the agency's ''head or duly appointed designee.'' The authority to make certifications under this provision is presumed to be vested exclusively in the agency head, unless that agency notifies the Commissioner of the Immigration and Naturalization Service in writing of other officials to whom that authority has been delegated. Each agency that chooses to participate in this program retains the right to determine its own review procedures.

Because the SSIA waives the job offer requirement in section 203(b)(2)(A) of the Act, the Service determined that the labor certification requirement is also waived in the case of an eligible scientist. To properly identify eligible scientists, the Service requires an orderly statement of their qualifications. The information contained in Part B of the Department of Labor Form ETA 750, Application for Alien Employment Certification, which lists the alien's qualifications and experience, will clarify and expedite the adjudication of an SSIA petition. The petition shall also include a supplementary statement of the beneficiary's relevant experience within the past 10 years. The Form ETA 750 Part B can be prepared either by the alien or by the petitioner.

Numerical Ceiling

Section 4(c) of the SSIA provides that no more than 750 petitions may be approved on behalf of eligible scientists. The Service may not, therefore, accept additional petitions under the SSIA if the ceiling of 750 principal beneficiaries has been reached prior to October 25, 1996. Accordingly, the language of § 204.10(a) is amended to clarify this matter.

All of the visa numbers issued to the scientists and to their spouses and children under the SSIA are being deducted from the employment-based immigrant visa quota under section 203(b)(2) of the Act. A number of commenters and Service field offices have expressed concern as to the method by which the numbers of immigrant visas issued under this provision will be counted for recordation. In order to enable the Service to count the number of visas allotted to the principal scientist beneficiaries under this law, a new immigrant visa code has been developed for them: ES1 in the case of a scientist admitted from abroad, and ES6 in the case of a scientist who adjusted status in the United States. Spouses and unmarried children of SSIA beneficiaries will be classified as accompanying or following to join under the employment-based second preference.

Termination Date

Section 4(d) of the SSIA states that the authority of subsection (a), under which the Attorney General designates a class of scientists from the former Soviet Union for purposes of section 203(b)(2)(A) of the Act, terminates 4 years after enactment of the SSIA. The authority to designate the class, therefore, expires on October 24, 1996. Under the language of section 4(d) of the SSIA, the authority to classify a qualified Soviet scientist terminates on that date. The Service may grant an applicant SSIA classification only upon approval of the I–140 petition.

The original interim rule provided that an SSIA applicant meets the statutory deadline by filing a petition on or before October 24, 1996. As noted above, the statute requires the applicant to receive SSIA classification before that date. Accordingly, this interim rule requires that the applicant must have an SSIA petition approved on his or her behalf on or before October 24, 1996.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the ''good cause'' exception found at 5 U.S.C. 553(d)(3). The reasons and the necessity for the immediate implementation of this interim rule are as follows: The national security considerations which were discussed in the May 27, 1993, interim rule at 58 FR 30700, apply equally to this rule. This grave economic and military situation in the former Soviet Union continues to raise concerns that some of the leading scientists of the former Soviet Union may be driven ''to market their skills to unscrupulous nations bent on developing weapons that can threaten the world's security.'' See 138 Cong. Rec. S1249 (daily ed. Feb. 6, 1992). The changes established in this rule, based on the Service's experience in adjudicating SSIA petitions, are necessary to ensure that the goals of the SSIA will be accomplished. In addition, the approaching termination date for benefits under the SSIA increases the urgency of implementing this rule to expedite the timely filing and adjudication of such cases before the statute expires.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not, if promulgated, have a significant adverse economic impact on a substantial number of small entities. This rule merely modifies existing regulations concerning the immigration of up to 750 scientists from the former Soviet Union. It will not significantly change the number of persons who immigrate to the United States. Any impact on small business entities will be, at most, indirect and attenuated.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waive its review process under section 6(a)(3)(A).

Executive Order 12612

This regulation 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 rule does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

Executive Order 12606

The Commissioner of Immigration and Naturalization Services certifies that she has assessed this rule in light of the criteria in Executive Order 12606

and has determined that it will have no effect on family well-being.

This rule contains information collection requirements which have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR 299.5, display of control numbers.

List of Subjects in 8 CFR Part 204

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, part 204 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 204—IMMIGRANT PETITIONS

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

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255; 8 CFR part 2.

2.Section 204.10 is amended by:

a. Removing the last two sentences in paragraph (a) and adding a new sentence in their place;

b. Revising paragraph (b);

c. Revising paragraph (d);

d. Revising paragraph (e)(2);

e. Redesignating paragraph (g) as paragraph (h);

f. Adding a new paragraph (g); and by

g. Revising newly redesignated paragraph (h) to read as follows:

§ 204.10 Petitions by, or for, certain scientists of the Commonwealth of Independent States or the Baltic states.

(a) *General.* * * * The Service must approve a petition filed on behalf of the alien on or before October 24, 1996, or until 750 petitions have been approved on behalf of eligible scientists, whichever is earliest.

(b) *Jurisdiction.* Form I–140 must be filed with the service center having jurisdiction over the alien's place of intended residence in the United States, unless specifically designated for local filing by the Associate Commissioner for Examinations. To clarify that the petition is for a Soviet scientist, the petitioner should check the block in part 2 of Form I–140 which indicates that the petition is for ''a member of the professions holding an advanced degree or an alien of exceptional ability'' and clearly print the words ''SOVIET SCIENTIST'' in an available space in Part 2.

* * * * *

(d) *Definitions.* As used in this section:

Baltic states means the sovereign nations of Latvia, Lithuania, and Estonia.

Eligible independent states and Baltic scientists means aliens:

(i) Who are nationals of any of the independent states of the former Soviet Union or the Baltic states; and

(ii) Who are scientists or engineers who have expertise in a high-technology field which is clearly applicable to the design, development, or production of ballistic missiles, nuclear, biological, chemical, or other high-technology weapons of mass destruction, or who are working on the design, development, and production of ballistic missiles, nuclear, biological, chemical, or other high-technology weapons of mass destruction.

Independent states of the former Soviet Union means the sovereign nations of Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan.

(e) * * *

(2) Evidence that the alien possesses exceptional ability in the field. Such evidence shall include:

(i) Form ETA 750B, Statement of Qualifications of Alien and a supplementary statement of relevant experience within the past ten years; and

(ii) Written testimony that the alien has expertise in a field described in paragraph (d) of this section, or that the alien is or has been working on a high-technology defense project or projects in a field described in paragraph (d) of this section, from either two recognized national or international experts in the same field or from the head or duly appointed designee of an agency of the Federal Government of the United States; and

(iii) Corroborative evidence of the claimed expertise, including the beneficiary's official Labor Record Book (Trudavaya Knizhka), any significant awards and publications, and other comparable evidence, or an explanation why the foregoing items cannot be submitted; or

(iv) In the case of a qualified scientist who establishes that he or she is unable to submit the initial evidence prescribed by paragraphs (e)(2) (ii) or (iii) of this section, a full explanation and statement of the facts concerning his or her eligibility. This statement must be sufficiently detailed so as to enable the Service to meaningfully consult with other government agencies as provided in paragraph (g) of this section.

* * * * *

(g) *Consultation with other United States Government agencies.* In evaluating the claimed qualifications of applicants under this provision, the Service may consult with other United States Government agencies having expertise in defense matters including, but not limited to, the Department of Defense, the Department of State, and the Central Intelligence Agency. The Service may, in the exercise of discretion, accept a favorable report from such agency as evidence in lieu of the documentation prescribed in paragraphs (e)(2) (ii) and (iii) of this section.

(h) *Decision on and disposition of petition.* If the beneficiary is outside of the United States, or is in the United States but seeks to apply for an immigrant visa abroad, the approved petition will be forwarded by the service center to the Department of State's National Visa Center. If the beneficiary is in the United States and seeks to apply for adjustment of status, the approved petition will be retained at the service center for consideration with the application for adjustment of status. If the petition is denied, the petitioner will be notified of the reasons for the denial and of the right to appeal in accordance with the provisions of 8 CFR part 103.

Dated: August 24, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–25931 Filed 10–18–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 773, 778 and 799

[Docket No. 951004245–5245–01]

RIN 0694–AB20

Revisions to the Export Administration Regulations: Exports of Sample Shipments Containing Precursor and Intermediate Chemicals; Revision to Australia Group Members; Aqueous Hydrofluoric Acid; and Clarifications

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL), as part of the Export Administration Regulations (EAR). The changes made by this rule are based on discussions in the Australia Group (AG) and suggested changes by industry.

This rule amends the CCL by revising Export Control Classification Number (ECCN) 1C60 to clarify that this entry controls aqueous hydrofluoric acid. ECCN 1C60 controls dual-use precursors and intermediate chemicals useful in the production of chemical warfare agents and certain mixtures containing such chemicals.

In addition, this rule adds Poland, Romania and the Slovak Republic to the list of Australia Group countries, thereby making them eligible for the license exceptions accorded AG members.

DATES: This rule is effective October 19, 1995.

FOR FURTHER INFORMATION CONTACT:

For general questions, call Sharron Cook, Bureau of Export Administration, Regulatory Policy Division, Telephone: (202) 482–2440.

For questions on foreign policy controls, call Patricia Sefcik, Bureau of Export Administration, Chemical & Biological Controls Division, Telephone: (202) 482–0707.

For questions of a technical nature on chemical weapon precursors, biological agents, and equipment that can be used to produce chemical and biological weapons agents, call James Seevaratnam, Bureau of Export Administration, Chemical & Biological Controls Division, Telephone: (202) 482–3343.

SUPPLEMENTARY INFORMATION:

Background

The export control liberalization set forth in BXA's October 19, 1994 Federal Register notice (59 FR 52685) provides relief to the chemical industry from the previous zero tolerance on chemical mixtures containing an Australia Group (AG) controlled chemical precursor. Before October 19, 1994, the U.S. did *not* permit any preferential licensing treatment for exports of chemical mixtures that contained any quantity of an AG-controlled chemical.

In May 1994, the members of the AG agreed to harmonize licensing requirements for mixtures containing AG controlled chemicals in order to facilitate legitimate trade without allowing chemical weapons (CW) proliferators to circumvent AG controls. Accordingly, thresholds were agreed to for mixtures containing *de minimis* quantities, by weight, of AG controlled chemicals. In this regard, the ''solvent free basis'' provision for determining whether such chemical mixtures are subject to export licensing requirement was added to preclude proliferators from extracting meaningful quantities of AG controlled chemical precursors for use in the production of CW.

At the November/December 1994 meeting of the Australia Group, the delegates discussed certain technical revisions in the AG's harmonized controls on chemical weapons precursors. The changes discussed at the meeting are contained in this final rule. These changes refine and clarify the scope of controls on exports of sample shipments and mixtures containing controlled precursor and intermediate chemicals. This rule does not address controls on biological agents that are controlled by ECCN 1C61.

Consistent with an AG agreement, Commerce is adding a note to ECCN 1C60 to clarify that a validated license is required for aqueous hydrofluoric acid.

This rule also adds Poland, Romania and the Slovak Republic to the list of countries exempt from certain validated license requirements on the basis of their recent membership in the Australia Group. For consistency and conformity, Romania has been removed from Supplement No. 5 to Part 778.

The chemical industry commented on the October 1994 rule, and requested that BXA clarify the terms ''solvent'' and ''solvent free basis.'' Therefore, in Supplement No. 3 to Part 778, this rule sets forth the definition of solvent and provides examples of mixtures containing AG-controlled chemicals, with and without solvents, to assist companies in determining whether such mixtures require validated export licenses.

BXA also received comments concerning the reporting requirements for sample shipments. Many exporters recommended that reports for sample shipments should be submitted on a quarterly basis instead of within 30 days after each sample shipment. The reports and the reporting requirement have been under consideration and upon assessing the data, and in light of the revisions to sample shipments made by this rule, it was determined that the reporting requirement will be made quarterly, under OMB control number 0694–0086.

BXA also received comments on the potential confusion caused by including in ECCN 1C60 both precursor chemicals that require a license to most countries and sample and mixtures that are exempt from a validated license requirement to most destinations. Therefore, this rule establishes a new ECCN 1C95F for mixtures meeting the *de minimis* mixtures exemptions found in ECCN 1C60. However, 1C60 chemicals that meet the samples exemption do not lose their identity and therefore will remain classified under ECCN 1C60.

This final rule revises ECCN 1C60, which controls precursor and intermediate chemicals useful in the production of chemical warfare agents, as follows:

ECCN 1C60

(1) Note 1 to ECCN 1C60 is revised to modify the general license treatment for sample shipments containing controlled chemical precursors to eligible destinations (all destinations except Iran, Syria and Country Groups S and Z). Previously, general license treatment for sample shipments to eligible destinations has been available for only a single sample shipment equal to or less than a 55-gallon container or 200 kg of each chemical to any one consignee per calendar year. Exporters may now use General License G–DEST to make multiple sample shipments of any quantity of precursor or intermediate chemicals, listed in ECCN 1C60, as long as the cumulative annual amount of each chemical to any one consignee does not exceed either a 55 gallon container or 200 kg. Reports on sample shipments must be made quarterly.

(2) Note 2 to ECCN 1C60 is clarified by adding a definition of ''Solvent''.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12924 of August 19, 1994.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

Saving Clause

Shipments of aqueous hydrofluoric acid that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export pursuant to actual orders for export before October 19, 1995 may be exported under general license provisions up to and including November 16, 1995. Any aqueous hydrofluoric acid not actually exported before midnight November 16, 1995, require a validated export license in accordance with this regulation.

Rulemaking Requirements

1. This final rule has been determined to be not significant for the purposes of Executive Order 12866.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005, 0694–0010, 0694–0023, 0694–0067, and 0694–0086. This rule makes a revision to an OMB collection, control number 0694–0086. The public burden for this collection contained within the rulemaking will remain an estimated average of one-half hour per response, although the frequency for reporting has been decreased. 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 these burden estimates or any other aspect of the data requirements, including suggestions for reducing this burden, to the Office of Security and Management Support, Room 4513, Bureau of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (Attn: Paperwork Reduction Project—0694–0086).

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Regulatory Policy Division, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 773 and 799

Exports, Reporting and recordkeeping requirements.

15 CFR Part 778

Exports, Nuclear energy, Reporting and recordkeeping requirements.

Accordingly, Parts 773, 778 and 799 of the Export Administration Regulations (15 CFR Parts 730–799) are amended as follows:

1. The authority citations for 15 CFR Part 773 and 778 continue to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; Pub. L. 102–484, 106 Stat. 2575 (22 U.S.C. 6004); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12851 of June 11, 1993 (58 FR 33181, June 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); E.O. 12924 of August 19, 1994 (59 FR 43437 of August 23, 1994); E.O. 12938 of November 14, 1994 (59 FR 59099 of November 16, 1994) and Notice of August 15, 1995 (60 FR 42767).

2. The authority citation for 15 CFR Part 799 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended; Pub. L. 264, 59 Stat. 619 (22 U.S.C. 287c), as amended; Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); Pub. L. 102–484, 106 Stat. 2575 (22 U.S.C. 6004); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12851 of June 11, 1993 (58 FR 33181, June 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); E.O 12918 of May 26, 1994 (59 FR 28205, May 31, 1994); E.O. 12924 of August 19, 1994 (59 FR 43437 of August 23, 1994); E.O. 12938 of November 14, 1994 (59 FR 59099 of November 16, 1994); and Notice of August 15, 1995 (60 FR 42767).

PART 773—[AMENDED]

3. Section 773.9 is amended by:

i. Revising paragraph (a)(1);

ii. Revising the phrase ''ECCN 1C60B or 1C64E'' or ''ECCNs 1C60C or 1C64E'' to read ''ECCN 1C60C'' in the following paragraphs:

A. (f)(1)(iv), last sentence;

B. (f)(2)(i)(B), last sentence; and

C. (i)(2)(vii), last sentence; and

iii. Revising the notice at the end of paragraph (l) to read as follows:

§ 773.9 Special Chemical License.

(a) * * *

(1) Precursor and intermediate chemicals controlled under ECCN 1C60C; and

* * * * *

(l) * * *

These commodities were authorized for export from the United States under a Special Chemical License procedure on the condition that they may not be reexported without prior approval from the United States authorities. This prior approval is not required for reexports to Argentina, Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovak Republic, Spain, Sweden, Switzerland, and the United Kingdom.

* * * * *

PART 778—[AMENDED]

4. Section 778.8 is amended by revising:

i. paragraph (a)(1) introductory text;

ii. paragraph (a)(1)(i);

iii. paragraph (a)(5)(i);

iv. paragraph (a)(5)(iv)(B);

v. paragraph (a)(5)(v), to read as follows:

§ 778.8 Chemical precursors and biological agents, and associated equipment, software, and technology.

(a) * * *

(1) Chemicals identified in ECCN 1C60 require a validated license for export from the United States to all destinations except Argentina, Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovak Republic, Spain, Sweden, Switzerland, and the United Kingdom.

(i) A validated license is required for chemical mixtures containing any

chemicals identified in ECCN 1C60. See Note 2 of ECCN 1C60 and ECCN 1C95 on the Commerce Control List (§ 799.1 of this subchapter) for further details on the concentrations of chemicals that require a validated license.

* * * * *

(5) * * *

(i) General License GTDU, as authorized in ECCN 1E60C, is not available for technical data for the production of chemical precursors described in paragraph (a)(1) of this section, except to Argentina, Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovak Republic, Spain, Sweden, Switzerland, and the United Kingdom;

* * * * *

(iv) * * *

(B) This prohibition on use of General License GTDU, as authorized in ECCN 1E60C, does not apply to exports to Argentina, Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovak Republic, Spain, Sweden, Switzerland, and the United Kingdom.

(v) General License GTDU, as authorized in ECCN 1D60C, is available only for process control software that is specifically configured to control or initiate the production of chemical weapons precursors controlled by ECCN 1C60 and only to Argentina, Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovak Republic, Spain, Sweden, Switzerland, and the United Kingdom.

* * * * *

5. Section 778.9 is amended by revising paragraph (c) to read as follows:

§ 778.9 Activities of U.S. persons.

* * * * *

(c) No U.S. person shall, without a validated license or other authorization by BXA, participate in the design, construction, or export of a whole plant to make chemical weapons precursors identified in ECCN 1C60, in countries other than Argentina, Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovak Republic, Spain, Sweden, Switzerland, and the United Kingdom.

* * * * *

6. Supplement No. 3 to Part 778 (formally reserved) is added to read as follows:

Supplement No. 3 to Part 778—Chemical Mixtures: De Minimis Exceptions Examples

This supplement contains examples on applying the *de minimis* exceptions for chemical mixtures containing precursor and intermediate chemicals controlled under ECCN 1C60.

In ECCN 1C60, Note 2, paragraphs (c) and (d) within the Mixtures Exemptions state that a validated license is required when at least one of the listed chemicals constitutes more than 10% or 25%, respectively, of the weight of the mixture on a solvent free basis.

Example One

A mixture contains the following components:

90% polymer polyol (a liquid raw material used to make polyurethane polymers)
10% Australia Group (AG)-controlled chemical eligible for 25% *de minimis* exemption

Note: The polymer does not dissolve the AG-controlled chemical.

In this example, the polymer polyol does not dissolve the AG-controlled chemical (the only other component of the mixture). Therefore, the polyol is NOT considered a solvent, and the concentration of the polymer polyol is included in the concentration calculation. As a result, the AG-controlled chemical's concentration is 10% when calculated on a solvent-free basis (.10/1.00). Accordingly, this concentration is below the threshold concentration of 25% applicable to specific AG-controlled chemicals under the chemical mixtures rule and can be exported under the provisions of general license G–DEST to all destinations except Iran, Syria, and Country Groups S and Z.

To determine the classification of this mixture, it is necessary to determine whether the polymer is capable of functioning as a solvent for the other components of the mixture. If the polymer polyol is capable of functioning as a solvent for the controlled AG chemical, then the polymer component is omitted from the concentration calculation. If the polymer polyol is not capable of functioning as a solvent for the AG chemical, then the polymer component is included in the concentration calculation.

Example Two

An automotive coolant (antifreeze) is a mixture of the following components:

75% ethylene glycol
10% additive package
15% water

Note: The ''additive package'' contains an AG-controlled chemical that is eligible for the 10% *de minimis* exemption. This chemical is added as a stabilizer and represents 9% of the total mixture. The remaining components of the additive package are various dyes and stabilizers that represent 1% of the total mixture. Ethylene glycol serves as the basic functional ingredient that prevents the engine block from freezing, and does not dissolve the other components of the mixture. The water is added to keep the mixture in solution.

To determine if this mixture requires an individual validated license (IVL) it is necessary to calculate the concentration of the AG-controlled chemical on a solvent-free basis. Since the water dissolves all of the other components of the mixture, water is considered a ''solvent'' and the quantity of water present is not included in the calculation of the AG-chemical concentration. Consequently, the concentration of the AG chemical is approximately 11% (.09/.85), and the mixture is classified under ECCN 1C60C. Accordingly, since this concentration is above the threshold concentration of 10% applicable to this category of AG-controlled chemical under the chemical mixtures rule, an IVL is required to all destinations except AG member countries.

Example Three

A pesticide formulation consists of an AG-controlled chemical that is eligible for the 25% *de minimis* exemption, and an active ingredient that is not AG-controlled. The formulation is diluted with water to allow safe, effective, and economic application. The resulting mixture is 15% AG chemical, 40% active ingredient and 45% water. Although the water is added as a diluent, it dissolves the other components of the mixture.

Since the water dissolves all components in the mixture, it is considered a solvent even though it was added as a diluent. The percent concentration of the AG-controlled chemical calculated on a solvent free basis is .15/.55 = 27%, and the mixture is therefore classified under ECCN 1C60C. Accordingly, since this concentration is above the threshold concentration of 25% applicable to this category of AG-controlled chemicals under the chemical mixtures rule, an IVL is required to all destinations except AG member countries.

Example Four

A mixture contains the following components:

10% water
22% Chemical A
21% Chemical B
20% Chemical C
19% Chemical D
8% Chemical E

Note: The water is added to dissolve the other components of the mixture. Chemicals A, B, C, and D are AG-controlled chemicals each eligible for 25% *de minimis* exemption. Chemical E is an AG-controlled chemical eligible for 10% *de minimis* exemption.

In this example, water is considered a solvent since it dissolves all components in the mixture. Therefore, the quantity of water present in the mixture is not included in calculating the concentrations of the controlled chemicals on a solvent-free basis. The concentrations of the controlled

chemicals are as follows: Chemical A 24%; Chemical B 23%; Chemical C 22%; Chemical D 21%; Chemical E 9%. It is important to note that in this example, even though the cumulative amount of the mixture (90%) consists of controlled chemicals, each one of the controlled chemicals is below the *de minimis* level for its category. Consequently, this mixture can be exported under the provisions of general license G–DEST to all destinations except Iran, Syria, and Country Groups S and Z.

7. Supplement No. 5 to Part 778 (Dual-Use Chemical and Biological Equipment; Regions, Countries, and Other Destinations), is amended by removing ''Romania'' from the list of countries.

PART 799—[AMENDED]

Supplement No. 1 to § 799.1 [Amended]

8. In Category 1 (Materials), ECCN 1C60C, 1D60C and 1E60C are amended by revising the Requirements section, and a new ECCN 1C95F is added after 1C94F, respectively, as follows:

1C60C Precursor and Intermediate Chemicals Used in the Production of Chemical Warfare Agents and Certain Mixtures Containing Such Chemicals

Requirements

Validated License Required: QSTVWYZ, *except* Argentina, Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovak Republic, Spain, Sweden, Switzerland, and the United Kingdom. (see *Note 4*)

Unit: Liters or kilograms as appropriate
Reason for Control: CB
GLV: $0
GCT: No
GFW: No

Notes: 1. *Sample Shipments:* Certain sample shipments of chemicals controlled under ECCN 1C60 may be made without a validated license, as provided by the following rules:

a. The following chemicals are not eligible for sample shipments: 0-Ethyl-2-diisopropylaminoethyl methylphosphonite (QL) (C.A.S. #57856–11–8), Ethylphosphonyl difluoride (C.A.S. #753–98–0), and Methylphosphonyl difluoride (C.A.S. #676–99–3).

b. The following countries are not eligible to receive sample shipments: Iran, Syria, and Country Groups S and Z.

c. Sample Shipments: a validated license is not required for sample shipments when the cumulative total of these shipments does not exceed a 55-gallon container or 200 kg of each chemical to any one consignee per calendar year. Multiple sample shipments, in any quantity, not exceeding the totals indicated in this paragraph may be made under General License G-DEST, subject to the stipulations of this Note 1.

d. The exporter is required to submit a quarterly written report for shipments of samples made under this Note 1. The report must be on company letterhead stationery identifying the chemical(s), Chemical Abstract Service Registry (C.A.S.) number(s), quantity(ies), the ultimate consignee's name and address, and the date exported. The report should be sent to the Bureau of Export Administration, Room 2705, Washington, DC 20230, clearly marked ''Report of Sample Shipments of Chemical Precursors'' at the top of the first page and on the envelope.

2. *Mixtures:* Mixtures that contain certain concentrations of precursor and intermediate chemicals are subject to the following licensing requirements under this ECCN:

a. A Validated License is required, regardless of the concentrations in the mixture, for the following chemicals: 0-Ethyl-2-diisopropylaminoethyl methylphosphonite (QL) (C.A.S.#57856–11–8), Ethylphosphonyl difluoride (C.A.S.#753–98–0) and Methylphosphonyl difluoride (C.A.S.#676–99–3);

b. A Validated License is required when at least one of the following chemicals constitutes more than 10 percent of the weight of the mixture on a solvent free basis: Arsenic trichloride (C.A.S.#7784–34–1), Benzilic acid (C.A.S.#76–93–7), Diethyl ethylphosphonate (C.A.S.#78–38–6), Diethyl methylphosphonite (C.A.S.#15715–41–0), Diethyl-N,N-dimethylphosphoroamidate (C.A.S.#2404–03–7), N,N-Diisopropyl-beta-aminoethane thiol (C.A.S.#5842–07–9), N,N-Diisopropyl-2-aminoethyl chloride hydrochloride (C.A.S.#4261–68–1), N,N-Diisopropyl-beta-aminoethanol (C.A.S.#96–80–0), N,N-Diisopropyl-beta-aminoethyl chloride (C.A.S.#96–79–7), Dimethyl ethylphosphonate (C.A.S.#6163–75–3), Dimethyl methylphosphonate (C.A.S.#756–79–6), Ethylphosphonous dichloride [Ethylphosphinyl dichloride] (C.A.S.#1498–40–4), Ethylphosphonus difluoride [Ethylphosphinyl difluoride] (C.A.S.#430–78–4), Ethylphosphonyl dichloride (C.A.S.#1066–50–8), Methylphosphonous dichloride [Methylphosphinyl dicloride] (C.A.S.#676–83–5), Methylphosphonous difluoride [Methylphosphinyl difluoride] (C.A.S.#753–59–3), Methylphosphonyl dichloride (C.A.S.#676–97–1), Pinacolyl alcohol (C.A.S.#464–07–3), 3–Quinuclidinol (C.A.S.#1619–34–7), and Thiodiglycol (C.A.S.#111–48–8); (Related ECCN: 1C95F)

c. A Validated License is required when at least one of all other chemicals in the List of Items Controlled constitutes more than 25 percent of the weight of the mixture on a solvent free basis (related ECCN: 1C95F); and

d. A Validated License is not required under this entry for mixtures when the controlled chemical is a normal ingredient in consumer goods packaged for retail sale for personal use. Such consumer goods are controlled by ECCN 1C96G.

e. *Calculation of concentrations of AG-controlled chemicals.*

1. Usual Commercial Purposes. In calculating the percentage of an AG controlled chemical in a mixture (solution), any other chemical must be excluded if it was not added for usual commercial purposes, but was added for the sole purpose of circumventing the Export Administration Regulations.

2. ''Solvent Free Basis Requirement.'' When calculating the percentage, by weight, of components in a chemical mixture, you must exclude from the calculation any component of the mixture that acts as a solvent.

3. Solvent—For purposes of this ECCN ''A substance capable of dissolving another substance to form a uniformly dispersed mixture (solution)''.

- Solvents are liquids at standard temperature and pressure (STP).
- In no instance is an AG controlled chemical considered a ''solvent''.
- All ingredients of mixtures are expressed in terms of weight.
- The solvent component of the mixture converts it into a solution.

3. *Compounds*: A validated license is not required under this entry for chemical compounds created with any chemicals identified in this ECCN 1C60, unless those compounds are also identified in this entry.

4. *Special Chemical License Available*: See § 773.9 of this subchapter.

Technical Notes: 1. For purposes of this ECCN 1C60, a ''mixture'' is defined as a solid, liquid or gaseous product made up of two or more components that do not react together under normal storage conditions.

2. The scope of this control applicable to Hydrogen Fluoride (Item 25 in List of Items Controlled) includes its liquid, gaseous, and aqueous phases, and hydrates.

3. All *de minimis* exclusions of this entry extend to all mixtures including those that contain no solvents.

4. A Solvent is defined as a substance capable of dissolving another substance to form a uniformly dispersed mixture (solution). For examples and clarification of the term ''solvent free'' basis, see Supplement No. 3 to Part 778.

* * * * *

1C95F Mixtures Containing Precursor and Intermediate Chemicals Used in the Production of Chemical Warfare Agents That Are Not Controlled by ECCN 1C60

Requirements

Validated License Required: SZ, Iran
Unit: Liters or kilograms as appropriate
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

Note: For calculation of *de minimis* quantities of AG-controlled chemicals in mixtures, see ECCN 1C60 and Supplement 3 to Part 773.

* * * * *

1D60C Software for Process Control That is Specifically Configured To Control or Initiate Production of the Chemical Precursors Controlled by ECCN 1C60

Requirements

Validated License Required: QSTVWYZ, *except* Argentina, Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovak Republic,

Spain, Sweden, Switzerland, and the United Kingdom.

Unit: $ value

Reason for Control: CB

GTDR: No

GTDU: Only to countries listed above as not subject to validated license

* * * * *

1E60C Technology for the Production and/or Disposal of Chemical Precursors Described in ECCN 1C60C, and Technology as Described in the List Below for Facilities Designed or Intended to Produce Chemicals Described in ECCN 1C60

Requirements

Validated License Required: QSTVWYZ, *except* Argentina, Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovak Republic, Spain, Sweden, Switzerland, and the United Kingdom.

Reason for Control: CB

GTDR: No

GTDU: Only to countries listed above as not subject to validated license

* * * * *

9. In Supplement No. 1 to § 799.2, the introductory text to Interpretation 23 is revised to read as follows:

Supplement No. 1 to § 799.2—Interpretations

* * * * *

Interpretation 23: Precursor Chemicals

Following is a list of chemicals controlled by ECCN 1C60C that includes their Chemical Abstract Service Registry (C.A.S.) number and synonyms (i.e., alternative names). These chemicals require a validated license to all countries except Argentina, Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovak Republic, Spain, Sweden, Switzerland, and the United Kingdom.

* * * * *

Dated: October 13, 1995.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 95–25900 Filed 10–18–95; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 94F–0415]

Secondary Direct Food Additives Permitted in Food for Human Consumption; Polypropylene Glycol

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polypropylene glycol with a molecular weight range of 1,200–3,000 grams per mole (g/mol) as a defoaming agent in processing beet sugar and yeast. This action is in response to a petition filed by Ashland Chemical Co.

DATES: Effective October 19, 1995; written objections and requests for a hearing by November 20, 1995.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3076.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of January 12, 1995 (60 FR 2975), FDA announced that a food additive petition (FAP 5A4436) had been filed by Ashland Chemical Co., One Drew Plaza, Boonton, NJ 07005, proposing that § 173.340 *Defoaming agents* (21 CFR 173.340) be amended to provide for the safe use of polypropylene glycol with a molecular weight range of 1,200–3,000 g/mol as a defoaming agent in processing beet sugar and yeast.

The additive polypropylene glycol with a molecular weight range of 1,200–2,500 g/mol is currently listed in § 173.340 for use as a defoaming agent in processing beet sugar and yeast. FDA has evaluated the data in the petition and other relevant material and concludes that the extension of the allowable molecular weight range for polypropylene glycol to a maximum of 3,000 from the current 2,500 g/mol would not result in a greater exposure to the additive or to residual oligomers and monomers. The longer polymer of propylene glycol is a more effective defoamer and can be used at lower levels than the currently regulated polymer. Therefore, FDA concludes that the proposed food additive use of polypropylene glycol with a molecular weight range of 1,200–3,000 g/mol requested by the petitioner is safe and that § 173.340 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule and announced its conclusion in the notice of filing for FAP 5A4436 (60 FR 2975, January 12, 1995). No new information or comments have been received that would affect the agency's conclusion that there is no significant impact on the human environment and that an environmental impact statement is not required.

Any person who will be adversely affected by this regulation may at any time on or before November 20, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR part 173

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 173 is amended as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 173 continues to read as follows:

Authority: Secs. 201, 402, 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348).

§ 173.340 [Amended]

2. Section 173.340 *Defoaming agents* is amended in the table in paragraph (a)(3) in the entry for ''Polypropylene glycol'' under the heading ''Limitations'' by removing ''1,200–2,500'' and adding in its place ''1,200–3,000''.

Dated: October 4, 1995.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–25924 Filed 10–18–95; 8:45 am]

BILLING CODE 4160–01–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7150]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

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

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

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

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

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

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

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

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

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

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

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

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Connecticut: Tolland ...	Town of Somers	June 23, 1995, June 30, 1995, *Journal Engineer*.	Mr. Robert Percoski, First Selectman of the Town of Somers, P.O. Box 308, Somers, Connecticut 06071.	June 16, 1995	090112
Florida: Pinellas	Unincorporated Areas .	July 7, 1995, July 14, 1995, *Pinellas Review*.	Mr. Fred Marquis, Pinellas County Administrator, 315 Court Street, Clearwater, Florida 34616.	June 26, 1995	125139 C
Georgia: Effingham	Unincorporated Areas .	Aug. 23, 1995, Aug. 30, 1995, *The Herald*.	Mr. George C. Allen, Chairman of the Effingham County Board of Commissioners, Effingham County Courthouse, P.O. Box 307, Springfield, Georgia 31329.	Aug. 15, 1995	130076
Illinois: Cook	City of Country Club Hills.	July 27, 1995, Aug. 3, 1995, *The Daily Southtown* and *The Star*.	The Honorable Dwight W. Welch, Mayor of the City of Country Club Hills, 3700 West 175th Place, Country Club Hills, Illinois 60478.	July 20, 1995	170078 C
Maine: Androscoggin ..	City of Lewiston	Sept. 4, 1995, Sept. 11, 1995, *The Sun-Journal*.	The Honorable John Jenkins, Mayor of the City of Lewiston, City Hall, Pine Street, Lewiston, Maine 04240.	Aug. 30, 1995	230004 B
Massachusetts: Dukes	Town of Oak Bluffs	Aug. 29, 1995, Sept. 5, 1995, *The Gazette*.	Ms. Barbara Houtman, Chairperson, Oak Bluffs Board of Selectmen, P.O. Box 1327, Oak Bluffs, Massachusetts 02557.	Aug. 21, 1995	250072 D
Plymouth	City of Duxbury	July 12, 1995, July 19, 1995, *Duxbury Clipper*.	Ms. Margaret Kearney, Chairman of the Town of Duxbury Board of Selectman, 878 Tremont Street, Duxbury, Massachusetts 02332.	July 3, 1995	250263 C
Minnesota: Olmsted	City of Rochester	Sept. 5, 1995, Sept. 12, 1995, *Post-Bulletin*.	The Honorable Chuck Hazama, Mayor of the City of Rochester, 224 1st Avenue, SW., City Hall, Rochester, Minnesota 55902.	Aug. 29, 1995	275246 C
New Jersey: Middlesex	Piscataway (Township)	July 28, 1995, Aug. 4, 1995, *Piscataway Review*.	The Honorable Ted Light, Mayor of the Township of Piscataway, 455 Hoes Lane, Piscataway, New Jersey 08854.	July 18, 1995	340274 B
New York: Erie	Town of Amherst	Aug. 23, 1995, Aug. 30, 1995. *Amherst Bee*.	Mr. Thomas Ahern, Town Supervisor, Amherst Municipal Building, 5583 Main Street, Williamsville, New York 14221.	Aug. 17, 1995	360226
Ohio: Athens	City of Athens	Aug. 9, 1995, Aug. 16, 1995, *The Athens Messenger*.	The Honorable Sara Hendricker, Mayor of the City of Athens, 8 East Washington Street, Athens, Ohio 45701.	Feb. 2, 1996	390016

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
South Carolina: Greenville.	City of Mauldin	Aug. 24, 1995, Aug. 31, 1995, *The Greenville News*.	The Honorable L.S. Green, Mayor of the City of Mauldin, P.O. Box 249, Mauldin, South Carolina 29662.	Aug. 17, 1995	450198 C
Wisconsin: Ozaukee ...	Village of Grafton	Aug. 14, 1995, Aug. 21, 1995, *The News Graphic*.	Mr. Rodney L. Schroeder, President of the Village of Grafton, P.O. Box 125, Grafton, Wisconsin 53024–0125.	Aug. 7, 1995	550314 C

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

Dated: October 5, 1995.

Robert H. Volland,

Acting Deputy Associate Director for Mitigation.

[FR Doc. 95–25934 Filed 10–18–95; 8:45 am]

BILLING CODE 6718–04–P

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

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

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

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

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

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

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

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

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama:					
Jefferson (FEMA Docket No. 7137).	City of Hoover	Mar. 31, 1995, Apr. 7, 1995, *The Birmingham News*.	The Honorable Frank S. Skinner, Jr., Mayor of the City of Hoover, 100 Municipal Drive, P.O. Box 360628, Hoover, Alabama 35236–0628.	Mar. 24, 1995 ...	010123
Tuscaloosa (FEMA Docket No. 7137).	City of Tuscaloosa	Mar. 31, 1995, Apr. 7, 1995, *Tuscaloosa News*.	The Honorable Alvin P. Dupont, Mayor of the City of Tuscaloosa, P.O. Box 2089, Tuscaloosa, Alabama 35404.	June 3, 1995	010203 B
Connecticut: Hartford (FEMA Docket No. 7137).	City of New Britain	Apr. 6, 1995, Apr. 13, 1995, *The Herald*.	The Honorable Linda A. Blogoslawski, Mayor of the City of New Britain, 27 West Main Street, New Britain, Connecticut 06051.	Sept. 30, 1995 ..	090032 B
Florida: Broward County (FEMA Docket No. 7137).	Town of Hillsboro Beach.	Mar. 23, 1995, Mar. 30, 1995, *Sun Sentinel*.	The Honorable Howard Sussman, Mayor of the Town of Hillsboro Beach, 1210 Hillsboro Mile, Hillsboro Beach, Florida 33062.	Mar. 10, 1995 ...	120040 F
Georgia: Muscogee (FEMA Docket No. 7137).	City of Columbus ..	Apr. 10, 1995, Apr. 17, 1995, *Columbus Ledger-Enquirer*.	The Honorable Bobby Peters, Mayor of the City of Columbus, 100 10th Street, Columbus, Georgia 31902.	Mar. 31, 1995 ...	135158 D
Illinois: DuPage County (FEMA Docket No. 7135).	Unincorporated Areas.	Feb. 17, 1995, Feb. 24, 1995, *The Chicago Tribune*.	Mr. Gayle Franzen, DuPage County Board Chairman, 421 North County Farm Road, Wheaton, Illinois 60187.	Feb. 10, 1995 ...	170197 B
Illinois:					
DuPage County (FEMA Docket No. 7137).	Uninocorporated Areas.	Mar. 20, 1995, Mar. 27, 1995 *Chicago Tribune*.	Mr. Gayle M. Franzen, DuPage County Board Chairman, 421 North County Farm Road, Wheaton, Illinois 60187.	Mar. 15, 1995 ...	170197 B
Will (FEMA Docket No. 7137).	Village of Romeoville.	Mar. 27, 1995, Apr. 3, 1995, *Joliet Herald News*.	Ms. Sandra Gulden, President of the Village of Romeoville, 13 Montrose Drive, Romeoville, Illinois 60441.	June 19, 1995 ..	170711 B
Will (FEMA Docket No. 7137).	Unincorporated Areas.	Mar. 27, 1995, Apr. 3, 1995, *Joliet Herald News*.	Mr. Charles Adelman, Will County Executive, 302 North Chicago Street, Joliet, Illinois 60431.	June 19, 1995 ..	170695 B
New Jersey: Monmouth (FEMA Docket No. 7137).	Township of Aberdeen.	Apr. 24, 1995, May 1, 1995, *Asbury Park Press*.	Mr. James M. Cox, Aberdeen Township Manager, 1 Aberdeen Drive, Aberdeen, New Jersey 07707.	Apr. 17, 1995	340312 A and B
New York: Erie County (FEMA Docket No. 7137).	Town of Cheektowaga.	Mar. 16, 1995 Mar. 23, 1995, *Cheektowaga Times*.	Mr. Dennis H. Gabryszak, Supervisor for the Town of Cheektowaga, 3301 Broadway Street, Cheektowaga, New York 14227–1088.	Mar. 14, 1995 ...	360231 E
North Carolina:					
Dare (FEMA Docket No. 7137).	Unincorporated Areas.	Mar. 28, 1995, Apr. 4, 1995, *The Coastland Times*.	Mr. Robert V. Owens, Chairman of the Dare County Board of Commissioners, P.O. Box 1000, Manteo, North Carolina 27954.	Mar. 20, 1995 ...	375348 D
Rockingham County (FEMA Docket No. 7137).	City of Reidsville ...	Mar. 17, 1995, Mar. 24, 1995, *Reidsville Review*.	The Honorable W. Clark Turner, Mayor of the City of Reidsville, 230 West Morehead Street, Reidsville, North Carolina 27320.	Sept. 30, 1994 ..	370209 B
Ohio: Montgomery (FEMA Docket No. 7137).	City of Centerville .	Mar. 18, 1995, Mar. 25, 1995, *Centerville-Bellbrook Times*.	The Honorable Shirley Heintz, Mayor of the City of Centerville, 100 West Spring Valley Road, Centerville, Ohio 45458.	Mar. 9, 1995	390408 C
Tennessee: Hamilton, (FEMA Docket No. 7137).	Unincorporated Areas.	Apr. 6, 1995, Apr. 13, 1995, *The Chattanooga Free Press*.	Mr. Claude Ramsey, Hamilton County Executive, 208 County Courthouse, Fountain Square, Chattanooga, Tennessee 37402.	Sept. 30, 1995 ..	470071

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

Dated: October 5, 1995.

Robert H. Volland,

Acting Deputy Associate Director for Mitigation.

[FR Doc. 95–25935 Filed 10–18–95; 8:45 am]

BILLING CODE 6718–04–P

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

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

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

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

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

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

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

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

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

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

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

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

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

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

§ 67.11 [Amended]

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

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ILLINOIS	
Adams County (unincorporated areas) (FEMA Docket No. 7138)	
Interior Drainage:	
Approximately 600 feet south of the confluence of Curtis Creek	*468
Approximately 900 feet northeast of the confluence of Mill Creek	*468
Maps available for inspection at the Adams County Highway Department, 5200 Broadway, Quincy, Illinois.	
INDIANA	
Tipton (city), Tipton County (FEMA Docket No. 7136)	
Cicero Creek:	
At the confluence of Tobin Ditch	*859
Approximately .95 mile upstream of State Route 19 (Main Street)	866
Buck Creek:	
Approximately .5 mile downstream of State Route 28 (Jefferson Street)	*866
At Norfolk & Western Railroad	*870
Maps available for inspection at the City of Tipton Planning Commission, 113 Court Street, Tipton, Indiana.	
MAINE	
Pittsfield (town), Somerset County (FEMA Docket No. 7124)	
Sebasticook River:	
Approximately 250 feet downstream of downstream corporate limits	*145
Approximately 100 feet downstream of Horseback Road	*175
Maps available for inspection at the Town Manager's Office, 16 Park Street, Pittsfield, Maine.	
MICHIGAN	
Selma (township), Wexford County (FEMA Docket No. 7136)	
Lake Mitchell:	
Entire shoreline within community	*1291
Gyttja Lake:	
Entire shoreline within community	*1291
Pleasant Lake:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Entire shoreline within community	*1330
Maps available for inspection at the Selma Township Hall, 3730 South 37th Road, Cadillac, Michigan.	
MINNESOTA	
Aitkin County, (unincorporated areas) (FEMA Docket No. 7138)	
Cedar Lake:	
Entire shoreline within community	*1,202
Lake Minnewawa:	
Entire shoreline within community	*1,225
Horseshoe Lake:	
Entire shoreline within community	*1,225
Big Pine Lake:	
Entire shoreline within community	*1,265
Round Lake:	
Entire shoreline within community	*1,260
Maps available for inspection at the Aitkin County Office of Zoning, Courthouse, 209 2nd Street NW, Aitkin, Minnesota.	
MISSISSIPPI	
Pearl River Valley Water Supply District, Hinds, Madison, Leake, Scott, and Rankin Counties (FEMA Docket No. 7136)	
Brashear Creek:	
Approximately 1,250 feet downstream of Charity Church Road	*287
Approximately 850 feet upstream of Rice Road (upstream corporate limits)	*297
Hearn Creek:	
Approximately 1,500 feet downstream of North Bay Drive	*303
Approximately 1,480 feet upstream of North Bay Place	*308
Ross Barnett Reservoir:	
At the north side of North Shore Parkway	*300
At corporate limits approximately 150 feet north of North Shore Parkway	*300
Maps available for inspection at the Water Supply District General Office, 115 Madison Landing Circle, Madison, Mississippi.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
NEW JERSEY	
Moorestown (Township), Burlington County (FEMA Docket No. 7136)	
Swede Run:	
Approximately 0.54 mile downstream of Garwood Road	*34
Approximately 150 feet upstream of Stanwick Avenue	*57
Swede Run Tributary:	
At the confluence with Swede Run	*48
Approximately 600 feet upstream of the confluence with Swede Run	*48
Maps available for inspection at the Building Inspector's Office, 111 West Second Street, Moorestown, New Jersey.	
Newark (city), Essex County (FEMA Docket No. 7130)	
Peddie Ditch:	
West of main Newark International Airport terminal	*9.5
Port Newark Channel:	
Intersection of Import Street and Marsh Street	*9.5
Newark Bay:	
At confluence of Port Newark Channel	*9.5
Elizabeth Channel:	
Entire length within the City of Newark	*9.5
Maps available for inspection at the Newark City Hall, Department of Engineering, 920 Broad Street, Newark, New Jersey.	
North Wildwood (city), Cape May County (FEMA Docket No. 7138)	
Atlantic Ocean:	
At the intersection of 10th Avenue and JFK Drive	*14
At the intersection of Oak Avenue and Virginia Avenue	*10
Maps available for inspection at the Joint Construction Office of Wildwood, 4004 Pacific Avenue, North Wildwood, New Jersey.	
Wildwood (city), Cape May County (FEMA Docket No. 7138)	
Atlantic Ocean:	
At the intersection of Taylor Avenue and Ocean Avenue	*14
At the intersection of Garfield Avenue and Ocean Avenue	*11

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Joint Construction Office of Wildwood, 4004 Pacific Avenue, Wildwood, New Jersey.	
Wildwood Crest (borough), Cape May County (FEMA Docket No. 7138)	
Atlantic Ocean:	
At the intersection of Ocean Avenue and Buttercup Road	*14
Approximately 170 feet northwest of the intersection of Myrtle Road and Ocean Avenue	*10
Maps available for inspection at the Joint Construction Office of Wildwood (JCOW), 4004 Pacific Avenue, Wildwood, New Jersey.	
NEW YORK	
Bolivar (village), Allegany County (FEMA Docket No. 7136)	
Root Creek:	
Approximately 0.27 mile downstream of Main Street	*1583
Approximately 0.4 mile upstream of Davis Street	*1638
Maps available for inspection at the Village Clerk's Office, 252 North Main Street, Bolivar, New York.	
Huron (town), Wayne County (FEMA Docket No. 7136)	
Lake Ontario:	
Within Sodus East and Port Bays	*250
Entire Lake Ontario shoreline within the Town of Huron corporate limits	*251
Maps available for inspection at the Town Clerk's Office, 10880 Lummisville Road, Wolcott, New York.	
Kiantone (town), Chautauqua County (FEMA Docket No. 7138)	
Stillwater Creek:	
Approximately 1,880 feet downstream of U.S. Route 62	*1244
Approximately 1,665 feet upstream of confluence of Widow Bostwick Creek	*1253
Widow Bostwick Creek:	
At confluence with Stillwater Creek	*1250
At South Main Street extension	*1315

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Town Hall, 1521 Peck Settlement Road, Jamestown, New York.	
Waterford (town), Saratoga County (FEMA Docket No. 7138)	
Unnamed Ponding Area:	
Northeast of the intersection of Old Champlain Canal and the Delaware and Hudson Railroad	*36
Maps available for inspection at the Town Hall, 65 Broad Street, Waterford, New York.	
NORTH CAROLINA	
Durham (city), Durham County (FEMA Docket No. 7136)	
Chunky Pipe Creek:	
Approximately 1.2 miles upstream of State Route 1815 (North Mineral Springs Road)	*297
Approximately 1.64 miles upstream of State Route 1815 (North Mineral Springs Road)	*319
Goose Creek:	
At confluence with Ellerbe River	*293
Upstream face of Holloway Street	*339
Goose Creek Tributary A:	
At confluence with Goose Creek	*317
Approximately 2,050 feet downstream of South Miami Boulevard	*325
Little Lick Creek:	
Approximately 0.8 mile upstream of State Route 1814 (Fletcher Chapel Road)	*284
Approximately 200 feet downstream of State Route State Route 1815 (North Mineral Spring Road)	*290
Little Lick Creek Tributary 1A:	
At confluence with Little Lick Creek	*293
Approximately 60 feet upstream of State Route 1825 (Clayton Road)	*317
Little Lick Creek Tributary 1B:	
Approximately 1,700 feet upstream of confluence with Little Lick Creek	*281
Approximately 100 feet upstream of State Route 1191 (Holder Road)	*314
Little Lick Creek Tributary 1D:	
At confluence with Little Lick Tributary 1A	*302
Approximately 50 feet upstream of State Route 1844 (Chandler Road)	*317
Mud Creek:	
At confluence with New Hope Creek	*256
Approximately 50 feet upstream of American Drive	*360
New Hope Creek:	
Approximately 400 feet downstream of State Route 2220 (Chapel Hill Road)	*250
Approximately 2.3 miles upstream of confluence of New Hope Creek Tributary	*263
New Hope Creek Tributary:	
Approximately 500 feet upstream of confluence with New Hope Creek	*260
Approximately 1,750 feet upstream of State Route 1113 (New Mt. Moriah Road)	265
Northeast Creek:	
Approximately 0.6 mile downstream of State Route NC54 (Nelson-Chapel Hill Way)	*258
Approximately 50 feet upstream of Sohi Road	*305
Stirrup Iron Creek:	
Approximately 120 feet downstream of State Route 1969 (Chin Page Road)	*317
Approximately 750 feet upstream of confluence of Stirrup Iron Creek Tributary A	*344
Stirrup Iron Creek Tributary A:	
Approximately 200 feet upstream of confluence with Stirrup Iron Creek	*344
Approximately 400 feet upstream of confluence with Stirrup Iron Creek	*344
Stirrup Iron Creek Tributary B:	
At confluence with Stirrup Iron Creek	*326
Approximately 1,440 feet upstream of Soil Access Road	*339
Third Fork Creek:	
Approximately 1,000 feet downstream of South Roxboro Road	*254
Approximately 50 feet upstream of Forest Hill Boulevard (East)	*310
Third Fork Creek Tributary A:	
At Abandoned Road	*248
Approximately 800 feet upstream of Rolingwood Drive	*286
Third Fork Creek Tributary C:	
Approximately 400 feet downstream of South Roxboro Road	*255
Upstream side of Princeton Avenue	*317
Third Fork Creek Tributary D:	
At confluence with Third Fork Creek	*255
Approximately 60 feet upstream of Morningside Drive	*289
Third Fork Creek Tributary E:	
At confluence with Third Fork Creek	*291
Approximately 50 feet upstream of Ward Street	*331
Third Fork Creek Tributary:	
At confluence with Third Fork Creek Tributary C	*277
Approximately 50 feet upstream of Sherbon Drive	*329
Warren Creek:	
At confluence with Eno River	*299
Approximately 40 feet upstream of State Route 1407 (Carver Road)	*388
Warren Creek Tributary A:	
At confluence with Warren Creek	*316
Approximately 50 feet upstream of State Route 1321 (Hillandale Road)	*383
Warren Creek Tributary B:	
At confluence with Warren Creek	*311
Approximately 225 feet upstream of State Route 1321 (Hillandale Road)	*340
Crooked Creek:	
At confluence with Eno River	*296
Approximately 0.37 mile upstream of Gatewood Drive	*376
Ellerbe Creek:	
Approximately 1.5 miles downstream of State Route 1669 (East Club Boulevard)	*286
At upstream crossing of State Route 1477 (Shocoree Drive)	*417
Ellerbe Creek Tributary A:	
At confluence with Ellerbe Creek	*302
At downstream side of Bluefield Street	*302
Ellerbe Creek Tributary B:	
At confluence with Ellerbe Creek	*291
Approximately 1,660 feet upstream of confluence with Ellerbe Creek	*291
Eno River:	
Approximately 2 miles downstream of U.S. Route 15/501	*284
Approximately 0.73 mile upstream of State Route 1401 (Cole Mill Road)	*369
Eno River Tributary 1:	
Approximately 350 feet upstream of State Route 1648 (Danube Lane)	*316
Approximately 0.3 mile upstream of State Route 1648 (Danube Lane)	*329
Eno River Tributary 2:	
At downstream of Rivermont Drive	*361
Approximately 50 feet upstream of Interstate 85	*498
Eno River Tributary A:	
At confluence with Eno River	*291

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At downstream side of Fox Hunt Road	*290
Burdens Creek:	
At upstream side of Southern Railway	*262
Approximately 250 feet downstream of South Alston Avenue	*263
Northeast Creek North Prong:	
At confluence with Northeast Creek	*271
Approximately 1,100 feet upstream of State Route 55 (Apex Highway)	*330
Northeast Creek North Prong Tributary A:	
Approximately 80 feet upstream of confluence of Northeast Creek North Prong	*282
Approximately 100 feet upstream of Akron Avenue	*349
Northeast Creek North Prong Tributary:	
At confluence with Northeast Creek North Prong	*271
Approximately 110 feet upstream of State Route 1,182 (Carpenter Fletcher Road)	*280
Rocky Creek:	
At confluence with Third Fork Creek	*289
Approximately 150 feet upstream of Briggs Avenue	*336
**South Ellerbe Creek:*	
At confluence of South Ellerbe Creek Tributary	*311
Approximately 150 feet upstream of West Club Boulevard	*354
***South Ellerbe Creek Tributary:*	
At confluence with South Ellerbe Creek	*311
Approximately 865 feet upstream of Dacian Street (Upstream Limit)	*329
Sandy Creek:	
At confluence with New Hope Creek	*256
Approximately 50 feet upstream of State Route 1317 (Moreene Road)	*317
Sandy Creek Tributary A:	
At confluence with New Hope Creek	*255
Approximately 0.4 mile upstream of University Drive	*274
Sandy Creek Tributary D:	
At confluence with Sandy Creek	*292
Approximately 50 feet upstream of Anderson Street	*321

Maps available for inspection at Durham City Engineer's Office, 101 City Hall Plaza, Durham, North Carolina.

* Shown as South Ellerbe Creek Tributary in the effective Flood Insurance Rate Map.

** Shown as South Ellerbe Creek in the effective Flood Insurance Rate Map.

Durham County (unincorporated areas) (FEMA Docket No. 7136)

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Little Lick Creek:	
Approximately 200 feet downstream of State Route 1814 (Fletcher Chapel Road)	*278
Approximately 200 feet downstream of State Route 1815 (North Mineral Springs Road)	*290
Little Lick Creek Tributary 1B:	
At confluence with Little Lick Creek	*279
Approximately 50 feet upstream of Delmar Road	*345
Northeast Creek:	
Approximately 1,800 feet downstream of State Route 1100 (Grandale Drive)	*245
Approximately 100 feet downstream of State Route 1951 (Sohi Road)	*301
Northeast Creek Tributary D:	
Approximately 150 feet upstream of confluence with Northeast Creek	*245
Just upstream of State Route 1100 (Old Alex Drive)	*286
Northeast Creek Tributary C:	
At confluence with Northeast Creek	*248
Approximately 100 feet upstream of State Route 1201 (McCormack Road)	*297
Stirrup Iron Creek:	
Approximately 0.4 mile downstream of Southern Railway Spur	*330
Approximately 0.66 mile upstream of Cart Path Dam	*399
Stirrup Iron Creek Tributary A:	
At confluence with Stirrup Iron Creek	*344
Just upstream of State Route 1966 (Lumley Road)	*383
Stirrup Iron Creek Tributary B:	
At downstream side of Soil Access Road	*327
Approximately 700 feet upstream of Soil Access Road	*331
Stirrup Iron Creek Tributary C:	
Approximately 600 feet downstream of State Route 1969 (Chin Page Road)	*317
Just upstream of State Route 1967 (Evans Road)	*349
Cabin Branch:	
Approximately 850 feet downstream of State Route 1631 (Snowhill Road)	*268
Approximately 1.29 miles upstream of Glen Oaks Drive	*385
Crooked Creek:	
Approximately 0.37 mile upstream of Gatewood Drive	*376
Approximately 50 feet upstream of Terry Road	*455
Crooked Creek Tributary 1:	
At confluence with Crooked Creek	*444
Eno River:	
Approximately 0.8 mile downstream of confluence of Eno River Tributary 3	*328
Approximately 0.7 mile upstream of State Route 1401 (Cole Mill Road)	*369
Eno River Tributary 3:	
At confluence with Eno River	*337
Approximately 600 feet upstream of Brook Lane	*438
Ellerbe Creek:	
Approximately 3,700 feet (0.7 mile) upstream from Glenn Road	*274
Approximately 1.8 miles upstream from Glenn Road	*286
Chunky Pipe Creek:	
Approximately 0.19 mile downstream of State Route 1815 (North Mineral Springs Road)	*267
Approximately 1.2 miles upstream of State Route 1815 (North Mineral Springs Road)	*297
Burdens Creek:	
At confluence with Northeast Creek	*252
At upstream face of State Route 54	*277
Burdens Creek Tributary:	
At confluence with Burdens Creek	*267
Approximately 100 feet upstream of State Route 54 (Nelson-Chapel Hill Highway)	*283
Sevenmile Creek:	
At confluence with Eno River	*339
Approximately 50 feet upstream of State Route 2359 (Quincemore Road)	*495
Panther Creek:	
Approximately 7,700 feet (1.4 miles) downstream of State Route 1818	*269
Approximately 75 feet upstream of State Route 1822 (Carpenter Road)	*314
Falls Lake (Neuse River):	
Entire shoreline within community	*263
Knap of Reeds Creek:	
Approximately 1 mile upstream of confluence with Neuse River	*263
Approximately 4.9 miles upstream of the confluence with Neuse River	*266

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Durham City Engineer's Office, 101 City Hall Plaza, Durham, North Carolina.	
OHIO	
Payne (village), Paulding County (FEMA Docket No. 7138)	
Flatrock Creek:	
At Sitzler Road	*741
Approximately 0.9 mile upstream of Sitzler Road	*743
Maps available for inspection at the Village of Payne Water Plant, 211 North Laura Street, Payne, Ohio.	
PENNSYLVANIA	
Charleroi (borough), Washington County (FEMA Docket No. 7136)	
Monongahela River:	
Approximately 700 feet downstream of Locks and Dam #4 at downstream corporate limits	*762
Approximately 1.07 miles upstream of Locks and Dam #4 at upstream corporate limits	*764
Maps available for inspection at the Municipal Building, 4th and Fallowfield Avenue, Charleroi, Pennsylvania.	
New Eagle (borough), Washington County (FEMA Docket No. 7138)	
Monongahela River:	
Approximately 200 feet downstream of confluence of Mingo Creek	*755
Upstream corporate limits	*755
Maps available for inspection at the Borough Office, 157 Main Street, New Eagle, Pennsylvania.	
Roulette (township), Potter County (FEMA Docket No. 7136)	
Allegheny River:	
Approximately 160 feet upstream of the confluence of Trout Brook	*1549
Approximately 750 feet upstream of the Township of Roulette's upstream corporate limits	*1581
Maps available for inspection at the Roulette Township Building, 253 Railroad Avenue, Roulette, Pennsylvania.	
RHODE ISLAND	
Barrington (town), Bristol County (FEMA Docket No. 7136)	
Providence River:	
Approximately 600 feet west of intersection of Allen Avenue and Narragansett Avenue	*19
At intersection of Washington Road and Annawamscutt Road	*15
Narragansett Bay:	
Approximately 500 feet south of the intersection of Middle Highway and Nayatt Avenue	*19
Approximately 600 feet west of the intersection of Vans Lane with Rumstick Road	*19
Barrington River:	
At the intersection of Kyle Street and Peck Lane	*10
At the intersection of Jennys Lane and Mathewson Road	*13
Palmer River:	
Approximately 1,000 feet east along Sowams Road from its intersection with Barneyville Road	*10
At the intersection of Sowams Road and Jessie Davis Lane	*13
Warren River:	
At the confluence of Barrington and Palmer Rivers	*13
At Adams Point	*19
Maps available for inspection at the Building Inspector's Office, Barrington Town Hall, 283 County Road, Barrington, Rhode Island.	
Bristol (town), Bristol County (FEMA Docket No. 7136)	
Kickamuit River:	
Approximately 1,000 feet east from the intersection of Butterworth Avenue and Hawthorne Avenue	*17
Approximately 500 feet east of Harrison Avenue extended	*18
Maps available for inspection at the Office of Community Development Planning, Bristol Town Hall, 10 Court Street, Bristol, Rhode Island.	
Warren (town), Bristol County (FEMA Docket No. 7128)	
Palmer River:	
Approximately 400 feet north of the intersection of North Main Street and Crescent Street	*10
At the confluence with Barrington and Warren Rivers	*14
Warren River:	
Approximately 600 feet west from the intersection of Johnson Street and Westminster Street	*14
Approximately 1,000 feet west of the intersection of Bridge Street with Abandoned Railroad	*18
Kickamuit River:	
Approximately 1,000 feet north from the intersection of Bradbury Street and Touisset Point Road	*18
Maps available for inspection at the Town Hall, 514 Main Street, Warren, Rhode Island.	
WEST VIRGINIA	
Bath (town), Morgan County (FEMA Docket No. 7140)	
Warm Spring Run:	
Approximately 250 feet upstream of William Street	*605
At the upstream side of Coughlan Lane	*622
Davis Road Run:	
At confluence with Warm Spring Run	*607
Yellow Spring Run:	
Approximately 50 feet upstream of confluence with Warm Spring Run	*620
Approximately 145 feet upstream of confluence with Warm Spring Run	*621
Maps available for inspection at the Bath Town Hall, 504 North Washington Street, Berkeley Springs, West Virginia.	
Morgan County (unincorporated areas) (FEMA Docket 7140)	
Warm Spring Run:	
Approximately 125 feet downstream of confluence of Unnamed Tributary	*575
Approximately 0.3 mile upstream of County Route 522/1	*681
Potomac River:	
At the confluence of Cherry Run (downstream county boundary)	*407
At upstream county boundary	*539

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Morgan County Courthouse, Berkeley Springs, West Virginia.	
Paw Paw (town), Morgan County (FEMA Docket No. 7140)	
Potomac River:	
At the Town of Paw Paw corporate limits	*532
Approximately 1.16 miles upstream of State Route 51	*537
Maps available for inspection at the Paw Paw Town Hall, Paw Paw, West Virginia.	
WISCONSIN	
Cadott (village), Chippewa County (FEMA Docket No. 7138)	
Yellow River:	
At downstream corporate limits	*943
At upstream corporate limits	*967
Maps available for inspection at the Cadott Village Office, 110 Central Street, Cadott, Wisconsin.	
Dane County (unincorporated areas) (FEMA Docket No. 7138)	
Badger Mill Creek:	
Approximately 500 feet upstream of confluence with the Sugar River	*922
Approximately 0.67 mile upstream of Nesbitt Road	*972
Badger Mill Creek Diversion Channel:	
At confluence with Badger Mill Creek	*953
At divergence from Badger Mill Creek	*957
Dry Tributary to Badger Mill Creek:	
At the confluence with Badger Mill Creek	*972
Approximately 0.32 mile upstream of Edward Street	*979
East Branch Badger Mill Creek:	
At confluence with Badger Mill Creek	*930
Approximately 0.25 mile upstream of the confluence with Badger Mill Creek	*976
Sugar River:	
Approximately 1.0 mile downstream of State Highway 69 bridge	*912
Approximately 0.8 mile upstream of State Highway 69 bridge	*917
Maps available for inspection at the City/County Building, 210 Martin Luther King Boulevard, Jr., Room 116, Madison, Wisconsin.	
Verona (city), Dane County (FEMA Docket No. 7128)	
Badger Mill Creek:	
Approximately 1,300 feet downstream of Bruce Street	*939
Approximately 740 feet upstream of the upstream corporate limits	*951
Dry Tributary to Badger Mill Creek:	
Approximately 1,200 feet downstream of the Chicago and Northwestern Railroad	*938
Approximately 1,200 feet upstream of Edward Street	*973
Maps available for inspection at the Building Inspection Department, 116 Paoli Street, Verona, Wisconsin.	
Washburn County, (unincorporated areas) (FEMA Docket No. 7138)	
Red Cedar Lake:	
Entire shoreline within county	*1189
Bear Lake:	
Entire shoreline within county	*1222
Trego Lake:	
Entire shoreline within county	*1036
Matthews Lake:	
Entire shoreline within county	*995
Spooner Lake:	
Entire shoreline within county	*1093
Maps available for inspection at the Washburn County Zoning Administration, 110 West 4th Avenue, Shell Lake, Wisconsin.	
Watertown (city), Dodge and Jefferson Counties (FEMA Docket No. 7128)	
Rock River:	
At downstream corporate limits	*792
Approximately .9 mile upstream of Oconomowoc Avenue	*826
Silver Creek:	
At Spaulding Street	*813
At upstream corporate limits	*824
Maps available for inspection at the Engineering Department, 106 Jones Street, Watertown, Wisconsin.	

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

Dated: October 5, 1995.

Robert H. Volland,

Acting Deputy Associate Director for Mitigation.

[FR Doc. 95–25933 Filed 10–18–95; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[FAC 90–31; FAR Case 94–740; Item I]

RIN 9000–AG24

Federal Acquisition Regulation; Technical Correction

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical correction.

SUMMARY: The Federal Acquisition Regulatory Council is issuing a correction to Federal Acquisition Circular 90–31. Text was omitted from 15.106–1(b) which appeared in FAR case 94–740—Consolidation and Revision of the Authority to Examine Records. At 60 FR 42650, August 16, 1995, second column, fifth line from the bottom, 15.106–1(b)(2) is redesignated as (b)(3) and a new (b)(2) is added.

DATES: *Effective Date:* October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994, at (202) 501–4547. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite Correction to FAC 90–31, FAR case 94–740.

Correction

On page 42650 of the issue of August 16, 1995, bottom of second column, the corrected 15.106–1(b) should read as follows:

15.106–1 Audit and Records—Negotiation clause.

* * * * *

(b) The contracting officer shall, if contracting by negotiation, insert the clause at 52.215–2, Audit and Records—Negotiation, in solicitations and contracts except those (1) not exceeding the simplified acquisition threshold in Part 13; or (2) for commercial items

exempted under 15.804–1; or (3) for utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge.

* * * * *

Dated: October 13, 1995.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

[FR Doc. 95–25888 Filed 10–18–95; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 101395B]

Groundfish of the Bering Sea and Aleutian Islands Area; Pacific Cod by Vessels Using Hook-and-Line and Pot Gear

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels using hook-and-line and pot gear in the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary to prevent exceeding the 1995 apportionment of the Pacific cod total allowable catch (TAC) allocated to vessels using hook-and-line or pot gear in the BSAI.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), October 16, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Nick Hindman, 907–586-7228.

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

In accordance with § 675.20(a)(7)(ii), the Pacific cod TAC for the BSAI was established by the Final 1995 Specifications of Groundfish (60 FR 8479, February 14, 1995), increased by an apportionment from the reserve (60 FR 32278, June 21, 1995) to 250,000 metric tons (mt), and further increased by a reallocation from jig gear (60 FR 52129, October 5, 1995). The 1995 Pacific cod TAC allocated to vessels using hook-and-line or pot gear is 111,800 mt, pursuant to § 675.20(a)(3)(iv).

In accordance with § 675.20(a)(8), the Director, Alaska Region, NMFS (Regional Director), has determined that the 1995 Pacific cod TAC allocated to vessels using hook-and-line or pot gear in the BSAI has been reached. Therefore, the Regional Director has established a directed fishing allowance of 111,600 mt, with consideration that 200 mt will be taken as incidental catch in directed fishing for other species by vessels using hook-and-line and pot gear in the BSAI. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels using hook-and-line gear in the BSAI.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

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

Dated: October 13, 1995.

Richard H. Schaefer,

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

[FR Doc. 95–25915 Filed 10–16–95; 9:11 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 202
Thursday, October 19, 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 LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–117–B]

Grain Handling Facilities

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; technical amendment.

SUMMARY: OSHA's standard for grain handling facilities applies to employees entering bins, silos, or tanks. At present, it does not apply to employees entering ''flat storage buildings or tanks'' unless entry is made from the top of the structure. It was entended to provide protection from the hazards faced by employees who walk on or underneath accumulations of grain within a grain storage facility. These hazards include engulfment and entrapment in the grain and grain handling equipment, which can result in asphyxiations crushing injuries, and amputations. OSHA intended the exception for flat storage buildings or tanks only to apply to entries that did not expose employees to these hazards; the point of entry into the storage area is not the critical factor in determining whether the entering employee is exposed to the hazards addressed in the standard. In this notice, OSHA is proposing to revise the exception for flat storage buildings or tanks and to add a new provision that applies to entry into flat storage facilities which do not have atmospheric hazards. The new provision would provide employees entering flat storage facilities with protection against entrapment, engulfment, and mechanical hazards, regardless of their point of entry. A definition for ''flat storage facility'' would be added to indicate more clearly the important elements which distinguish flat storage facilities from other grain storage structures.

In addition, for the same reasons, OSHA proposes to amend the provision which requires specific rescue equipment for entries from the tops of bins, silos or tanks. The proposal would clarify this requirement to include all entries from above the level of the grain, or wherever employees walk or stand on stored grain which poses an engulfment hazard.

DATES: Comments and requests for hearings must be postmarked no later than November 20, 1995.

ADDRESSES: Comments and requests for hearings must be submitted in quadruplicate to the OSHA Docket Office, Docket No. H–117–B, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210. (Telephone: 202–219–7894) Comments of 10 pages or less may be faxed to the Docket Office, if followed by hard copy mailed within two days. The OSHA Docket Office fax number is (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Cyr, OSHA Office of Information and Consumer Affairs, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 219–8148.

SUPPLEMENTARY INFORMATION: OSHA's standard for grain handling facilities, 29 CFR 1910.272, was published on December 31, 1987 (52 FR 49625), after a lengthy and extensive rulemaking effort. These standards were challenged in the Fifth Circuitry Court of Appeals, and were upheld in pertinent part by that court in *National Grain and Feed Association* v. *OSHA*, 866 F.2d 717 (5th Cir. 1989).

Entries Into Flat Storage Facilities

Paragraph (g) of § 1910.272 covers employee entry into grain bins, silos or tanks. It provides protection against the wide range of hazards that employees may encounter during such entries. These hazards include engulfment by grain, entrapment in draw-offs and mechanical equipment used to move the grain, and asphyxiation from oxygen-deficient atmospheres, among others.

The requirements of paragraph (g) apply, in general, to all bin, silo and tank entries. However, an exception is provided in paragraph (g) for entries into so-called ''flat storage buildings or tanks where the diameter of such structures is greater than the height.'' Entries into these structures are currently covered by paragraph (g) only when such entries are made from the *top* of the structure. Entries from other parts of the structure are excepted from coverage under paragraph (g).

In the preamble to the final rule (at 52 FR 49604–49605), OSHA explained its intentions as to the scope of the exception for flat storage:

> Many bins connected with grain facilities, e.g., flat storage and large diameter steel or concrete bins with ground level entry, present no entry hazards * * * Bin[s], silo[s] and tanks should be more clearly defined so as to exclude flat storage buildings with no bottom draw-off. The dangers represented in this section do not exist in conventional flat storage buildings which usually have large doorways and are at ground level * * *
>
> OSHA agrees that those large diameter tanks and flat storage buildings which are not entered from the top do not pose the same hazards as taller, cylindrical structures where ingress and egress are difficult, and where the quality of the atmosphere within such structures may be uncertain.

The final rule assumed that hazards from entry into flat storage structures only arise when the entry is made from the top, because employees who enter in that manner would do so in order to stand or walk on the stored grain. The text of the standard did not directly address situations in which the very same hazards would be encountered during entries from lower levels.[1]

In the seven years since the grain handling standard was issued, OSHA has learned that many entries take place from such levels lower than the top of the structure, in facilities whose dimensions (i.e., diameter greater than height) could be misconstrued to bring them within the definition of ''flat storage structures or tanks.'' At present, if such entries are made at points below the top of a qualifying flat storage structure or tank, they would be excepted from paragraph (g)'s requirements. However, it is clear to OSHA (and should be clear to employers) that employees making these entries are exposed to the same hazards of entry as if they were entering from the top.

Data collected by OSHA since the effective date of the grain handling

[1] It should be noted that Appendix A to § 1910.272 discusses the hazards faced by an employee who stands or walks on stored grain, without regard to the method or point of entry into the grain storage area.

standard clearly indicate that engulfment and mechanical injuries and fatalities continue to occur in these types of entries. One tragic example occurred on October 22, 1993, when 19-year-old employee and two other workers were instructed to enter a corn storage structure in order to ''walk down'' the corn. The structure's diameter was greater than its height if measured to the eaves, although the diameter was less than the height if measured to the peak of the roof. The workers entered the facility not at the top of the structure, but through an opening several feet above the ground.

The three men walked down the corn for 30–45 minutes while an auger at the base of the structure was running. At that point, the 19-year-old employee sank into the corn up to his knees. The two other workers began trying to pull him out, but he kept sinking as the corn began to avalanche, covering him and pushing him in the direction of the auger. One co-worker left to shut off the auger while the other continued to try to pull him from the corn. Rescue efforts were unsuccessful, and he suffocated. No rescue equipment, observers, lock-out procedures, or other precautions had been taken to protect the workers during the entry.

The present structure of paragraph (g) would benefit from further clarification to assure that these and other employees have the protection that this standard was intended to provide during entry. Accordingly, OSHA has determined that there is a compelling need to amend the standard to be in accord with its original intent: to provide appropriate protection to all grain handling employees, including those who walk on or under stored grain in flat storage facilities.

When the grain handling standard was promulgated, OSHA intended that the exception to paragraph (g) be a narrow one, provided relief only for situations where the hazards of entry were not significant. Since that time, the Agency has learned that the exception has been misinterpreted in a manner broader than its original intent. There are two basic problems with the exception to paragraph (g): First, as noted above, entries into flat storage-type structures can be hazardous even if they are not executed from the top of the structure; and, second, the current regulatory text places the emphasis on type and dimensions of the storage facility rather than on the hazards posed to the employee making the entry. OSHA believes that it is necessary to clarify the original intent more explicitly by making three amendments to § 1910.272: first, by revising the exception to paragraph (g) for flat storage to emphasize the hazards being addressed by the standard; second, by providing appropriate coverage for entries into flat storage facilities, in a new paragraph (h); and third, by adding a definition of ''flat storage facility'' to clarify OSHA's intentions as to the types of facilities which are to be covered in most cases by paragraph (h) instead of paragraph (g). The new paragraph (h) would assure that the standard provides protection for employees who are exposed to the hazards of entry into flat storage, regardless of where they enter the facility. Unlike the coverage in paragraph (g), however, paragraph (h) would be directed at engulfment and equipment hazards exclusively, rather than the broader range of confined space hazards addressed by paragraph (g).[2]

Paragraph (h) would only apply to flat storage facilities where there are none of the atmospheric hazards that might otherwise be encountered in the confined spaces of a grain storage facility. Facilities which are truly ''flat storage'' are warehouse-type storage structures, having doorways at ground level through which motorized vehicles such as front-end loaders and trucks can drive to move grain in and out of the structure. Because of their basic configuration, openness, and access to the outside, these facilities would not generally be expected to have restricted ventilation, confinement, or toxic or flammable materials that might be expected to produce atmospheric hazards for employees entering the structure. For these facilities, the employer should have no difficulty establishing that atmospheric hazards are not present, and that engulfment, entrapment, and mechanical equipment are the only entry hazards that need to be addressed. Proposed paragraph (h) is designed to handle these circumstances. By contrast, the proposed revision to the paragraph (g) exception makes clear that if atmospheric hazards *are* present, it is paragraph (g), and not paragraph (h), that applies to entries into the grain storage structure, regardless of the type of structure being entered.

The grain standard's present coverage of engulfment hazards is not sufficiently protective. Whereas entries (other than from the top) into flat storage structures are exempted from the confined spaces provisions of the standard, the standard does not provide alternative coverage for those entries. For example, an employee may enter a flat storage structure from a side or bottom entrance. If that employee walks on the grain, nothing in the current standard protects the employee from the hazards associated with that activity. If mechanical equipment, such as an auger, is used to draw off grain from the bottom, the employee is exposed to that equipment; if the surface of the grain were to collapse under the employee, the employee could be engulfed and asphyxiated; and if there were bridged grain above the employee, it could collapse upon the employee and cause asphyxiation. It is clear that the standard needs to be amended to provide protection from these hazards.

Accordingly, OSHA is proposing to revise the exception currently in paragraph (g), and to add a new paragraph (h) which addresses the requirements to be followed for all entries into flat storage structures where the employee may be exposed only to engulfment or mechanical equipment hazards.

In the amended standard, paragraph (g) would be revised to cover all grain storage structures; the current exception to paragraph (a) would be revised to except those flat storage facilities which only have engulfment, entrapment or mechanical hazards. As noted above, entries into these types of flat storage facilities would be covered by paragraph (h) instead. This change will assure that between paragraphs (g) and (h), all entrants who are exposed to engulfment, entrapment, or mechanical hazards will be protected, regardless of the type or structure of the facility being entered, and regardless of the point of entry.

A new definition of ''flat storage facility'' would be added to paragraph (c) of the standard, in order to indicate more clearly what types of grain storage structures would qualify for coverage by paragraph (h). In brief, a ''flat storage facility'' is, for all intents and purposes, a grain ''warehouse.'' The structure has doorways at ground level, through which motorized grain handling vehicles can be driven. Operators of these vehicles drive through the doorways to move grain into and out of the facility. A structure meeting the

[2] At present, entries from the top of flat storage facilities are covered by paragraph (g). Paragraph (g) addresses a wide range of hazards which are unique to confined spaces, including not only engulfment and equipment hazards, but also such hazards as toxic, flammable and explosive atmospheres. By contrast, wide-open, warehouse-type flat storage operations, which do not have restricted access and egress, would not normally be expected to generate or expose employees to the panoply of potential hazards that entries into silos and other confined spaces do. Thus, it is not necessary to apply all of the requirements of paragraph (g) to flat storage entries if atmospheric hazards are not present; instead, only the provisions which address engulfment and equipment hazards need to be added. New paragraph (h) would provide this coverage for all such flat storage entries, regardless of the point of entry. The proposed amendment and definition would bring the regulatory text into line with the OSHA's original intent in providing the current exception to paragraph (g).

definition of flat storage facility, qualifies for coverage under paragraph (h) if the only entry hazards are engulfment, entrapment, or mechanical; if there are atmospheric hazards present, the limited provisions of paragraph (h) will not be sufficient to provide entering employees with protection, and paragraph (g) applies.

The purpose of these revisions is to provide protection against engulfment by any employee who enters a grain storage facility and walks or stands on stored grain, regardless of the type of structure being entered. The revised standard would also prohibit the employer from exposing an employee to bridging conditions, whether or not the employee is walking or standing on the stored grain. In addition, the standard would require that the employer disconnect, lock and tag out, block off, or use another equally effective method to prevent operation of all equipment which presents a danger to employees, such as an auger or other mechanical equipment used to draw off grain. Similar requirements currently apply to entries into bins, silos or tanks under paragraph (g), and they would be extended to all grain storage entries under amended paragraph (g) and new paragraph (h).

Paragraph (g)(1)(ii) is the corresponding requirement to proposed paragraph (h)(2), relating to the deactivation of equipment. In conjunction with the requirement in proposed paragraph (h)(2), OSHA is also proposing to revise the text of paragraph (g)(1)(ii) to specify the need for deenergization, which is a necessary step in the procedures used to prevent the equipment from operating. This revision would provide additional consistency and clarify to the two provisions.

Most flat storage facilities are entered by walking in through a door at ground level, and grain is loaded and unloaded by conveyors, trucks and other vehicles, and other equipment. Entry into flat storage may present engulfment and mechanical hazards; however, the entrant would not normally be exposed to the unique hazards presented by entry into confined spaces. Therefore, where such hazards do not exist, the detailed permit and control requirements in paragraph (g) are not necessary or appropriate for flat storage entries. Entrants into flat storage facilities need to be protected from engulfment and equipment hazards, and the revised standard would provide the necessary protection.

Paragraph (h) would contain three requirements for flat storage: first, an employee walking or standing on grain would need to be equipped with a body harness and lifeline which will prevent the employee from sinking more than waist-deep into the grain. This provision would apply to any entry, from any point of entry, in which the employee walks on the grain. Second, any equipment which could endanger an entrant must be deenergized and prevented from operating during and for the duration of the entry. This provision would usually be directed at equipment located within the storage area; however, it would also address the engulfment hazard faced by an employee who is in the storage area when grain is being loaded into the area. The standard would not allow the equipment to expose the employee to this hazard. Third, no employee is to be exposed to a bridging condition or other buildup of grain which could fall on and engulf the employee.

As noted above, the revised language would not provide a blanket exception for entries into a grain handling structure based solely on its dimensions or points of entry. Where employees in any type of grain storage structure walk or stand on or under accumulations of grain or grain products which could engulf them, asphyxiate them, or entrap them in draw-off or mechanical equipment, the standard's protective requirements would apply.

In developing the final rule in 1987, OSHA determined that employees who enter grain storage bins, tanks, and other structures and who walk or stand on or under the stored grain are exposed to significant risks from a wide range of hazards. These hazards, particularly those of engulfment, asphyxiation, and entrapment, are not dependent on how or where the employee enters the structure. Rather, they relate directly to the employee's placement on top of and in the stored grain, regardless of how the employee reached that position. The significant risk being addressed by this proposed technical amendment (i.e., involving employees who enter flat storage structures from areas other than the top of the structure) is the residual risk that OSHA previously believed was adequately addressed in the final rule. Indeed, as noted earlier, as long as the employee's entry places that employee on top of or in the stored grain, the exact point of entry into the grain storage structure has no bearing on the hazards addressed by this part of the standard.

Rescue Equipment for Entries Into Grain Storage Facilities

Paragraph (g)(2) of § 1910.272 currently requires that specific types of rescue equipment be provided whenever entry is made from the ''top'' of a bin, silo, or other grain storage structure. As noted earlier, the hazards of entry onto the grain do not relate to the specific point of entry into the storage area; rather, they arise any time the entrant must walk on the grain, regardless of whether the entry was from the top, or from the side, or at or above the level of the grain. Accordingly, it is appropriate to amend paragraph (g)(2) to cover all such entries. OSHA notes that there is currently a provision in paragraph (g)(4) which requires that rescue equipment be provided for entries other than from the top; however, this requirement is less specific than paragraph (g)(2). For example, paragraph (g)(4) requires selection of rescue equipment to suit the particular situation. Clearly, when applied to entries from above or at grain level but not from the top, paragraph (g)(4) would usually require the use of the same types of rescue equipment as are mandated for top entries by paragraph (g)(2). However, the performance language of paragraph (g)(4) may have left the issue open to question in some situations, and OSHA wishes to eliminate any doubts about what rescue equipment is necessary for all entries from levels at or above the level of the grain. For reasons discussed above, OSHA believes that the protections of the standard should be the same for all entries at or above the level of the grain, and should not depend on whether the entry is from the top of the structure. In addition, these protections need to be provided whenever employees walk on or in stored grain of a depth which could cause engulfment, regardless of where the employee entered the storage structure. The hazards of walking the grain relate to the practice itself and not to the point or method of entry. Therefore, OSHA is proposing to amend paragraph (g)(2) to extend the specific requirements on rescue equipment to all entries at or above the level of the grain, and to all entries where employees walk on or in grain that is deep enough to cause an engulfment hazard. Paragraph (g)(4) would continue to apply to other types of entries under paragraph (g). In addition, in accordance with the scope of proposed paragraphs (g) and (h), the term ''grain storage structure'' is used in place of ''bins, silos and tanks.''

The Agency solicits public comment on the proposed changes to paragraph (g) and the proposed addition of a new paragraph (h) to § 1910.272. In particular, OSHA welcomes suggested alternative clarifying language for the exception which would better implement the Agency's original intent.

This rulemaking is limited to the regulatory text discussed in this notice. The rest of $1910.272 is not affected by this notice or this rulemaking action. The proposed change would also apply to employment in marine terminals (see 29 CFR 1917.1(a)(2)(ix), which incorporates § 1910.272 in its entirety.)

Summary of Preliminary Economic Analysis and Regulatory Flexibility Analysis

The regulatory action being undertaken in this notice is not a ''significant regulatory action'' for the purposes of Executive Order 12866. The proposed changes to paragraph (g) of § 1910.272 are designed to bring that paragraph into line with the Agency's original intentions in issuing the final rule in 1987. The Regulatory Impact Analysis performed for § 1910.272 at that time was based primarily on an assumption that the flat storage exception as drafted was as narrow as the Agency intended it to be. For that reason, any impacts associated with the proposed amendment to § 1910.272 were evaluated as part of the original final rule. OSHA has reviewed the earlier economic analysis and has determined that it accounts for any costs and impacts associated with the proposed change in the rule, and that no additional economic data or analyses are needed.

The Agency's intention in the final rule, in specifying particular types of rescue equipment for entries from the top of the structure, was that such equipment also be required for other entries which presented the same hazards, without regard to whether the employee entered from the side or other point of access at or above the level of the grain. However, as tragic experience has shown, the use of the term ''from the top'' has not always been interpreted in practice to mean the entire class of entries which OSHA intended these provisions to cover. Nevertheless, the regulatory impact analysis developed by OSHA in 1987 evaluated costs and benefits according to the Agency's regulatory intent, i.e., the analysis assumed that all entries would be covered, and that rescue equipment would be provided in all cases. OSHA has also reviewed the Regulatory Flexibility Analysis prepared in 1987 and reaffirms its determination that this rule will not have a significant impact on a substantial number of small entities.

The costs of the proposed technical amendment have already been accounted for in the Regulatory Impact Analysis (RIA) for the 1987 final rule. The data on entries developed for the RIA included all entries, regardless of point of entry or type of structure. These data had been collected in response to the original proposed rule, which did not contain an exception for flat storage.

The data available to OSHA indicate that several fatalities per year could be prevented by the proposed technical amendment. As discussed below, fatalities and injuries have continued to occur as a result of entries made from points other than the top of grain storage structures. The prevention of these fatalities and injuries would not involve compliance costs beyond those already calculated at the time of the final rule; hence, while the benefit of this proposal would be significant, the compliance burden would be minimal.

In the Final RIA, the Agency estimated that there were 14,000 grain elevators with 118,011 full-time and seasonal employees, and 9,922 grain mills with 129,068 full-time and part-time employees [Tables II–3, III–3, RIA (Exhibit 223)]. As noted at the time of the final rule, although all grain facilities have upright structures, only a portion only have flat storage structures [ADL (Exhibit 10); Stivers (Exhibit 193)]. Flat storage structures are typically add-ons, constructed quickly to handle excess grain. Although entries into such structures are common, the Agency believes that most such entries do not involve the hazards of walking on grain [ADL; Stivers]. An industry cost analysis relied upon in the RIA indicated that ''side entries'' add no additional costs [Stivers, pp. 3–15 through 3–17]. OSHA's analysis agrees with the industry on this point, i.e., the RIA's cost estimates for entries include costs for both top and side entries [RIA, pp. VI–12 to VI–17, and VI–63 to VI–68].

The Agency estimated in the final RIA that the final standard would prevent 80% of all grain handling engulfments. Based on more recent Agency data from its IMIS database, as many as 2 to 4 engulfment fatalities annually could be prevented by this technical amendment. Based on the same data, the Agency believes that a similar number of equipment-related accidents could also be prevented.

The original costs provided in the RIA for compliance with paragraph (g) of the standard, which addressed all kinds of entries for all types of grain storage structures, were estimated to be $12.7 million, as compared to the total cost estimates for § 1910.272 of between $41.4 and $68.8 million. Based on these figures, the Agency determined that the standard was economically feasible for the grain handling industry. The impacts of the amendment to paragraph (g) and the new paragraph (h) in this notice are incorporated into that analysis.

This proposed rule imposes no recordkeeping or reporting requirements under the Paperwork Reduction Act of 1995. It has no impacts on Federalism beyond those evaluated at the time of the final rule in 1987.

Public Participation

Interested persons are invited to submit written data, views and arguments on all issues with respect to this proposed standard. These comments must be postmarked on or before November 20, 1995. Comments are to be submitted in quadruplicate, or in 1 original (hard copy) and 1 disk (3½″or 5¼″) in WordPerfect 5.0, 5.1, or 6.0, or ASCII, to the Docket Office, Docket No. H–117–B, Room N2625, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210. All written comments, data, views, and arguments that are received within the specified comment period will be made a part of the record and will be available for public inspection and copying at the above Docket Office address.

Requests for an informal public hearing on objections to the proposed rule, pursuant to § 6(b)(3) of the Occupational Safety and Health Act (29 U.S.C. 655(b)(3)), must be submitted to the Docket Office at the above address, and postmarked no later than November 20, 1995. Hearing requests must comply with the following requirements: they must include the name and address of the objector; they must specify with particularity the provision of the proposed rule to which the objection is taken, and must state the grounds therefore; and they must be accompanied by a summary of the evidence proposed to be adduced at the requested hearing.

State Plan States

The 25 States and Territories with their own OSHA-approved occupational safety and health plans must revise their existing standard within six months of the publication date of the final standard or show OSHA why there is no need for action, e.g. because an existing State standard covering this area is already ''at least as effective'' as the revised Federal standard. These States are: Alaska, Arizona, California, Connecticut (State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (State and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia,

Virgin Islands, Washington, and Wyoming.

List of Subjects in 29 CFR Part 1910

Grain handling, Grain elevators, Occupational safety and health, Protective equipment.

Authority

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

Accordingly, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR Part 1911, it is hereby proposed to amend 29 CFR part 1910 as set forth below.

Signed at Washington, D.C., this 16th day of October, 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

29 CFR part 1910 would be amended as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The Authority citation for subpart R of 29 CFR part 1910 would continue to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicble.

Sections 1910.261, 1910.262, 1910.265, 1910.266, 1910.267, 1910.268, 1910.269, 1910.272, 1910.274, and 1910.275 also issued under 29 CFR part 1911.

§ 1910.272 [Amended]

2. The paragraph designations of the *Definitions* in paragraph (c) of § 1910.272 would be removed.

3. A new definition of ''Flat storage facility'' would be added in alphabetical order in paragraph (c) of § 1910.272, to read as follows:

§ 1910.272 Grain handling facilities.

* * * * *

(c) *Definitions.*

* * * * *

Flat storage facility means a building or structure that is used to store grain, and that has large doorways at ground level through which motorized vehicles are driven in order to move grain.

* * * * *

4. Paragraphs (h) through (p) of § 1910.272 would be redesignated as new paragraphs (i) through (g), respectively.

5. The heading and introductory text of paragraph (g), and paragraphs (g)(1)(ii) and (g)(2) of § 1910.272, would be revised, and a new paragraph (h) would be added, to read as follows:

§ 1910.272 Grain handling facilities.

* * * * *

(g) *Entry into grain storage structures.* This paragraph applies to employee entry into bins, silos, tanks, and other grain storage structures. *Exception:* Entry into flat storage facilities in which there are no toxicity, flammability, oxygen-deficiency, or other atmospheric hazards is covered by paragraph (h) of this section.

(1) * * *

(ii) All mechanical, electrical, hydraulic, and pneumatic equipment which could present a danger to employees inside grain storage structures shall be deenergized and shall be disconnected, locked-out and tagged, blocked-off, or otherwise prevented from operating by other equally effective means or methods.

* * * * *

(2) When an employee enters a grain storage structure from a level at or above the level of the stored grain, or whenever an employee walks or stands on or in stored grain of a depth which poses an engulfment hazard, the employer shall equip the employee with a body harness with lifeline, or a boatswaian's chair that meets the requirements of subpart D of this part. The lifeline shall be so positioned, and of sufficient length, to prevent the employee from sinking further than waist-deep in the grain.

* * * * *

(h) *Entry into flat storage facilities.* (1) The employee shall be equipped with a body harness with lifeline when walking or standing on or in stored grain, where the depth of the grain poses an engulfment hazard. The lifeline shall be so positioned, and of sufficient length, to prevent the employee from sinking further than waist-deep in the grain.

(2) All mechanical, electrical, hydraulic, and pneumatic equipment which could present a danger to an employee inside a flat storage facility (such as an auger or other grain transport equipment when an employee is standing on stored grain) shall be deenergized, and shall be disconnected, locked-out and tagged, blocked-off, or otherwise prevented from operating by other equally effective means or methods.

(3) No employee shall be permitted to be either underneath a bridging condition, or in any other location where an accumulation of grain on the sides or elsewhere could fall and engulf that employee.

* * * * *

[FR Doc. 95–25954 Filed 10–18–95; 8:45 am]

BILLING CODE 4510–26–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7155]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

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

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any

existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

3. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Indiana	Boone County (unincorporated areas).	New Reynolds Ditch	Approximately 500 feet downstream of Golf Course Road.	*932	*930
			At downstream side of Elm Swamp Road	*940	*938
Maps available for inspection at the Area Planning Commission, Building Inspector's Office, 101 Courthouse Square, Lebanon, Indiana.					
Send comments to Mr. Paul Green, President of the Boone County Council, Boone County Auditor's Office, 201 Courthouse Square, Lebanon, Indiana 46052.					
Indiana	Lebanon (city) Boone County.	New Reynolds Ditch	Approximately 1,000 feet upstream of confluence with Prairie Creek.	*920	*919
			At limit of study, approximately 80 feet upstream of Grant Drive.	*940	*939
Maps available for inspection at the Building Inspector's Office, 201 East Main Street, Lebanon, Indiana.					
Send comments to The Honorable James Acton, Mayor of the City of Lebanon, 201 East Main Street, Lebanon, Indiana 46052.					
Massachusetts	Monson (town) Hampden County.	Twelvemile Brook	At the upstream side of Pulpit Rock Pond dam.	None	*367
			Approximately 1,000 feet upstream of Reimers Street.	None	*426
		Thayer Brook	Approximately 210 feet downstream of Lakeshore Drive.	None	*367
			Approximately 40 feet upstream of Lakeshore Drive.	None	*385
Maps available for inspection at the Building Inspector's Office, 110 Main Street, Monson, Massachusetts.					
Send comments to Mr. Peter A. Rouette, Chairman of the Board of Selectmen for the Town of Monson, 110 Main Street, Monson, Massachusetts 01057.					
Michigan	Allen Park (city) Wayne County.	North Branch Ecorse Creek.	Approximately 0.36 mile downstream of Allen Road.	None	*590
			Approximately 250 feet upstream of Euclid Avenue.	*600	*598

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Allen Park City Hall, 16850 Southfield Road, Allen Park, Michigan.					
Send comments to The Honorable Gerald Richards, Mayor of the City of Allen Park, 16850 Southfield Road, Allen Park, Michigan 48101–2599.					
Michigan	Coldwater (city) Branch County.	Sauk River	At confluence with South Lake	None	*928
			Approximately 0.1 mile upstream of Michigan Avenue.	None	*972
		South Lake Drain	Approximately 300 feet downstream of Race Street.	None	*940
			Approximately 1,300 feet upstream of most upstream crossing of Farm Lane.	None	*985
		County Drain 15	At State Road	None	*969
			Approximately 900 feet upstream of Private Drive.	None	*974
		South Lake	Entire shoreline within community	None	*928
		Randall Lake	Entire shoreline within community	None	*928
Maps available for inspection at the Coldwater City Hall, 28 West Chicago Street, Coldwater, Michigan.					
Send comments to Mr. Fred Lilue, Chief, Coldwater City Engineer, 28 West Chicago Street, Coldwater, Michigan 49036–1683.					
Michigan	Coldwater (township) Branch County.	Coldwater River	At confluence with South Lake	None	*928
			At Fenn Road	*None	*959
		South Lake Drain	At confluence with South Lake	None	*928
			Approximately 1.2 miles upstream of Garfield Road.	*None	*1000
		Sauk River	Approximately 0.6 mile downstream of Michigan Avenue.	None	*970
			At Fox Road	None	*984
		County Drain 40	At confluence with Sauk River	None	*978
			Approximately 1.0 mile upstream of Wood Road.	None	*990
		Cold Creek	At confluence with Randall Lake	None	*928
			At Jonesville Road	None	*963
		County Drain 15	At confluence with Cold Creek	None	*946
			Approximately 0.7 mile upstream of Michigan Road.	None	*966
		Morrison Lake	Entire shoreline within community	None	*928
		Randall Lake	Entire shoreline within community	None	*928
		South Lake	Entire shoreline within community	None	*928
Maps available for inspection at the Coldwater Township Hall, 571 South Sprague Road, Coldwater, Michigan.					
Send comments to Mr. John Kopacz, Supervisor of the Township of Coldwater, 571 South Sprague Road, Coldwater, Michigan 49036.					
Michigan	Dearborn Heights (city).	North Branch	At Southfield Freeway	*601	*598
	Wayne County	Ecorse Creek	Approximately 250 feet downstream of Pardee Road.	*610	*609
Maps available for inspection at the Dearborn Heights City Hall, 6045 Fenton Street, Dearborn Heights, Michigan.					
Send comments to The Honorable Ruth A. Canfield, Mayor of the City of Dearborn Heights, 6045 Fenton Street, Dearborn Heights, Michigan 48127.					
Michigan	Hartland (township) Livingston County	North Ore Creek	At Parshallville Road	None	*909
			At Fenton Road	None	*966
Maps available for inspection at the Hartland Township Office, 3191 Hartland Road, Hartland, Michigan.					
Send comments to Mr. Don Rhodes, Hartland Township Supervisor, 3191 Hartland Road, Hartland, Michigan 48353.					
Michigan	Taylor (city) Wayne County.	North Branch	At Pelham Road	*604	*602
		Ecorse Creek	Approximately 200 feet downstream of Pardee Road.	*610	*609

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the City of Taylor Building Department, 23333 Eureka Road, Taylor, Michigan.					
Send comments to The Honorable Cameron Priebe, Mayor of the City of Taylor, 23333 Eureka Road, Taylor, Michigan 48180.					
New Jersey	Flemington (Borough).	Walnut Brook	Approximately 605 feet downstream of downstream corporate limits.	*168	*169
	Hunterdon County .		Approximately 400 feet upstream of State Route 12.	*181	*182
		Bushkill Brook	Approximately 70 feet downstream of State Route 31.	None	*129
			Approximately 900 feet upstream of Elizabethtown Gas Company bridge.	None	*140
Maps available for inspection at the Flemington Borough Building, 38 Park Avenue, Flemington, New Jersey.					
Send comments to The Honorable Austin H. Kutcher, Jr., Mayor of the Borough of Flemington, 38 Park Avenue, Flemington, New Jersey 08822–1396.					
Pennsylvania	McSherrystown (Borough) Adams County.	Plum Creek	At downstream corporate limits (approximately 1,250 feet downstream of State Route 116).	*527	*526
			At upstream corporate limits (approximately 1,175 feet upstream of State Route 116).	*533	*534
Maps available for inspection at the Borough Building, 338 Main Street, McSherrystown, Pennsylvania.					
Send comments to Mr. William Smith, Borough of McSherrystown Manager, 338 Main Street, McSherrystown, Pennsylvania 17344.					
Pennsylvania	Philadelphia (city) Philadelphia County.	Schuylkill River	The land area located adjacent to and east of the Schuylkill River previously designated as the Philadelphia Naval Base.	None	*10
		Delaware River	The land area located adjacent to and north of the Delaware River previously designated as the Philadelphia Naval Base.	None	*10
Maps available for inspection at the Philadelphia Planning Commission, 1515 Market Street, Philadelphia, Pennsylvania.					
Send comments to Mr. Edward G. Rendell, Mayor of the City of Philadelphia, Room 215, City Hall, Philadelphia, Pennsylvania 19107.					
Virginia	Norfolk (city) Independent City.	Chesapeake Bay	Approximately 1,300 feet northeast of the intersection of Pleasant Avenue and 30th Bay Street.	*13	*12
		Little Creek	Approximately 1,400 feet east of the intersection of Pleasant Avenue and 30th Bay Street.	*9	*10
Maps available for inspection at the Norfolk City Planning Office, Suite 508, City Hall Building, Norfolk, Virginia.					
Send comments to The Honorable Paul D. Frame, Mayor of the City of Norfolk, City Hall Building, Suite 1109, Norfolk, Virginia 23501.					
Virginia	City of Virginia Beach Independent City.	Chesapeake Bay	At the intersection of Oceanview and Fentiess Avenues.	None	*9
			Approximately 220 feet north of the intersection of Windy Road and Sandy Bay Drive.	None	*12
			Approximately 650 feet northwest of the intersection of Shore Drive and Vista Circle.	*11	*10
			Approximately 310 feet north of the intersection of Ebb Tide Road and Ocean Shore Avenue.	*9	*11
			At Lynnhaven Inlet	*13	*14
		Atlantic Ocean	Approximately 130 feet east of the intersection of 20th Street and Atlantic Avenue.	None	*11
			Approximately 450 feet east of the intersection of 8th Street and Atlantic Avenue.	*13	*14
		Lake Wishart	Entire shoreline	None	*8
		Bradford Lake	Entire shoreline	*8	*9

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Chubb Lake	Entire shoreline	*8	*9
		Fox Run Canal	At the confluence with Eastern Branch Elizabeth River.	*8	*9
			Approximately 1,200 feet upstream of Churchill Drive.	*14	*13
		Left Bank Tributary Thalia Creek.	Approximately 1,400 feet upstream of the mouth of Thalia Creek.	*9	*8
			At Windsor Oaks Boulevard	*12	*10
		Holland Road Tributary Thalia Creek.	At the confluence with Left Bank Tributary Thalia Creek.	*12	*10
			At the downstream side of Holland Road	*12	*10
		Unnamed Pond	Approximately 100 feet east of the intersection of East Port Road and Gammon Road.	None	*9
		Shallow Ponding Area	Approximately 400 feet east of Atlantic Avenue on 65th Street.	None	#1
		Shallow Ponding Area	Located in the vicinity of the intersection of Sandpiper Road and Oyster Lane.	None	#2
		Shallow Ponding Area	Approximately 500 feet north of the State boundary line.	None	#3
Maps available for inspection at the City of Virginia Beach Municipal Center, Operations Building No. 2, Virginia Beach.					
Send comments to The Honorable Mayera E. Oberndorf, Mayor of the City of Virginia Beach, Municipal Center, Virginia Beach, Virginia 23456.					
West Virginia	Mineral County (unincorporated areas).	Patterson Creek	Approximately 1.55 miles downstream of George Run Road.	None	*593
			Approximately 0.58 mile upstream of confluence of Mill Creek.	None	*751
Maps available for inspection at the Mineral County Planning Office, 150 Armstrong Street, Keyser, West Virginia.					
Send comments to Mr. Danny Evans, Director of the Mineral County Planning Commission, 150 Armstrong Street, Keyser, West Virginia 26726.					
Wisconsin	Barron County (unincorporated areas).	Tenmile Lake	Entire shoreline within community	None	1040
		Lake Chetek	Entire shoreline within community	None	1040
		Prairie Lake	Entire shoreline within community	None	1040
		Pokegama Lake	Entire shoreline within community	None	1040
		Mud Lake	Entire shoreline within community	None	1040
		Hemlock Lake	Entire shoreline within community	None	1189
		Red Cedar Lake	Entire shoreline within community	None	1189
		Kidney Lake	Entire shoreline within community	None	1233
		Beaver Dam Lake	Entire shoreline within community	None	1233
		Bear Lake	Entire shoreline within community	None	1222
Maps available for inspection at the Barron County Clerk's Office, 1671 18th Street, Barron, Wisconsin.					
Send comments to Mr. Arnold Ellison, Chairman of the Barron County Board, 1671 18th Street, Barron, Wisconsin 54812.					
Wisconsin	Dunn County (unincorporated areas).	Chippewa River	Approximately 400 feet upstream of downstream county boundary.	*726	*725
			At upstream county boundary	*762	*761
		Elk Creek	At the Elk Lake Dam	*814	*806
			At County Highway EE	*852	*846
		Eau Galle River	At the Eau Galle Dam	*778	*763
			Approximately 200 feet upstream of County Highway D.	None	*769
		Red Cedar River	At the confluence with Chippewa River	*730	*729
			Approximately 0.4 mile downstream of County Highway Y.	*730	*729
Maps available for inspection at the Dunn County Clerk's Office, 800 Wilson Avenue, Menomonie, Wisconsin.					
Send comments to Mr. Patrick Thompson, Dunn County Administrator, 800 Wilson Avenue, Menomonie, Wisconsin 54751.					
Wisconsin	Haugen (Village) Barron County.	Bear Lake	Entire shoreline within corporate limits	None	*1222

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Haugen Village Office, 108 West Third Street, Haugen, Wisconsin. Send comments to Ms. Mary Grengs, President of the Village of Haugen, P.O. Box 085, Haugen, Wisconsin 54841.					
Wisconsin	Shell Lake (city) Washburn County.	Shell Lake	Entire shoreline within community	None	*1226
Maps available for inspection at the Shell Lake City Hall, 209 West 5th Avenue, Shell Lake, Wisconsin. Send comments to The Honorable Charles R. Lutz, Mayor of the City of Shell Lake, P.O. Box 0520, Shell Lake, Wisconsin 54871.					

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

Dated: October 5, 1995.

Robert H. Volland,

Acting Deputy Associate Director for Mitigation.

[FR Doc. 95–25937 Filed 10–18–95; 8:45 am]

BILLING CODE 6718–04–P

Notices

Federal Register
Vol. 60, No. 202
Thursday, October 19, 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

Draft 1995 RPA Program

AGENCY: Forest Service, USDA.

ACTION: Notice of availability; request for public comment.

SUMMARY: The Forest and Rangeland Renewable Resources Planning Act (RPA) of 1974, as amended, directs the Secretary of Agriculture to prepare a long-range recommended renewable natural resources program every 5 years. The draft of the 1995 Program, which responds to the renewable resource situation projected in the 1989 RPA Assessment and the 1993 Update of the RPA Assessment, is now available to those who wish to review and comment on it. Written comments will be used in preparing the final 1995 RPA Program.

EFFECTIVE DATE: Comments must be received in writing by January 17, 1996.

ADDRESSES: Send written comments to Director, Resources Program and Assessment (1910), Forest Service, U.S. Department of Agriculture, P.O. Box 96090, Washington, DC 20090–6090 or via FAX at 202/205–1546.

FOR FURTHER INFORMATION CONTACT: Copies of the 1995 Draft RPA Program may be requested by calling 202/205–1235 or via FAX at 202/205–1546.

Information may also be requested by E-Mail (ASCII only) at fswa/s=rpa/ou1=w01c@mhs.attmail.com. For information on electronic access and viewing of the draft document, see the supplementary information section of this notice.

Questions about the 1995 Draft Program may be addressed to Kathryn P. Maloney, Director, Resources Program and Assessment, telephone: 202/205–1235.

SUPPLEMENTARY INFORMATION: The 1995 RPA Draft Program serves as a strategic planning document that provides long-term guidance for future Forest Service policies and programs. This long-term strategy describes the agency's approach to achieving sustainability of ecosystems. This strategic plan is composed of future actions for protecting ecosystems, restoring ecosystems, providing multiple benefits from ecosystems, and ensuring organizational effectiveness. Future agency actions and associated costs are described for international and domestic assistance, the management of the national forests and grasslands, and research.

The Draft 1995 RPA Program has been developed in accordance with the principles in the National Environmental Policy Act. Should the Forest Service initiate any legislative proposals as a result of guidance in the final 1995 RPA Program, the Forest Service will prepare the appropriate environmental analyses and documentation specific to the proposed legislation. Similarly, implementation of the Program through the forest land and resource management planning process will entail environmental analysis and documentation at appropriate decision points.

During the 90-day comment period, the Forest Service will hold regional public meetings in Missoula, Montana; Albuquerque, New Mexico; Sacramento, California; Atlanta, Georgia; Milwaukee, Wisconsin; and Washington, DC. Additional meetings may be held at other locations and will be announced through local/regional media. Additional information regarding times and specific locations of meetings may be obtained by calling 202/205–1235 (E-mail: fswa/s=rpa/ou1=w01c@mhs.attmail.com.)

Electronic copies of the Draft 1995 Program may be obtained via the World-wide Web at URL: http://www.fs.fed.us/land/RPA/welcome.htm.

After consideration of the public comment received on the Draft 1995 RPA Program, the President will present his statement of policy and the Secretary will recommend a final 1995 RPA Program to the U.S. Congress.

Dated: October 4, 1995.

David G. Unger,

Associate Chief.

[FR Doc. 95–25688 Filed 10–18–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

President's Export Council: Meeting of the Subcommittee on Europe, Japan, and Newly Independent States

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The President's Export Council Subcommittee on Europe, Japan, and the Newly Independent States will hold an open meeting that may include discussion of the following issues: European market-access barriers, government procurement in Japan and Japanese competition in third countries, and the tax regime and intellectual property rights in the Newly Independent States. The President's Export Council was established on December 20, 1973, and reconstituted May 4, 1979, to advise the President on matters relating to U.S. trade. It was most recently renewed on September 29, 1995, by Executive Order 12974.

DATES: October 27, 1995.

TIME: 9:00 a.m.–11:30 a.m.

ADDRESSES: Main Commerce Building, Room 3407, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. This program is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to A.J. McMichen, President's Export Council, Room 2015B, Washington, D.C. 20230. Seating is limited and will be on a first come, first serve basis.

FOR FURTHER INFORMATION CONTACT: A.J. McMichen, President's Export Council, Room 2015B, Washington, D.C. 20230.

Dated: October 12, 1995.

Sylvia Lino Prosak,

Acting Staff Director and Executive Secretary, President's Export Council.

[FR Doc. 95–25952 Filed 10–18–95; 8:45 am]

BILLING CODE 3510–DR–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Indonesia

October 13, 1995.

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

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: October 18, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6704. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 369–S is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17325, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 13, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on October 18, 1995, you are directed to amend the directive dated March 30, 1995 to increase the limit for Category 369–S [1] to 759,850 kilograms [2], as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.95–25953 Filed 10–18–95; 8:45 am]

BILLING CODE 3510–DR–F

[1] Category 369–S: only HTS number 6307.10.2005.

[2] The limit has not been adjusted to account for any imports exported after December 31, 1994.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0048]

Request for Public Comments Regarding OMB Clearance Entitled Authorized Negotiators

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0048).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Authorized Negotiators. This OMB clearance currently expires on February 28, 1996.

DATES: *Comment Due Date:* December 18, 1995.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0048, Authorized Negotiators, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph De Stefano, Office of Federal Acquisition Policy, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Firms offering supplies or services to the Government under negotiated solicitations must provide the names, titles, and telephone numbers of authorized negotiators to assure that discussions are held with authorized individuals. The information collected is referred to before contract negotiations and it becomes part of the official contract file.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *1* minute per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *61,875;* responses per respondent, *8;* total annual responses, *495,000;* preparation hours per response, *.017;* and total response burden hours, *8,415.*

Dated: October 12, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–25889 Filed 10–18–95; 8:45 am]

BILLING CODE 6820–EP–M

[Docket No. 9000–0058]

Request for Public Comments Regarding OMB Clearance Entitled Schedules for Construction Contracts

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0058).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44

U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Schedules for Construction Contracts. This OMB clearance currently expires on February 28, 1996.

DATES: *Comment Due Date:* December 18, 1995.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0058, Schedules for Construction Contracts, in all correspondence.

FOR FURTHER INFORMATION CONTACT:

Mr. Jack O'Neill, Office of Federal Acquisition Policy, GSA (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

Federal construction contractors may be required to submit schedules, in the form of a progress chart, showing the order in which the contractor proposes to perform the work. Actual progress shall be entered on the chart as directed by the contracting officer. This information is used to monitor progress under Federal construction contract when other management approaches for ensuring adequate progress are not used.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *1* hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *2,600;* resonses per respondent, *2*; total annual responses, *5,200;* preparation hours per response, *1*; and total response burden hours, *5,200.*

Dated: October 12, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–25890 Filed 10–18–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0059]

Request for Public Comments Regarding OMB Clearance Entitled North Carolina Sales Tax Certification

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0059).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning North Carolina Sales Tax Certification. This OMB clearance currently expires on February 28, 1996.

DATES: *Comment on Date:* December 18, 1995.

ADDRESSES: Comments regarding this burden estimate or may any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0059, North Carolina Sales Tax Certification, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy F. Olson, Office of Federal Acquisition Policy; GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

The North Carolina Sales and Use Tax Act authorizes counties and incorporated cities and towns to obtain each year from the Commissioner of Revenue of the State of North Carolina a refund of sales and use taxes indirectly paid on building materials, supplies, fixtures, and equipment that become a part of or are annexed to any building or structure in North Carolina. However, to substantiate a refund claim for sales or use taxes paid on purchases of building materials, supplies, fixtures, or equipment by a contractor, the Government must secure from the contractor certified statements setting forth the cost of the property purchased from each vendor and the amount of sales or use taxes paid. Similar certified statements by subcontractors must be obtained by the general contractor and furnished to the Government. The information is used as evidence to establish exemption from State and local taxes.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *10* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *106*; responses per respondent, *4*; total annual responses, *424*; preparation hours per response, *.17*; and total response burden hours, *72*.

Dated: October 13, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–25891 Filed 10–18–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0089]

Request for Public Comments Regarding OMB Clearance Entitled Standard Form 1444, Request for Authorization of Additional Classification and Rate

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0089).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Standard Form 1444, Request for Authorization of Additional Classification and Rate. This OMB clearance currently expires on February 28, 1996.

DATES: *Comment Due Date:* December 18, 1995.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0089, Standard Form 1444, Request for Authorization of Additional Classification and Rate, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill, Office of Federal Acquisition Policy, GSA (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

This regulation prescribes labor standards for federally financed and assisted construction contracts subject to the Davis-Bacon and Related Acts (DBRA), as well as labor standards for nonconstruction contracts subject to the Contract Work Hours and Safety Standards Act (CWHSSA).

The recordkeeping requirements in this regulation, 48 CFR ch. 1, section 22.406, are a restatement of requirements cleared under OMB control numbers 1215–0140, 1215–0149, and 1215–0017 for 29 CFR 5.5(a)(1)(i), 5.5(c), and 5.15 (records to be kept by employers under the Fair Labor Standards Act (FLSA), 29 CFR 516, which is the basic recordkeeping regulation for all the laws administered by the Wage and Hour Division of the Employment Standards Administration).

48 CFR ch. 1, § 22.406–3, implements the recordkeeping and information collection requirements prescribed in 29 CFR 5.5(a)(1)(iii) cleared under OMB control number 1215–0140 (also prescribed at 48 CFR 22.406 under OMB control number 9000–0089), by providing SF 1444, Request for Authorization of Additional Classification and Rate, for the contractor and the Government to enter the recordkeeping and information collection data required by 29 CFR 5.5(a)(1)(ii) prior to transmitting the data to the Department of Labor.

This SF 1444 places no further burden on the contractor or the Government other than the information collection burdens already cleared by OMB for 29 CFR 5.

B. Annual Reporting Burden

There is no burden placed on the public beyond that prescribed by the Department of Labor regulations.

The annual reporting burden is estimated as follows: Total annual responses, *1*; and total response burden hours, *630*.

Dated: October 12, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–25892 Filed 10–18–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0091]

Request for Public Comments Regarding OMB Clearance Entitled Anti-Kickback Procedures

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0091).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Anti-Kickback Procedures. This OMB clearance currently expires on February 28, 1996.

DATES: *Comment Due Date:* December 18, 1995.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0091, Anti-Kickback Procedures, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph De Stefano, Office of Federal Acquisition Policy, GAS (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Federal Acquisition Regulation (FAR) 52.203–7, Anti-Kickback procedures, requires that all contractors have in place and follow reasonable procedures designed to prevent and detect in its own operations and direct business relationships, violations of section 3 of the Anti-Kickback Act of 1986 (41 U.S.C. 51–58). Whenever prime contractors or subcontractors have reasonable grounds to believe that a violation of section 3 of the Act may have occurred, they are required to report the possible violation in writing to the contracting agency or the Department of Justice. The information is used to determine if any violations of section 3 of the Act have occurred.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *1* hour per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *2,500*; responses per respondent, *1*; total annual responses, *2,500*; preparation hours per response, *1*; and total response burden hours, *2,500*.

Dated: October 12, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–25893 Filed 10–18–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0101]

Request for Public Comments Regarding OMB Clearance Entitled Drug-Free Workplace

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0101).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Drug-Free Workplace. This OMB clearance currently expires on February 28, 1996.

DATES: *Comment Due Date:* December 18, 1995.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0101, Drug-Free Workplace, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph De Stefano, Office of Federal Acquisition Policy, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Public Law 100–690, the Drug-Free Workplace Act of 1988, mandates that: (1) Government contract employees notify their employer of any criminal drug statute conviction for a violation occurring in the workplace; and (2) Government contractors, after receiving notice of such conviction, must notify the Government contracting officer. These requirements are effective as of March 18, 1989.

The information provided to the Government will be used to determine contractor compliance with the statutory requirements to maintain a drug-free workplace.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *.17* hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *600;* responses per respondent, *1;* total annual responses, *600;* preparation hours per response, *.17;* and total response burden hours, *102*.

Dated: October 12, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–25894 Filed 10–18–95; 8:45 am]

BILLING CODE 6820–EP–M

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 the Massachusetts Institute of Technology an exclusive license under United States Patent Application S/N 08/168,791 filed in the name of Edwin L. Thomas *et al.* for a ''Method For Preparing Oriented Polymer Structures and Said Structures.''

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 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. 95–25877 Filed 10–18–95; 8:45 am]

BILLING CODE 3910–01–P

Department of the Army

Report of Comments Received to a Request for Comments on MTMC's Consideration to Employ Full-Service Contracts to Improve the Department of Defense (DOD) Personal Property Program, Published in the Federal Register, Monday, March 13, 1995, Vol. 60, No. 48, Notices, and Again on Wednesday, May 10, 1995, Vol. 60, No. 90, Notices To Extend the Comment Period

AGENCY: Military Traffic Management Command.

ACTION: Notice.

SUMMARY: Fifty-six responses were received from members of the carrier industry, carrier industry association, and related industries. Headquarters, Military Traffic Management Command wishes to thank all those who took the time to provide thoughtful and beneficial suggestions and comments.

ADDRESSES: Headquarters, Military Traffic Management Command, Attn: MTOP–QE, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Mr. Joe DeLucia, MTOP–QE, (703) 681–6753 or Ms. Ann Gibson, MTOP–QS, (703) 681–6590.

SUPPLEMENTARY INFORMATION: The following is MTMC's response to the questions received from the 56 respondents to the Federal Register Notice that solicited comments from industry concerning the reengineering of the DOD personal property program:

Questions and Answers Concerning Re-engineering

1. Why start over from scratch by re-engineering the entire program when many of the objectives could be achieved by making changes to the current system that would be less disruptive?

A. Military Traffic Management Command (MTMC) has discovered several factors that argue decisively against small changes. First, there is widespread opinion among the military services, personal property shipping offices, and the individual service members that the entire system is broken rather than a few elements within that system. Second, the existing system itself is a product of the process of making many isolated changes without considering the total impact. It seems inappropriate to fix a program by the same process that caused it to break down. Third, there is value in boldness. It is often difficult to adjust single elements of the program because of vested interests and the interconnected nature of various provisions. Frequently, good ideas are lost in the negotiation or compromise process. As an alternative, the re-engineering approach offers a process in which the best commercial practices can be combined with Government needs to create a better system for all concerned. Also with the down sizing, the military does not have the infrastructure it once had to support the current program. Although MTMC is committed to re-engineering, that is not to say that the new program won't have some features that are similar to the current system.

2. Are the services sold on the re-engineering program at this point?

A. There is an agreement that a re-engineering of the program is necessary and that we must move toward a simpler, customer satisfaction driven program incorporating commercial business practices.

3. What are the specific goals that MTMC wants to achieve under the re-engineering effort?

A. MTMC has three basic goals. One of the goals is to simplify the personal property program. The second is to maximize the use of commercial practices. The third is to improve customer satisfaction (quality of life for the military member).

4. What specific commercial practices does MTMC want to obtain?

A. MTMC would like to see as close as possible a commercial contract with a Department of Defense (DOD) cover on it. This would include commercial practices such as long term contracts, direct claim settlements; full value replacement; movement counseling by industry; tracing and intransit visibility; 1–800 customer numbers; carrier customer surveys; electronic data interchange; management information; commercial quality inventory, packing, storage, and shipping; and full service movement arranging/managing.

5. Can you provide a brief description on how the process will work under the Federal Acquisition Regulation (FAR)?

A. The proposed acquisition will be advertised in the Commerce Business Daily (CBD). Contractors interested in competing for the award of the contracts will request a copy of the request for proposals (RFP) or solicitation. Following the CBD announcement MTMC will issue the RFP to all interested parties. The RFP will provide a minimum of 30 days to prepare and submit proposals in accordance with the instructions set forth in the RFP. The solicitation will also set forth all significant factors and subfactors we will consider in evaluating proposals, including price and non-price (technical and operations) related factors and subfactors. A team or panel will evaluate each proposal individually. The evaluator will identify any deficiencies, weaknesses and strengths in the proposals and will rate them in accordance with the criteria set forth in the solicitation. Based on the results of the evaluation, the contracting officer will determine whether discussions are necessary. If it is determined that discussions are unnecessary, award will be made based on initial proposals. If discussions are conducted, the contracting officer will request best and final offers which will be evaluated just like the initial proposals. In any case award will be made to those offerors whose proposals provide the best overall value to the government.

6. Would the competitive range be determined in terms of dollars?

A. No, the competitive range is established by the contracting officer after consideration of all factors, including price or cost. All proposals that have a reasonable chance of receiving the award will be included in the competitive range.

7. Is MTMC going from a total cost operation to a quality operation?

A. No, price will continue to be a factor but it will not be the only factor. However, greater emphasis certainly will be placed on quality than is currently required under today's system.

8. Under the best value evaluation process, would you rank each proposal then choose a cut off point or would there exist some type of formula to determine best value?

A. When price or cost is the basis for award, proposals are evaluated for technical acceptability and then award is made to the lowest priced, technically acceptable offeror. Under our proposed concept, we would lay out specific evaluation factors and the importance of each in the solicitation. The Government will make cost-technical tradeoffs, and determine which proposal offers the best value based on sound business judgment and the evaluation criteria stated in the solicitation.

9. would the best value method increase the price?

A. Best value may be associated with paying a price premium. However, it is consistent with the philosophy that the slight increase in price is more than compensated for by the associated increase in quality, performance, decrease in claims, etc.

10. Will the same team evaluate everybody?

A. All proposals will be equally evaluated as to each factor. We may have established teams reviewing specified aspects of all proposals.

11. What does MTMC anticipate the length of the FAR contract to be under the proposed reengineering initiative?

A. MTMC envisions a base period of two years with possible one year options not to exceed a total of five years.

12. Currently, who uses FAR contracts?

A. The overall preponderance of Government acquisitions currently utilize FAR. However, transportation services acquired under rates negotiated under the authority 49 U.S.C. 10721 have been exempted from certain rules and regulations established in the FAR. Nonetheless, transportation related services are routinely acquired using FAR contracts (for example, non-temp storage, direct procurement HHG movements, etc.)

13. Do there currently exist FAR contracts with multiple award winners?

A. Yes.

14. How will the labor wage rate be determined under a FAR contract?

A. MTMC is aware of industry's concerns. At the present time MTMC has not determined how the labor wage rate will impact the program, but we are working with the Department of Labor to determine how the Service Contract Act and associated labor wage rates should apply to MTMC's HHG contracts.

15. How could small and medium size carriers possibly service every destination out of an AOR? This worldwide, service concept may exclude some small and medium size carriers that provide excellent specialized service in specific areas. These carriers will be forced to align themselves as subcontractors with one of the major van lines or be forced out of business. Why prevent these carriers from being prime contractors?

A. It is not MTMC's intent to force any carrier out of business or to prevent small and medium size carriers from being a prime contractor. MTMC wants to do business with those carriers that provide quality service. MTMC has reevaluated its position of requiring a prime carrier to provide worldwide service out of an AOR. Presently, MTMC is considering awarding personal property traffic in channels from a single AOR to single rate areas throughout the world. An offeror may choose to bid on one, several, or all traffic channels offered. It will allow any carrier the opportunity to choose those outbound channels from an AOR that they would like to make a proposal to service. Size will not be a discriminatory factor in determining the ability of a carrier to be awarded a contract as long as the contractor can reasonably establish a capability to meet our minimum requirements. Instead it will be based, among other things, upon management, operations, quality control plan, and past performance of the carrier. One of the reasons we narrowed our focus from a regional concept down to the AOR/worldwide service concept and further down to an AOR/rate area service concept is to allow the small and medium size carriers, that provide quality service, the opportunity to participate. We recognize and need the capacity of the small and medium carriers, and we believe they will fit into the re-engineered program.

16. Why does MTMC intend to combine domestic and international into one program when they are distinctly different and would be more manageable if kept separate?

A. Under the single AOR to single rate area concept, a proposal may be placed for one or any number of traffic channels. In effect, this separates the domestic and international programs by permitting bidding for only international origin/destinations, only domestic origins/destinations, or a combination of both, if desired.

17. Under the Area of Responsibility (AOR) to rate area concept, how many awards do you envision for each channel?

A. The best overall offer will be awarded all the traffic moving between the AOR and the rate area. Additionally, the process will allow us to consider selecting one or more alternates to move into the prime position in the event the prime contractor fails.

18. Because carriers will not know which channel they will be awarded, it seems under the re-engineering concept carriers would be placed in a situation where they would have to place proposals on more channels than they have the capacity to service if they were awarded them all. What will protect the carrier from over bidding or under bidding their capacity?

A. MTMC will provide potential offerors with distribution data (weight, shipments, costs) for each channel at the time of the solicitation. Also, we are working on a procedure to consider capacity and risk assessment in awarding channels.

19. Could an agent for a carrier make a proposal on a contract?

A. MTMC fully expects agents of carriers to make proposals on contracts under their own authority.

20. Under the FAR contract will there be a restriction that only allows movers to be eligible to make a proposal? What would preclude someone from outside the moving industry from trying to become a prime contractor?

A. Nothing would prevent someone from outside the moving industry from making a proposal. We encourage full and open competition.

21. How will someone new to the business of transportation be evaluated on past performance under the FAR proposal?

A. A new company would be required to display to us their ability to satisfy the expected requirements. When no relevant past performance information exists, we will treat it as an unknown performance risk that is neutral, having no positive or negative evaluative significance. However, the proposal can offer other considerations such as the past experience of individual employees.

22. Can a foreign corporation be a prime overseas?

A. Foreign corporations are not precluded from competing for these requirements. Their offers, however, will be evaluated in accordance with the guidance at FAR Part 25 and DFARS Part 225 on Foreign Acquisitions.

23. Would operating authority be one of the criteria in determining a carriers ability under a FAR contract?

A. Contractors will be required to comply with all applicable federal, state, and local laws. Whether an offeror has proper operating authority is a determination to be made by the appropriate regulatory body, not MTMC. The operating authority of a carrier could possibly be one of the criteria that is evaluated. However, typically all responsible offerors that will be transporting HHG are required by law to have such authority. As such, the authority may simply be required as a condition for award.

24. Will the Government require a performance bond?

A. At the present time, our intention is to require a performance bond.

25. Does MTMC intend to enforce regulations covering Common Financial and Administrative Control (CFAC)?

A. We do not anticipate CFAC being an issue under a FAR contract.

26. Will there exist a subcontracting requirement for a carrier awarded a channel of traffic under the AOR to rate area concept?

A. The contractor will have the option of subcontracting any movement services deemed necessary to meet the shipping requirements of each customer. However, the contractor shall be responsible for all actions of any subcontractor used in the shipment and/or storage of personal property. Pursuant to FAR 19.702, acquisitions expected to exceed $500,000 will require a subcontracting plan with expressed goals for small, small and disadvantaged, and women-owned companies. We are in the process of determining what these requirements will be.

27. Can you define what a subcontract is?

A. In general terms, a subcontractor is any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor. See FAR 19.701.

28. Could a large carrier as a prime contractor only subcontract to its own agents and still satisfy the subcontracting requirement? If this is the case then won't a large carrier be inclined to only use its own agents as subcontractors?

A. Offers must demonstrate in the subcontracting plan how they will ensure that small businesses and small disadvantaged businesses will have an equitable opportunity to compete for contracts. See FAR 19.704.

29. Could the owner/operator of a truck be a subcontractor?

A. An owner/operator of a truck probably could qualify as a subcontractor.

30. How will you monitor the subcontracting requirement of a prime?

A. The FAR requires the contracting officer to monitor the subcontracting plan for individual contracts. Additionally, the plan may be evaluated during the selection process. The contractor is required to submit to the contracting officer a subcontracting report semiannually for an individual contract and an annual summary report to each summarizing cumulative subcontracting activity for all contracts being performed for the respective agency. Note, this reporting is only required on contracts involving performance within the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands which exceed $500,000 and for which a subcontracting plan was negotiated. Failure of the contractor to meet the plan requirements and goals could result in the assessment of liquidated damages. If goals are not met, the contracting officer must determine whether the contractor failed to make a good faith effort to comply with the subcontracting plan and if so will make a final decision and assess liquidated damages. The contractor has the right to appeal the contracting officer's final decision under the disputes clause of the contract.

31. What happens if the subcontractor fails, would the prime contractor still be expected to provide moves?

A. Yes, the prime contractor would still be expected to perform.

32. Will the government ensure that subcontractors are paid by the prime contractor?

A. As a general rule the Government's obligation will be only to the prime contractor. It will be the responsibility of the subcontractors to assure that they are involved in a business relationship with a reliable and responsible prime contractor that they can trust. The opposite also holds true for the prime contractor. MTMC is allowing the carriers the ability to choose whom they do business with.

33. Could a subcontractor support several prime contractors per AOR?

A. Within the capabilities of the individual subcontractors, we envision a subcontractor being able to support as many prime contractors in an AOR as they might desire.

34. What will happen in small areas where all offerors may have the same subcontractors?

A. Unique capabilities will also help determine who will receive the award. This would include past performance, financial stability, and how the carrier plans to manage the expected requirements.

35. Can a prime carrier also be a subcontractor in the same AOR?

A. Subject to capacity/capability, a carrier could be a prime contractor for one channel of traffic out of an AOR,

and at the same time be a subcontractor to a carrier for a different channel of traffic out of that same AOR.

36. Will there be different requirements for small and disadvantaged carriers to qualify as a prime contractor?

A. The requirements for small and small disadvantaged carriers will not be different. All offerors will be evaluated in accordance with the criteria stated in the solicitation, regardless of business size.

37. What will be the function of the Installation Transportation Office (ITO) under the re-engineering concept?

A. The ITO will continue to play an important role. Under the re-engineering concept, the ITO will continue to perform many of the roles they do today. The difference is that the simpler process will give them more opportunity to focus on customer advocacy and quality management. We envision the final determination of the role performed by the ITO as a military service determination.

38. Is any consideration being given to contracting out the functions performed by the Personal Property Shipping Offices (PPSOs) and Personal Property Processing Offices (PPSOs)?

A. The PPSOs and PPPOs are operated by their respective services. The decision to staff PPSOs and PPPOs with Government employees or contracted personnel remains the decision of the services.

39. Who will manage the list and distribute the traffic under the AOR concept?

A. Most of the lanes out of the AORs to the rate areas will have one contractor that is awarded all of the traffic.

40. If there is excess tonnage that the prime contractor and his subcontractors cannot handle then will the prime contractor have to acquire additional subcontractors to handle the tonnage?

A. Yes. In single contractor channels, if the prime does not want to fail, arrangements will have to be made to accommodate all requirements within the channel, unless we specify a maximum requirement in the solicitation.

41. Who will provide entitlement counseling to the service member?

A. Collectively, the services desire to maintain the function of entitlement counseling of the members. This function will probably be retained by the personal property offices. However, we envision movement planning being a service provided by the contractor.

42. Will there be a change in the service members' entitlements as a result of the re-engineering?

A. Presently there are no plans to change entitlements as a result of the re-engineering. MTMC does not determine entitlements. It is decided by the services and the Congress.

43. There was mention of permitting the carrier industry to do self reporting. If this would happen then will the temptation exist for some carriers to over rate how well they are doing?

A. Although the temptation may exist to over rate performance, we expect to counter it by means such as monitoring and doing random checks to assure the accuracy of the carrier reports.

44. In a commercial move, the carrier normally has a spread on the required pick-up and delivery dates. Does MTMC plan on incorporating this practice within the re-engineering program?

A. MTMC does envision some flexibility being incorporated within the re-engineering program. However, there does need to exist some structured framework to which the variance in pick-up and delivery dates must adhere.

45. Have service members been surveyed on whether they would like pick up and delivery spreads?

A. We have not conducted a formal survey on whether the service members would prefer load spreads. However, selected members have indicated that they would like more involvement in the personal property process.

46. Will direct claim settlements with the carrier definitely be part of the program?

A. At this point, our intentions are to incorporate direct claims settlements with the carriers as part of the program. We cannot take away from the members the option of settling with the Government, but we can make it mandatory that the member attempts settlement first with the carrier. Also, we can make it more attractive to the member to settle the claim with the contractor with full value replacement as an incentive.

47. Under the re-engineering concept will the service members still have two years to file a claim?

A. Currently, our approach is that the customer have one year from the date of delivery of the personal property shipment to file a claim with the contractor. The contractor has thirty days from receipt of a claim to respond to the claim by making payment for lost or damaged items, beginning repairs, or presenting an explanation for denial of an item or items. However, after the one year limit has expired then the member would still have the statutory entitlement to settle the claim with the Government until the two year limit.

48. In the commercial world, corporate customers pay for full value replacement. Does the military expect to get full value replacement free?

A. As the full value replacement requirement will be included in our solicitation, we expect all offerors to include costs associated with requirements in their rates.

49. Will the service members fill out value inventories?

A. Yes, we believe that the service members will fill out value inventories if they know that they will be protected. We realize that the re-engineering of personal property will also necessitate that the service members be educated on their responsibilities under the new program.

50. If quality is to be measured in part on the basis of customer surveys then what guarantees are there that a customer knows how to determine whether they have received a good, quality move?

A. We must assume they know how to determine if they are satisfied. Every day the service members take consumer judgments and choices, and this is no different. Customer satisfaction is a key to a quality move.

51. If the use of the Government Bill of Lading is eliminated then would MTMC leave it to the discretion of industry to determine what to include in the commercial bill?

A. MTMC has not yet determined what bill of lading requirements will apply.

52. Will the carriers have the ability to determine how to move shipments under the re-engineering concept?

A. MTMC's concern is not how you move the shipment but that it is picked up and delivered on time with minimal or no damage. We ultimately want the member to be happy with the move. However, once a proposal is accepted for award, we would expect performance to be consistent with the accepted proposal.

53. What transportation services will be included and excluded from the contract?

A. The transportation services required at origin include packing, crating, disassembly, accessorial services, linehaul, SIT, and other services required for the preparation and movement of the property. At destination the contractor will be responsible for unpacking, reassembly, one time placement of articles as designated by the customer, one time removal of debris at the time property is delivered or at a date agreed upon by the customer and contractor. Transportation services not included in the contract include nontemporary storage (NTS), mobile homes, one-time-only (OTO), volume moves, boats/

trailers 25 feet and over, and Do-it Yourself (DITY) moves.

54. What is the drive behind combining many of the transportation services into one contract?

A. The principal drive behind combining the transportation services is a quality of life issue. We want to allow a member to go to just one carrier for a move as opposed to multiple carriers as often happens under the present system. We would like one stop shopping and simplicity. We believe, it would also relieve some of the administrative burden.

55. Will MTMC go down to the agent level to get their input on the re-engineering program?

A. MTMC is accepting input from all sources. MTMC already has gone down to the agent level and will continue to do so to receive input. MTMC encourages and wants input from all parties involved in the personal property process throughout the re-engineering. This is the only way we can build an effective program.

56. Do you intend on having a pilot program? If so, then when and where?

A. It is MTMC's intent to award a pilot program contract late in calendar year 1996. We have not decided on a geographic location at this time.

57. Will there exist a provision to adjust the rate for economic changes that may occur?

A. We are considering incorporating an economic price adjustment clause within the contract that would allow for rate adjustments after the first year, based on increased carrier costs. This would involve upward or downward revisions of the contract price based on the cost of labor or material.

58. Has there been consideration given to having the services work with the transportation industry to attempt to eliminate some of the peak season and even out the volume throughout the entire year?

A. MTMC has talked to the services but realistically we are not overly optimistic that anything can be done to even out the volume throughout the entire year. Just like the commercial world, a move is a quality of life issue and most people with families prefer to move in the summer.

59. If there exists a mistake in the entire process what is the Government's ability to back out of the contract?

A. The Government would have the right to terminate for convenience or default.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–25882 Filed 10–18–95; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Public Hearings for Draft Environmental Impact Statement on Realignment of Naval Air Station Miramar, California

Pursuant to Council on Environmental Quality regulations (40 CFR Parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act, the Marine Corps has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for realignment of Naval Air Station (NAS) Miramar, California.

As discussed in the notice published in the Federal Register on September 20, 1995, a public hearing to inform the public of the DEIS findings and to solicit comments will be held on October 18, 1995, beginning at 6 pm, in the Tierrasanta Elementary School Auditorium, located at 5450 La Quenta Drive, San Diego, California. A second public hearing will be held on October 26, 1995, beginning at 6 pm, in the auditorium in Building 603, located on the corner of Raven Road and Comet Way on NAS Miramar.

The public hearings will be conducted by the Marine Corps. Federal, state, and local agencies and interested parties are invited and urged to be present or represented at the hearings. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study. Equal weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their oral comments to five minutes. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearings or mailed to the address listed at the end of this announcement. The comment period on the DEIS has been extended one week, all written statements must be postmarked by November 6, 1995, to become part of the official record.

The DEIS has been distributed to various Federal, State, and local agencies, elected officials, and civic associations and groups. A limited number of single copies are available at the address listed at the end of this notice.

In accordance with the Defense Base Closure and Realignment Act of 1990 and the specific base closure and realignment decisions approved by the president and accepted by Congress in September 1995, the proposed action is the realignment or conversion of NAS Miramar to Marine Corps Air Station (MCAS) Miramar. The proposed action relocates aircraft and associated assets from MCAS Tustin and MCAS El Toro, which are closing, to NAS Miramar. Alternatives considered in the DEIS include: no action, relocation of aircraft and assets to other air stations that meet operational requirements, and relocation of aircraft and assets to NAS Miramar. Alternative configurations of facilities at NAS Miramar were also evaluated. The proposed action will have impacts on noise, endangered species, and air quality.

Additional information concerning this notice may be obtained by contacting LtCol George Martin or Mr. Bruce Shaffer, Base Closure and Realignment Office, Marine Corps Air Station El Toro, Santa Ana, CA 92709, telephone (714) 726–2338.

Dated: October 13, 1995.

By direction of the Commandant of the Marine Corps

Kim Weirick,

Assistant Head, Land Use and Military Construction Branch, Facilities and Services Division, Installations and Logistics Department.

[FR Doc. 95–25884 Filed 10–18–95; 8:45 am]

BILLING CODE 3810–FF–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 95–2]

Safety Management

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board (Board) has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a(a)(5) concerning Safety Management. The Board requests public comments on this recommendation.

DATES: Comments, data, views or arguments concerning this recommendation are due on or before November 20, 1995.

ADDRESSES: Send comments, data, views or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT:

Kenneth M. Pusateri or Carole J. Morgan, at the address above or telephone (202) 208–6400.

Dated: October 16, 1995.

John T. Conway,

Chairman.

[Recommendation 95–2]

Safety Management

Dated: October 11, 1995.

The Defense Nuclear Facilities Safety Board (Board) has issued and the Secretary of Energy has accepted three sets of recommendations (90–2, 92–5, and 94–5) concerning the use of standards by contractors at the Department of Energy's (DOE) defense nuclear facilities, and the level of conduct of operations to be maintained at these facilities. These recommendations intersect in many of their implications. The Board now wishes to combine and modify these recommendations into a form that (1) reflects what it has learned from DOE's response to the recommendations, (2) more sharply focuses continued activity on the objectives DOE and the Board seek to achieve, and (3) is more clearly consonant with the actions which DOE has under way to modify DOE's system of Orders.

On March 8, 1990, the Board forwarded to the Secretary of Energy Recommendation 90–2. Briefly paraphrased, it recommended that (1) DOE identify the particular standards that it considered should apply to certain designated defense nuclear facilities of DOE, (2) DOE provide its views of the adequacy of these standards, and (3) DOE establish the extent to which the standards were being applied to the facilities. The Secretary accepted this Recommendation on June 11, 1990, and provided the Board with an acceptable Implementation Plan on November 9, 1994.

The principal product of implementation was to be a set of facility-specific documents that set forth the applicable standards and requirements for a selected set of DOE's defense nuclear facilities. These were termed Standards/Requirements Implementation Documents (S/RIDs). The S/RID was to contain those requirements considered necessary and sufficient for ensuring safety in the particular application. These were to be principally extracted from DOE Orders, appropriate standards, NRC guides, and similar sources. The S/RID was envisioned as the basis upon which work controls would be developed and implemented.

This concept has been maturing in the course of its application to several DOE defense nuclear facilities. Subsequently, in connection with its internal plans to restructure its system of Orders, DOE has developed the concept of the ''necessary and sufficient'' set of requirements at a site or a facility or for an activity. As applied to safety requirements, we recognize the ''necessary and sufficient'' and S/RID concepts to be identical. In the following, the identity of the two will be implicitly understood, although we shall continue to use S/RID as the preferred term for the documented set of applicable standards and requirements in agreements between DOE and its defense contracts. This is the nomenclature found in implementation plans submitted by DOE to the Board. To avoid confusion, we suggest that DOE continue uniform use of the term S/RID in this connection.

DOE is to determine the extent to which standards are implemented through a process of Order Compliance Self-Assessment. This has generally been accomplished through review of detailed compliance with the DOE safety Orders of interest to the Board. The practice is to be followed until S/RIDs are in place, after which time, the issue becomes compliance with requirements in S/RIDS.

The Board has viewed the Order Compliance Self-Assessment Program of DOE as an initial activity in the formulation of the S/RIDs. As part of this compliance self-assessment, DOE required the contractors to justify in documented form the rationale for judging requirements to be non-applicable. This procedural requirement has been reported to have caused the expenditure of more effort than merited to achieve the end result the Board sought, which was the establishment of the particular subset of requirements upon which the safety management programs at a site would be structured. In the recommendations below, the Board seeks to streamline the process of arriving at an Authorization Basis and Authorization Agreements with respect to DOE's safety management of its sites, facilities, and activities. The review and acceptance by DOE of (1) the hazards assessment of the work contracted, (2) the standards/requirements identified as appropriate, and (3) safety management controls committed by the contractor for the work would in effect constitute, in the view of the Board, a DOE determination of adequacy relative to sufficiency of the requirements base.

In another action, on August 17, 1992, the Board forwarded its Recommendation 92–5, which called for establishing certain safety policies at defense nuclear facilities faced with missions that were changing in response to the shifting world situation. The principal features of Recommendation 92–5 can be paraphrased as follows: (1) that facilities to be used in the longer term in nuclear defense missions or in cleanup from previous nuclear defense activities should be operated according to a superior level of conduct of operations, (2) that certain safety practices be followed at nuclear defense facilities being restarted after a long period of idleness, and (3) that defense nuclear facilities designated for various other kinds of use (such as standby) should be subject to a graded approach of safety criteria and requirements to be developed. The Board requested that it be informed on a timely basis of changes in the intended use of DOE's defense nuclear facilities.

Implicit in the Recommendation was a broader view of conduct of operations than adherence to written procedures and related activities directly in support of operations. It encompassed the entire set of practices used to ensure safety in a facility, and in the operations conducted therein, extending to coverage implied by the term ''safety culture.''

On December 16, 1992, the Secretary of Energy accepted Recommendation 92–5, and forwarded to the Board an Implementation Plan which the Board accepted on January 8, 1993.

Circumstances affecting DOE's defense programs have continued to evolve since then, and the view of the future of the defense nuclear establishment is now different from that in late 1992. Many facilities then scheduled for restart or standby are now slated for deactivation and decommissioning. Though the future form of the establishment continues to be uncertain, the Board believes that the extent of the changes and other intervening events makes it necessary to bring major features of its Recommendation 92–5 up to date and in line with the updating of Recommendation 90–2.

Another important development has been the elaboration of the S/RID concept into a system view of a standards-based safety management system.[1] This has shed further light on such important matters as permissible variability of safety management at facilities of different kinds and different levels of risk, and the formal means whereby an Authorization Agreement

[1] Fundamentals for Understanding Standards-Based Safety Management, Joseph J. DiNunno, DNFSB/TECH–5.

related to environment, safety and health objectives is incorporated into contractual terms.

Principles that should guide the structure and use of safety management, the framework for conduct of operations appropriate to different cases, the basis for grading of safety management and conduct of operations, and the application to the important defense nuclear laboratories of the Department of Energy, are outlined in another document in the DNFSB/TECH sequence.[2] The points laid out in DNFSB/TECH–6 are consistent with those in DNFSB/TECH–5. Although the concepts and processes discussed in these documents are couched in terms of radiological hazards, they are more general, and apply as well to hazards of other kinds. In addition, they offer an appropriate match to requirements established elsewhere for safety in decommissioning of facilities, and would serve as a bridge to such operations.

The Board agrees with the view adopted by DOE in certain pilot tests presently under way, that the contractor for a site, facility, or activity should originate the drafting of the Safety Management Plan and the S/RID with assistance and input as appropriate by DOE. DOE has the responsibility for determining that the proposed S/RID will ensure an adequate level of safety, and finally approving it when it is found to be satisfactory. In the Board's view, an S/RID should be the central component of the Authorization Agreement which should have contractual status as part of the agreement with the contractor relevant to performance of the work authorized for the site, facility, or activity.

In accordance with its statutory directive to review DOE's safety standards and their implementation, the Board plans to track selected S/RIDs and the associated Safety Management Programs as they are developed. The Board will formally review them after their completion and will provide its comments to DOE in letters to the Secretary or in the statutory form of recommendations. The Board would normally expect DOE to have performed its own review with documentation of the results before being formally provided with the Board's comments.

We recognize that the various DOE organizational units which may be delegated review and approval authority for S/RIDs and associated Safety Management Programs may not have enough individuals with qualifications in the technical specialties required to carry out effectively the streamlined process being recommended. This means that technical assistance may need to be retained from elsewhere to compensate for such personnel deficiencies where they exist. It also means that DOE may need to augment its own technical expertise so as not to be obliged to continue indefinitely to rely on technical assistance from outside DOE.

The Board renews its request that it be informed on a timely basis of changes in planned use of defense nuclear facilities. In addition, the Board now wishes to replace Recommendations 90–2 and 92–5. The schedule agreed to by DOE and the Board for S/RID development and implementation pursuant to Recommendation 90–2 will be revised and carried forward as a part of Recommendation 94–5, which is not being otherwise modified at this time.

Therefore, the Board recommends, that DOE:

1. Institutionalize the process of incorporating into the planning and execution of every major defense nuclear activity involving hazardous materials those controls necessary to ensure that environment, safety and health objectives are achieved.

2. Require the conduct of all operations and activities within the defense nuclear complex or the former defense nuclear complex that involve radioactive and other substantially hazardous materials to be subject to Safety Management Plans that are graded according to the risk associated with the activity. The Safety Management Plans and the operations should be structured on the lines discussed in the referenced documents DNFSB/TECH–5 and DNFSB/TECH–6.

3. Establish a new list of facilities and activities prioritized on lines of hazard and importance to defense and cleanup programs, to focus the transition from implementation programs related to 90–2 and 92–5 to this revised development of S/RIDs and associated Safety Management Plans, following the process of Section I of DNFSB/TECH–6.

4. Promulgate requirements and associated instructions (Orders/standards) which provide direction and guidance for this process including responsibilities for carrying it out. The manner of establishing responsibilities and authorities as currently set forth in DOE Order 5480.31 (425.1) for Operational Readiness Reviews should serve as a model for preparing, reviewing, and approving the Safety Management Programs. The requirement for conformance should be made a contract term.

5. Take such measures as are required to ensure that DOE itself has or acquires the technical expertise to effectively implement the streamlined process recommended.

John T. Conway,

Chairman.

October 11, 1995

The Honorable Hazel R. O'Leary,
Secretary of Energy, Washington, DC 20585

Dear Secretary O'Leary: On October 11, 1995, the Defense Nuclear Facilities Safety Board, in accordance with 42 U.S.C. § 2286a(a)(5), unanimously approved Recommendation 95–2 which is enclosed for your consideration. Recommendation 95–2 deals with Safety Management.

42 U.S.C. § 2286d(a) requires the Board, after receipt by you, to promptly make this recommendation available to the public in the Department of Energy's regional public reading rooms. The Board believes the recommendation contains no information which is classified or otherwise restricted. To the extent this recommendation does not include information restricted by DOE under the Atomic Energy Act of 1954, 42 U.S.C. §§ 2161–68, as amended, please arrange to have this recommendation promptly placed on file in your regional public reading rooms.

The Board will publish this recommendation in the Federal Register.

Sincerely,

John T. Conway,

Chairman.

Enclosure
c: Mark Whitaker, EH–9

[FR Doc. 95–25946 Filed 10–18–95; 8:45 am]

BILLING CODE 3670–01–M

[2] Safety Management and Conduct of Operations at the Department of Energy's Defense Nuclear Facilities, DNFSB/TECH–6.

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, October 25, 1995. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1:30 p.m. in the University of Delaware's Wilcastle Center Ballroom, 2600–2800 Pennsylvania Avenue, Wilmington, Delaware.

An informal conference among the Commissioners and staff will be held at 10 a.m. at the same location and will include discussion of the Delaware Estuary Program implementation phase organizational structure; Delaware Riverkeeper request for Commission consideration of cumulative impacts of proposed Pennsylvania wetland fill

regulation and water quality considerations of Blue Marsh Reservoir.

The subjects of the hearing will be as follows:

Current Expense and Capital Budgets. A proposed current expense budget for the fiscal year beginning July 1, 1996, in the aggregate amount of $3,294,500 and a capital budget for the same period in the amount of $2,147,500 in revenue and $1,500,500 in expenditures. Copies of the current expense and capital budget are available from the Commission on request by contacting Richard C. Gore.

A Proposal to Adopt the 1995–1996 Water Resources Program. A proposal that the 1995–1996 Water Resources Program and the activities, programs, initiatives, concerns, projections and proposals identified and set forth therein be accepted and adopted, in accordance with the requirements of Section 13.2 of the Delaware River Basin Compact.

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *Holdover Project: C S Water & Sewer Associates D–76–21 (Revised).* An application to revise DRBC Docket No. D–76–21 to approve an existing discharge from a 0.1 million gallons per day (mgd) sewage treatment plant (STP) to an unnamed tributary of the Delaware River; the applicant also proposes to modify the plant by adding an equalization tank. The STP was originally approved predicated upon a discharge directly to the Delaware River. The project STP is located in Lackawaxen Township, Pike County, Pennsylvania. The STP will continue to serve the Masthope Mountain Community residential/resort development. This hearing continues that of September 27, 1995.

2. *Holdover Project: Borough of Dublin D–95–25 CP.* An application for approval of a ground water withdrawal project to supply water to the applicant's distribution system from existing Well Nos. 1, 2 and 3 and new Well No. 5, and to retain the existing withdrawal limit from all wells to 4.36 million gallons (mg)/30 days. Well No. 5 is being developed as an alternate public water supply in accordance with the U.S. Environmental Protection Agency record of decision for the Dublin TCE Superfund site. The project is located in the Borough of Dublin, Bucks County, Pennsylvania in the Southeastern Pennsylvania Ground Water Protected Area. This hearing continues that of September 27, 1995.

3. *U.S. Department of Justice D–94–11 CP.* An application to expand the applicant's Otisville Federal Correctional Institute STP from 0.2 mgd to 0.5 mgd. The expanded STP will provide a new advanced secondary biological treatment system and continue to provide tertiary filtration and ultraviolet disinfection prior to discharge to an unnamed intermittent stream of Basher Kill, a Neversink River tributary. The project is located approximately 1.5 miles north of Otisville in the Town of Mount Hope, Orange County, New York.

4. *Beacon Hill at Upper Freehold D–94–64 CP.* An application for approval of a ground water withdrawal project to supply up to 5.2 mg/30 days of water to the applicant's proposed residential development from new Wells Nos. 1 and 2B, and to limit the withdrawal from all wells to 5.2 mg/30 days. The project is located in Upper Freehold Township, Monmouth County, New Jersey.

5. *Buckingham Township D–95–43 CP.* A project to expand the applicant's Fieldstone STP from 0.022 mgd to 0.061 mgd. The expanded STP will serve growth in the existing residential development of Fieldstone and the proposed residential development of Sylvan Glen, both located in Buckingham Township, Bucks County, Pennsylvania. The STP will continue to provide secondary biological treatment utilizing extended aeration lagoons and, after disinfection, will discharge the increased flow to new spray irrigation fields located at the intersection of Cold Spring Creamery Road and Church School Lane in Buckingham Township. The Fieldstone spray fields, located near the existing STP on the east side of Church School Lane, will be expanded and redesigned to include a new treatment lagoon. The proposed Sylvan Glen spray fields will be in the Pine Run watershed.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: October 10, 1995.

Susan M. Weisman,

Secretary.

[FR Doc. 95–25883 Filed 10–18–95; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF ENERGY

Environmental Assessment and Finding of No Significant Impact for the Proposed Interim Storage of Enriched Uranium at the Y–12 Plant, Oak Ridge, TN

AGENCY: Department of Energy.

ACTION: Notice of availability—Finding of No Significant Impact.

SUMMARY: The Department of Energy (DOE) announces the availability of the Finding of No Significant Impact (FONSI) for the Environmental Assessment (EA), ''Proposed Interim Storage of Enriched Uranium Above the Maximum Historical Storage Level at the Y–12 Plant Oak Ridge, Tennessee'' (DOE/EA–0929), as modified in September 1995. After careful consideration of all comments received, and after consideration of the impact of transporting only three metric tons of low enriched uranium (LEU) as analyzed in the modification to the EA, the Department has determined that the receipt, prestorage processing, and interim storage at the Y–12 Plant of up to 506 metric tons of enriched uranium, including storage of up to 500 metric tons of highly enriched uranium (HEU) and 6 metric tons of LEU (3 metric tons more than is currently stored at the Y–12 Plant), does not constitute a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act (NEPA) of 1969. Therefore, an Environmental Impact Statement (EIS) is not required and the Department has issued a FONSI.

DATES: The EA (DOE/EA–0929), as modified, and FONSI were approved by DOE on September 14, 1995.

ADDRESSES: Questions regarding the EA and FONSI should be addressed to: Mr. William R. Lynch, U.S. Department of Energy, DP–24, 19901 Germantown Road, Germantown, MD 20585, (301) 903–3011.

Copies of the EA and FONSI are available for public review at the following Department of Energy reading rooms:

U.S. Department of Energy, Freedom of Information Reading Room, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–6020

U.S. Department of Energy, Oak Ridge Public Reading Room, 55 Jefferson Avenue, Oak Ridge, Tennessee 37830, (615) 241–4780

FOR FURTHER INFORMATION CONTACT: For general information on the Y–12 project,

interested parties may contact Mr. Lynch at the address and phone number above. For general information regarding the DOE NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Ave., SW., Washington DC 20585, (202) 586–4600 or 1–800–472–2756

SUPPLEMENTARY INFORMATION: DOE prepared an EA for the ''Proposed Interim Storage of Enriched Uranium Above the Maximum Historical Storage Level at the Y–12 Plant Oak Ridge, Tennessee'' (DOE/EA–0929, September, 1994). The EA was prepared pursuant to NEPA (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality NEPA regulations (40 CFR Parts 1500–1508) and the DOE NEPA regulations (10 CFR Part 1021). The EA evaluates the environmental effects of transportation, prestorage processing, and interim storage of bounding quantities of enriched uranium over a ten-year period. The bounding quantities of enriched uranium analyzed in the EA include the transportation of up to 7,102.9 metric tons of LEU and about 100 metric tons of highly enriched uranium plus HEU shipments from the Pantex Plant near Amarillo, Texas. The bounding quantities of enriched uranium analyzed for interim storage include the existing inventories (approximately 3 metric tons LEU and 170 metric tons HEU) plus the bounding quantities that would be shipped. HEU placed in interim storage at the Y–12 Plant would not exceed 500 metric tons. Storage of HEU beyond this interim period is being addressed by the Programmatic Environmental Impact Statement for the Storage and Disposition of Weapons-Usable Fissile Materials (DOE/EIS–0229); the Stockpile Stewardship and Management Programmatic Environmental Impact Statement (DOE/EIS–0236); and the Environmental Impact Statement for the Disposition of Surplus Highly Enriched Uranium (DOE/EIS–0240), all of which are currently in preparation.

A predecisional draft EA was first released to the State of Tennessee and the public in February 1994, followed by public meetings and workshops in March and April 1994. After careful consideration of all comments, DOE issued a revised pre-approval EA in September 1994 followed by additional public meetings in December 1994 and March 1995. Additional comments were received and were carefully considered by DOE. Because the preapproval EA analyzed bounding quantities of enriched uranium as discussed above, an additional analysis was conducted in August 1995 to determine the potential impacts of the transportation of only three metric tons LEU. This analysis is attached to the FONSI, is incorporated into the EA, and refines the analysis in the pre-approval EA. As a result of this process, the Department decided that, in addition to its existing inventory (which includes approximately 3 metric tons LEU), DOE will receive an additional 3 metric tons of LEU and up to a total of 500 metric tons HEU for interim storage of up to 506 metric tons enriched uranium at the Y–12 Plant.

Based on the public participation process, the analyses in the EA, the attachment to the FONSI, and after careful consideration of all comments received, DOE has determined that transportation, prestorage processing and interim storage at the Y–12 Plant of up to 506 metric tons of enriched uranium, including up to 500 metric tons of HEU and 6 metric tons of LEU, does not constitute a major Federal action significantly affecting the quality of the human environment, within the meaning of NEPA. Therefore, an EIS is not required and the DOE approved the EA, as modified, and issued a FONSI on September 14, 1995.

Signed in Washington, DC, this 12th day of October, 1995, for the United States Department of Energy.

Henry K. Garson,

Acting Associate Deputy Secretary for Facility Transition and Technical Support, Office of Defense Programs.

[FR Doc. 95–25949 Filed 10–18–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER95–1815–000, et al.]

Niagara Mohawk Power Corporation, et al.; Electric Rate and Corporate Regulation Filings

October 12, 1995.

Take notice that the following filings have been made with the Commission:

1. Niagara Mohawk Power Corporation

[Docket No. ER95–1815–000]

Take notice that on September 21, 1995, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an agreement between Niagara Mohawk and Electric Clearinghouse Power Marketing (Electric Clearinghouse) dated September 19, 1995, providing for certain transmission services to Electric Clearinghouse.

Copies of this filing were served upon Electric Clearinghouse and the New York State Public Service Commission.

Comment date: October 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Central Vermont Public Service Corporation

[Docket Nos. ER95–679–000 and ER95–680–000]

Take notice that on September 13, 1995, Central Vermont Public Service Corporation tendered for filing an amendment in its open access transmission tariff in compliance with the Commission's order.

Comment date: October 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Central Illinois Light Company

[Docket No. ER95–1845–000]

Take notice that on September 28, 1995, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission two Transmission Tariffs, a network integration service tariff; and a point-to-point transmission service tariff (including firm and non-firm components). The proposed tariffs are based on the *pro forma* tariffs contained in RM95–8–000 and is being filed pursuant to the Commission's order on rehearing in American Electric Power Service Corp., 71 FERC ¶ 61,393 (1995). CILCO proposed that these tariffs become effective as of November 27, 1995.

Copies of the filing were served on the Illinois Commerce Commission.

Comment date: October 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Union Electric Company

[Docket No. ER95–1846–000]

Take notice that on September 28, 1995, Union Electric Company (UE) tendered for filing a Transmission Service Agreement dated September 29, 1995 between Heartland Energy Services, Inc. (Heartland) and UE. UE asserts that the purpose of the Agreement is to set out specific rates, terms, and conditions for transactions from UE to Heartland.

Comment date: October 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Madison Gas and Electric Company

[Docket No. ER95–1848–000]

Take notice that on September 28, 1995, Madison Gas and Electric Company (MGE), tendered for filing a service agreement with Catex Vitol Electric, LLC under MGE's Power Sales Tariff. MGE requests an effective date 60 days from the filing date.

Comment date: October 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Mid-Continent Area Power Pool

[Docket No. ER95–1849–000]

Take notice that on September 28, 1995, Mid-Continent Area Power Pool (MAPP) tendered for filing amendments to the MAPP Agreement, on file with the Commission as MAPP Electric Rate Schedule FERC No. 1.

Comment date: October 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. St. Joseph Light & Power Company

[Docket No. ER95–1850–000]

Take notice that on September 28, 1995, St. Joseph Light & Power Company tendered for filing revised copies of an addendum to its coordination rate schedules which provide for the recovery of the cost of emission allowances.

Comment date: October 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Northeast Utilities Service Company

[Docket No. ER95–1851–000]

Take notice that on September 28, 1995, Northeast Utilities Service Company (NUSCO) tendered for filing a unit exchange agreement between NUSCO, on behalf of The Connecticut Light and Power Company and Western Massachusetts Electric Company, and Boston Edison Company (BE). NUSCO states that a copy of this filing has been mailed to BE. NUSCO requests that the Agreement become effective on November 1, 1995.

Comment date: October 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Central Vermont Public Service Corporation

[Docket No. ER95–1852–000]

Take notice that on September 28, 1995, Central Vermont Public Service Corporation (Central Vermont) tendered for filing a Service Agreement with PECO Energy Company under its FERC Electric Tariff No. 5. The tariff provides for the sale by Central Vermont of power and energy at or below Central Vermont's fully allocated costs.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on October 3, 1995.

Comment date: October 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. The Washington Water Power Company

[Docket No. ER95–1853–000]

Take notice that on September 29, 1995, The Washington Water Power Company (WWP) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.15, a Notice of Termination for WWP Rate Schedule FERC No. 157 a Transmission Service Agreement, dated June 1, 1988, between WWP and The Montana Power Company which has expired by its own terms effective September 30, 1995.

WWP requests that the requirement for 60 days notice between filing date and termination date be waived. If the 60 days notice is waived, there will be no effect upon purchases under other rate schedules.

Comment date: October 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Central Power and Light Company

[Docket No. ER95–1854–000]

Take notice that on September 29, 1995, Central Power and Light Company (CPL), tendered for filing certain non-rate revisions to its currently effective Coordination Sales Tariff (CST–1 Tariff). The expanded and new provisions clarify certain matters under the CST–1 Tariff.

CPL has asked for waiver of the Commission's notice requirements to the extent necessary to permit an effective date of October 1, 1995. Copies of this filing were served on the Public Utility Commission of Texas and the customers for whom CPL has filed service agreements under the CST–1 Tariff.

Comment date: October 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. VTEC Energy, Inc.

[Docket No. ER95–1855–000]

Take notice that on September 29, 1995, VTEC Energy, Inc. (VTEC), tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective on the date of the order.

VTEC intends to engage in electric power energy transactions as a marketer and a broker in transactions where VTEC sells electric energy. It proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. VTEC is not in the business of generating, transmitting, or distributing electric power.

Comment date: October 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. The Dayton Power and Light

[Docket No. ER95–1856–000]

Take notice that on September 29, 1995, The Dayton Power and Light Company (Dayton), tendered for filing, an executed Master Power Sales Tariff Service Agreement between Dayton and Central Illinois Public Service (CIPS).

Pursuant to the rate schedules as Exhibit B to the Agreement, Dayton will provide to DIPS power and/or energy for resale. Dayton and CIPS are currently parties to a Coordination Sales Tariff Service Agreement for the Sale of power and energy to Dayton from CIPS.

Comment date: October 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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. 95–25923 Filed 10–18–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP92–237–022]

Alabama-Tennessee Natural Gas Company; Notice of Filing

October 13, 1995.

Take notice that on October 6, 1995, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), filed the following Attachment 1 appended to its filing:

4th Sub. Fifth Revised Sheet No. 4
3rd Sub. Seventh Revised Sheet No. 4
3rd Sub. Eighth Revised Sheet No. 4
4th Sub. Eighth Revised Sheet No. 4
Sub. Tenth Revised Sheet No. 4

According to Alabama-Tennessee, it has conditionally submitted these tariff

sheets expressly subject to the request that the Commission not act upon this filing at this time. Alabama-Tennessee has advised the Commission that it will be filing a request for rehearing of the order issued by the Commission on September 21, 1995 in Docket Nos. RP92–237, et al., 72 FERC ¶ 61,282 (September 21, Order), in which it will be seeking a stay of the filing required thereunder. Therefore, Alabama-Tennessee has requested that these tariff sheets be made effective, if at all, fifteen (15) days after the Commission issues an order on rehearing of the September 21 Order.

According to Alabama-Tennessee, its customers will not be prejudiced by treating this filing in this manner because the rates currently in effect are being collected subject to refund.

Alabama-Tennessee also states that it has filed the deferred account report as required under ordering paragraph ''C'' of the September 21 Order.

In the event the Commission acts upon this filing, Alabama-Tennessee has requested that the Commission grant such waivers as may be necessary to accept and approve the filing as submitted.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before October 20, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will serve to make protestants a party to the proceeding. Copies of this filing are on file with the Commission in and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–25907 Filed 20–18–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–20–002]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

October 13, 1995.

Take notice that on October 6, 1995, Algonquin Gas Transmission Company (Algonquin), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following revised tariff sheet:

Sixth Revised Sheet No. 343

The proposed effective date of the tariff sheet is October 1, 1995.

Algonquin states that the purpose of this filing is to correct the pagination for sheet No. 343, in compliance with the Letter Order issued in Docket No. TM96–1–1–000 on September 29, 1995.

Algonquin states that copies of this tariff filing were mailed to all firm customers of Algonquin and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before October 20, 1995. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–25911 Filed 10–18–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–14–000]

East Tennessee Natural Gas Company; Notice of Request Under Blanket Authorization

October 13, 1995.

Take notice that on October 10, 1995, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP96–14–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon a portion of its Algood Lateral by sale to the City of Cookeville, Tennessee (Cookeville) under East Tennessee's blanket certificate issued in Docket No. CP82–412–000 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.

East Tennessee proposes to abandon a portion of its Algood Lateral (1,900 feet of 4-inch pipeline) by sale to Cookeville. East Tennessee states that Cookeville acquired the Algood Lateral from the Town of Algood, Tennessee. East Tennessee further states that Cookeville, now the only customer served by the facilities proposed to be abandoned, has consented to the abandonment. The proposed facilities are located in Putnam County, Tennessee, downstream of East Tennessee's Cookeville Meter Station (Meter No. 75–9029). East Tennessee states that, pursuant to the terms of the August 16, 1995. Purchase and Sales Agreement between East Tennessee and Cookeville, Cookeville will pay East Tennessee $1,000 upon receipt of abandonment authority.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–25903 Filed 10–18–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–19–000]

K N Interstate Gas Transmission Co., Notice of Request Under Blanket Authorization

October 13, 1995.

Take notice that on October 10, 1995, K N Interstate Gas Transmission Co., (K N Interstate), P.O. Box 281304, Lakewood, Colorado 80228–8304, filed in Docket No. CP96–19–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install and operate ten new delivery taps and appurtenant facilities under K N Interstate's blanket certificate issued in Docket No. CP83–140–000, *et al.*, 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.

K N Interstate proposes to install and operate ten new delivery taps and appurtenant facilities located in Adams, Antelope, Buffalo, Hall, Holt, Madison, Scottsbluff, Stanton, and York Counties, Nebraska. These taps will be added as delivery points under an existing transportation agreement between K N Interstate and K N Energy Inc. (K N) and will be used by K N to facilitate the

delivery of natural gas to direct retail customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–25906 Filed 10–18–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–30–005]

Koch Gateway Pipeline Company; Notice of Compliance Filing

October 13, 1995.

Take notice that on October 10, 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 October 1, 1995:

3rd Sub Fourth Revised Sheet No. 20
2nd Sub Fourth Revised Sheet No. 21
2nd Sub Fourth Revised Sheet No. 22
3rd Sub Fourth Revised Sheet No. 24

Koch Gateway states that on September 29, 1995, the Commission issued an Order in the above captioned proceeding. Pursuant to that Order, Koch Gateway was directed to file within 10 days to correct pagination errors on the above referenced sheets. Accordingly, Koch Gateway has revised the pagination to reflect the necessary changes.

Koch Gateway also states that the tariff sheets are being mailed to all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Regulations. All such protests should be filed on or before October 20, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–25908 Filed 10–18–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–11–001]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 13, 1995.

Take notice that on October 10, 1995, Koch Gateway Pipeline Company (Koch Gateway) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective October 1, 1995:

Substitute Seventh Revised Sheet No. 20
Substitute Seventh Revised Sheet No. 21
Substitute Seventh Revised Sheet No. 22
Fifth Revised Sheet No. 23
Substitute Seventh Revised Sheet No. 24

Koch Gateway states that the above referenced tariff sheets are being filed in compliance with the Director's September 29, 1995, Order in Docket No. TM96–1–11 (''ACA Order'') accepting its Annual Charge Adjustment. The ACA Order accepted the tariff sheets subject to the outcome of the proceedings in RP95–30 and RP95–421. By order issued September 29, 1995, in Docket No. RP95–30, the Commission accepted Koch Gateway's Account 858 surcharge, also to be effective October 1, 1995. In order to reflect all currently effective rates on one set of tariff sheets, the instant tariff filing reflects the approved surcharges, pursuant to the orders in both RP95–30 and TM96–1–11.

Koch Gateway also states that the tariff sheets are being mailed to all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Regulations. All such protests should be filed on or before October 20, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–25910 Filed 10–18–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–426–000 and TM96–2–25–001]

Mississippi River Transmission Corporation; Notice of Compliance Filing

October 13, 1995.

Take notice that on October 10, 1995, Mississippi River Transmission Corporation (MRT) submitted for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets listed below, to be effective October 1, 1995:

Substitute Thirteenth Revised Sheet No. 5
Substitute Thirteenth Revised Sheet No. 6
Substitute Eleventh Revised Sheet No. 7
Substitute Fourth Revised Sheet No. 8

MRT states that the purpose of this filing is to comply with Ordering Paragraph (B) of the Commission's September 29, 1995 order by removing the Compressor Fuel Tax Surcharge from Sheet Nos. 5, 6, 7 and 8.

MRT states that a copy of the filing has been mailed to each of its customers and the State Commissions of Arkansas, Missouri and Illinois.

Any person desiring to protest the subject filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before October 20, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–25909 Filed 10–18–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–618–005]

Pacific Gas Transmission Company; Notice of Change in Rates

October 13, 1995.

Take notice that on September 26, 1995, Pacific Gas Transmission Company (PGT) tendered for filing to

become part of its FERC Gas Tariff, First Revised Volume No. 1–A and Second Revised Volume No. 1, the revised tariff sheets listed on Appendix A to the filing, with a proposed effective date of October 9, 1995.

PGT states that the proposed revised tariff sheets establish initial rates for service on PGT's Medford and Coyote Springs, Oregon Extensions as certificated by the Commission. PGT states that it is also submitting an undated system map reflecting the addition of the Medford and Coyote Springs Extensions.

PGT furthers states that a copy of the filing has been served upon the official service list established by the Secretary in this proceeding.

PGT requests waiver of the Commission's regulations to allow the proposed revised tariff sheet to become effective October 9, 1995.

Any person desiring to protest the subject filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before October 20, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

FR Doc. 95–25901 Filed 10–18–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–618–007]

Pacific Gas Transmission Co.; Notice of Change in Rates

October 13, 1995.

Take notice that on October 4, 1995, Pacific Gas Transmission Company (PGT) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following revised tariff sheet, with a proposed effective date of October 9, 1995.

Sub. Ninth Revised Sheet No. 4

PGT states that the revised tariff sheets modifies the initial rates for firm service PGT's Medford and Coyote Springs, Oregon Extensions by applying the Gas Research Institute Adjustment to the Reservation Charge for Medford and Coyote Springs Extension shippers. The Adjustment was omitted from PGT's September 26, 1995 compliance filing.

PGT further states that a copy of the filing has been served upon the official service list established by the Secretary in this proceeding.

PGT requests waiver of the Commission's regulations to allow the proposed revised tariff sheet to become effective October 9, 1995, consistent with its September 26, 1995 compliance filing.

Any person desiring to protest the subject filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before October 20, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–25902 Filed 10–18–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–15–000]

Texas Eastern Transmission Corporation; Notice of Application

October 13, 1995.

Take notice that on October 10, 1995, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP96–15–000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon in place certain inactive facilities located in the states of Pennsylvania, West Virginia and Ohio which were authorized in Docket Nos. G–880 [1] and G–1003,[2] all as more fully set forth in the application on file with the Commission and open to public inspection.

Texas Eastern proposes to abandon: (i) approximately 25 miles of 24-inch diameter Line No. 1, located between Texas Eastern's Waynesburg Compressor Station in Greene County, Pennsylvania and Texas Eastern's Waynesburg Compressor Station in Greene County, Pennsylvania and Texas Eastern's Uniontown Compressor Station in Fayette County, Pennsylvania; (ii) approximately 120 miles of 20-inch diameter Line No. 2, located between Texas Eastern's Somerset Compressor Station in Perry County, Ohio and Texas Eastern's Waynesburg Compressor Station in Greene County, Pennsylvania; and (iii) Texas Eastern's Wind Ridge Compressor Station located in Greene County, Pennsylvania.

Texas Eastern states that the facilities proposed to be abandoned have already been removed from active service and will not have any effect on its existing natural gas services, tariffs or rate schedules.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 3, 1995, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., 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 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 Texas Eastern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–25904 Filed 10–18–95; 8:45 am]

BILLING CODE 6717–01–M

[1] See 6 FPC 148 (1947).

[2] See 8 FPC 139 (1949).

[Docket No. CP96–16–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

October 13, 1995.

Take notice that on October 10, 1995, Transcontinental Gas Pipe Line Corporation (Transco) P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP96–16–000 an application, pursuant to Section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity for (1) authorization to construct and operate certain pipeline facilities on Transco's mainline pipeline system in order to create additional firm transportation capacity, extending from Transco's production area in Louisiana to the vicinity of the border between North Carolina and South Carolina (designated as the SunBelt Expansion Project) and (2) approval of incremental initial rates for the firm transportation service to be rendered through such incremental firm transportation capacity, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that the SunBelt Expansion Project is an incremental expansion of Transco's mainline in its Southeastern market area which will provide the dekatherm equivalent of 145,666 Mcf per day (Mcf/d) of additional firm transportation capacity. Transco proposes an in-service date of November 1, 1997. Transco states that the incremental capacity will provide access to two of Transco's major supply areas; 100,001 Mcf/d of the capacity will commence at Transco's Station 65 in St. Helena Parish, Louisiana and 45,665 Mcf/d will commence at Station No. 85, which is at the point of interconnection between Transco's mainline and its Mobile Bay Lateral near Butler, Alabama. The incremental capacity will extend to points of delivery in the vicinity of Transco's Station No. 145 near the North Carolina and South Carolina border.

Transco states that the firm transportation service under the SunBelt Expansion Project will be rendered pursuant to Rate Schedule FT of Transco's FERC Gas Tariff. Transco proposes initial rates designed on a straight fixed-variable rate design methodology and an incremental cost of service designed to recover the cost of the proposed facilities.

In order to expand system capacity, Transco proposes to construct and operate the following facilities:

(1) A 15,000 Horsepower (HP) compressor addition at Transco's Station 80 in Jones and Jasper Counties, Mississippi.

(2) Modifications to existing compressor equipment at Transco's Station 100 in Chilton County, Alabama to eliminate or modify current air permit restrictions, thereby allowing increased annual operating hours and resulting in a uprate of 900 HP.

(3) A 15,000 HP compressor installation at a proposed new compressor station (Station 105) in Coosa County, Alabama.

(4) Modifications to existing compressor equipment at Transco's Station 110 in Randolph County, Alabama to eliminate or modify current air permit restrictions, thereby allowing increased annual operating hours and resulting in an uprate of 2,400 HP.

(5) A 15,000 HP compressor installation at a proposed new compressor station (Station 125) in Walton County, Georgia.

(6) Modifications to existing compressor equipment at Transco's Station 130 in Madison County, Georgia to eliminate or modify current air permit restrictions, thereby allowing increased annual operating hours and resulting in an uprate of 2,400 HP.

(7) Modifications to existing compressor equipment at Transco's Station 140 in Spartanburg County, South Carolina to eliminate or modify current air permit restrictions, thereby allowing increased annual operating hours and resulting in an uprate of 2,400 HP.

(8) 14.92 miles of 42-inch Mainline ''D'' pipeline loop between Stations 140 and 145, beginning at milepost 1222.66 and ending at milepost 1237.58 in Cherokee County, South Carolina.

Transco estimates that the project will cost $84,995,849, which will be financed initially through short-term loans and funds on hand, with permanent financing to be undertaken at a later date.

Transco proposes to charge a monthly reservation rate of $13.20 per Mcf for firm transportation services from Station 65 to shipper delivery points and $10.20 per Mcf for transportation from Station 85 to shipper delivery points. Transco indicates that SunBelt Expansion Project shippers will also be charged the electric power unit rate, fuel retention factor, ACA and GRI and any other applicable charges under Rate Schedule FT. It is noted that the electric power unit rate and fuel retention will vary depending on the location of each shipper's receipt and delivery points.

Transco states that it has executed precedent agreements with ten shippers which assure that all of the incremental firm capacity will be subscribed on a firm basis for 20-year initial terms.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 3, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the 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 is 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 Transco to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–25905 Filed 10–18–95; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Correction to Report No. 2099]

Petition for Reconsideration of Action in Rulemaking Proceedings

October 17, 1995.

Report No. 2099, released September 26, 1995, stated the incorrect bureau identification for the docket proceeding. The opposition date will remain the same.

Subject: Allocation of Spectrum Below 5 GHz Transferred from Federal Governmental Use. (ET Docket No. 94–32). Number of Petitions Filed: 2.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–25925 Filed 10–18–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1069–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1069–DR), dated October 4, 1995, and related determinations.

EFFECTIVE DATE: October 12, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida dated October 4, 1995, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 4, 1995:

Franklin and Jackson Counties for Individual Assistance, Public Assistance, and Hazard Mitigation Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–25936 Filed 10–18–95; 8:45 am]

BILLING CODE 6718–02–P

Notice of Adjustment of Disaster Grant Amounts

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) gives notice that the maximum amounts for Individual and Family Grants and grants to State and local governments and private nonprofit facilities are adjusted for disasters declared on or after October 1, 1995.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended, prescribes that grants made under Section 411, Individual and Family Grant Program, and grants made under Section 422, Simplified Procedure, relating to the Public Assistance program, shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

Notice is hereby given that the maximum amount of any grant made to an individual or family for disaster-related serious needs and necessary expenses under Sec. 411 of the Act, with respect to any single disaster, is increased to $12,900.00 for all disasters declared on or after October 1, 1995.

Notice is also hereby given that the amount of any grant made to the State, local government, or to the owner or operator of an eligible private nonprofit facility, under Sec. 422 of the Act, is increased to $44,800.00 for all disasters declared on or after October 1, 1995.

The increase is based on a rise in the Consumer Price Index for All Urban Consumers of 2.6 percent for the prior 12-month period. The information was published by the Department of Labor during September 1995.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 95–25932 Filed 10–18–95; 8:45 am]

BILLING CODE 6718–02–P

GENERAL ACCOUNTING OFFICE

Administrative Practice and Procedure, Reporting and Recording Requirements, Title 6: ''Pay, Leave, and Allowances'', ''Policy and Procedures Manual for the Guidance of Federal Agencies''

AGENCY: General Accounting Office.

ACTION: Notice of document availability.

SUMMARY: As part of its mandate to provide agencies useful guidance on accounting and internal control matters, GAO periodically updates and revises parts of its ''Policy and Procedures Manual for Guidance of Federal Agencies.'' This notice indicates that proposed revisions to portions of Title 6, ''Pay, Leave, and Allowances,'' of GAO's ''Policy and Procedures Manual,'' are available from GAO for review and comment. These proposed revisions are intended to reflect changes in technology as well as changes in the law which have occurred since the last edition. Comments are being sought as part of the due process to revise portions of Title 6 and will be considered in the finalizing the revision.

DATES: Comments must be received by December 18, 1995.

ADDRESSES: Copies of the Title 6 draft are available by (1) pick-up at Document Distribution, U.S. General Accounting Office, Room 1100, 700 4th Street, NW. (corner of 4th and G Streets, NW.), Washington, DC., (2) mail from U.S. General Accounting Office, P.O. Box 6015, Gaithersburg, MD 20884–6015, or (3) phone at 202–512–6000 or FAX 301–258–4066. Comments should be addressed to the Accounting and Information Management Division, attention: Bruce Michelson, Room 6B12, U.S. General Accounting Office, 441 G Street, NW., Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Bruce Michelson, 202–512–9366.

SUPPLEMENTARY INFORMATION: The revisions to Title 6 cover two main parts: time and attendance and the order of withholding precedence for deductions from federal employee pay. The changes to T & A reporting are a result of advancing technology and current initiatives to streamline and simplify administrative operations. This revision replaces chapter 3.

The changes on the order of withholding precedence are a result of regulations recently issued by the Office of Personnel Management in response to the requirements of the Hatch Act Reform Amendments of 1993 (Pub. L. 103–94), sec. 9, that was passed subsequent to the last revision of Title 6. This revision replaces section 5.3 in chapter 5.

Gene L. Dodaro,

Assistant Comptroller General.

[FR Doc. 95–25951 Filed 10–18–95; 8:45 am]

BILLING CODE 1610–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities.'' This rate may be revised

quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the Federal Register.

The Secretary of the Treasury has certified a rate of 13 7/8% for the quarter ended September 30, 1995. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: October 13, 1995.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 95–25885 Filed 10–18–95; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 95F–0331]

BASF Aktiengesellschaft; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that BASF Aktiengesellschaft has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polyaryletherketone resins (i.e., poly(oxy-1,4-phenylenecarbonyl-1,4-phenyleneoxy-1,4-phenylenecarbonyl-1,4-phenylene) as a basic resin for use in food-contact materials.

DATES: Written comments on the petitioner's environmental assessment by November 20, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 5B4483) has been filed by BASF Aktiengesellschaft, c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations to provide for the safe use of polyaryletherketone resins (i.e., poly(oxy-1,4-phenylenecarbonyl-1,4-phenyleneoxy-1,4-phenylenecarbonyl-1,4-phenylene) as a basic resin for use in food-contact materials.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before November 20, 1995, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the Federal Register. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: October 3, 1995.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–25765 Filed 10–18–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0334]

Drug Export; Atrovent® (Ipratropium Bromide) Nasal Spray 0.03%, 10 Milliliter (mL) and 30 mL

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Boehringer Ingelheim Pharmaceuticals Inc., has filed an application requesting approval for the export of the human drug Atrovent® (ipratropium bromide) Nasal Spray 0.03%, 10 mL and 30 mL to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–310), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–3150.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Boehringer Ingelheim Pharmaceuticals Inc., 900 Ridgebury Rd., Ridgefield, CT 06877, has filed an application requesting approval for the export of the human drug Atrovent® (ipratropium bromide) Nasal Spray 0.03%, 10 mL and 30 mL to Canada. This drug product is used for the symptomatic relief of rhinorrhea associated with allergic or non-allergic perennial rhinitis. The application was received and filed in the Center for Drug Evaluation and Research on September 28, 1995, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by October 30,

1995, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: October 4, 1995.

Betty L. Jones,

Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 95–25886 Filed 10–18–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0335]

Drug Export; Atrovent® (Ipratropium Bromide) Nasal Spray 0.06%, 15 Milliliter (mL)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Boehringer Ingelheim Pharmaceuticals Inc., has filed an application requesting approval for the export of the human drug Atrovent® (ipratropium bromide) Nasal Spray 0.06%, 15 mL to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–310), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–3150.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Boehringer Ingelheim Pharmaceuticals Inc., 900 Ridgebury Rd., Ridgefield, CT 06877, has filed an application requesting approval for the export of the human drug Atrovent® (ipratropium bromide) Nasal Spray 0.06%, 15 mL to Canada. This drug product is used for the symptomatic relief of rhinorrhea associated with allergic or nonallergic perennial rhinitis. The application was received and filed in the Center for Drug Evaluation and Research on September 28, 1995, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by October 30, 1995, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: October 5, 1995.

Betty L. Jones,

Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 95–25868 Filed 10–18–95; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Agency Forms Undergoing Paperwork Reduction Act Review

Periodically, the Health Resources and Services Administration (HRSA) will publish a list of information collection requests under review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the HRSA Reports Clearance Office on (301)-443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act.

1. Study of Physicians' Educational Preparation for Practice in Managed Care Settings—New—A mail survey will be conducted of primary care physicians and medical directors in managed care organizations to assess their views of the adequacy of their preparation for practice in that setting. The survey of physicians will be limited to those who graduated between 1986 and 1990. The information will be used by the Bureau of Health Professions to formulate recommendations for curriculum changes. Because this is a mail survey, automated collection techniques will not be used. Burden estimates are as follows:

	No. of respondents	No. of responses per respondent	Avg. burden/response	Total hours of burden
Eligible Physicians/ Medical Directors	1915	1	.25 hours	479
Ineligible Physicians/ Medical Directors	200	1	.07 hours	14
Estimated Total Annual Burden: 493 hours.				

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice to: Allison Eydt, Human Resources and Housing Branch, Office

of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: October 16, 1995.

J. Henry Montes,

Associate Administrator for Policy Coordination.

[FR Doc. 95–25926 Filed 10–18–95; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Fort Mojave Indian Tribe—Liquor Ordinance No. 52

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that by Resolution No. 52, the Fort Mojave Indian Tribe Liquor Ordinance was duly adopted by the Fort Mojave Indian Tribe on December 20, 1994. The Ordinance provides for the regulation of the sale and possession of liquor within the Fort Mojave Indian Reservation.

DATES: This Ordinance is effective as of October 19, 1995.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Judicial Services, Division of Tribal Government Services, 1849 C Street N.W., MS 2611 MIB, Washington, D.C. 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: The Fort Mojave Indian Tribe Liquor Control Ordinance is to read as follows:

Fort Mojave Liquor Control Ordinance

Chapter 1. General Provisions

Section 1.1. Definition of Terms

Terms used in this Ordinance, unless the context otherwise plainly requires, shall mean as follows:

(a) ''Alcohol'' shall mean that substance known as ethyl alcohol, hydrated oxide or ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, sugar or other substances including all dilutions and mixtures of those substances.

(b) ''Alcoholic Beverage'' shall mean any intoxicating liquor as such term is defined under the provisions of Section 1.1(e) of this Ordinance.

(c) ''Commission'' shall mean the Fort Mojave Tribal Alcoholic Beverage Control Commission established and empowered pursuant to this Ordinance.

(d) ''Director'' shall mean the Director of the Commission.

(e) ''Intoxicating Liquor'' or ''Liquor'' shall mean any liquid or substance either commonly used, or reasonably adopted to use, for beverage purposes containing in excess of one percentum of alcohol by weight, and includes those liquids or substances commonly known as spirits, wine and beer.

(f) ''Legal Age'' shall mean:

(i) for the Arizona portion of the Reservation, the age established by Arizona law for the consumption, purchase and/or possession of a certain alcoholic beverage off the Reservation;

(ii) for the California portion of the Reservation, the age established by California law for the consumption, purchase and/or possession of a certain alcoholic beverage off the Reservation; and

(iii) for the Nevada portion of the Reservation, the age established by Nevada law for the consumption, purchase and/or possession of a certain alcoholic beverage off the Reservation.

(g) ''Liquor Enterprise'' shall mean the Fort Mojave Tribal Liquor Enterprise established and empowered pursuant to this Ordinance.

(h) ''Liquor Store'' shall mean any establishment engaged in the retail sale of alcoholic beverages in the bottle, can or immediate container with original seal unbroken.

(i) ''Manager'' shall mean the Manager of the Liquor Enterprise.

(j) ''Ordinance'' shall mean this Fort Mojave Liquor Control Ordinance.

(k) ''Person'' shall mean and include any natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures, associations, companies, trusts, or other organizations, whether or not legal entities.

(l) ''Public Place'' shall mean any place, building, or structure to which the public has or is permitted access.

(m) ''Retailer'' shall mean the Tribe, Tribal Citizen or any person that sells alcoholic beverages for consumption and not for resale.

(n) ''Reservation'' means the Fort Mojave Indian Reservation.

(o) ''Sale'' or ''Sell'' includes exchange, barter and traffic; and also includes the selling or supplying or distributing, by any means whatsoever, of liquor by any person to any person.

(p) ''Tribal Citizen'' or ''Citizen of the Tribe'' shall mean an enrolled member of the Tribe and persons eligible for enrollment.

(q) ''Tribal Council'' shall mean the governing body of the Fort Mojave Indian Tribe.

(r) ''Tribal Court'' shall mean the Fort Mojave Tribal Court.

(s) ''Tribe'' or ''Tribal'' shall mean the Fort Mojave Indian Tribe of Arizona, California and Nevada.

Section 1.2. Policy and Purpose

This Ordinance shall be cited as the ''Fort Mojave Liquor Control Ordinance'' and under the inherent sovereignty of the Tribe, shall be deemed an exercise of the Tribe's power, for the protection of the welfare, health, peace, morals, and safety of the people of the Tribe, and all its provisions shall be liberally construed for the accomplishment of that purpose, and it is declared to be public policy that the sale and possession of alcoholic beverages affects the public interest of the people, and should be regulated to the extent of prohibiting all sale and possession of alcoholic beverages, except as provided in this Ordinance. In order to provide for Tribal control over liquor sales and possession within the Reservation, and to provide a source of revenue for the continued operation of the Tribal government and the delivery of Tribal governmental services, the Tribal Council promulgates this Ordinance.

Section 1.3. General Prohibition

It shall be a violation of this Ordinance to sell or possess for sale liquor within the Reservation except upon the terms, conditions, limitations, and restrictions specified in this Ordinance.

Section 1.4. Conformity With Federal Law

A. Tribally authorized liquor transactions on the Arizona portion of the Reservation shall comply with Arizona State liquor law standards of general applicability throughout the State to the extent required by 18 U.S.C. § 1161 and other federal law.

B. Tribally authorized liquor transactions on the Nevada portion of the Reservation shall comply with Nevada State Liquor law standards of general applicability throughout the State to the extent required by 18 U.S.C. § 1161 and other federal law.

C. Tribally authorized liquor transactions on the California portion of the Reservation shall comply with California State Liquor law standards of general applicability throughout the State to the extent required by 18 U.S.C. § 1161 and other federal law.

D. Nothing in this Ordinance shall constitute, nor be construed as, the Tribe's consent to the extension of jurisdiction by any State over matters

coming within the purview of this Ordinance.

Section 1.5. Fort Mojave Tribal Alcoholic Beverage Control Commission

A. There is hereby established the Fort Mojave Tribal Alcoholic Beverage Control Commission. The members of the Fort Mojave Tribal Council shall serve as the initial members of the Commission until such time as the Tribal Council appoints by resolution a Director and two members.

B. Appointments of the Commission Director and members shall be for a period of three (3) years, except that of the initial terms, the Director shall be appointed for three (3) years, one member shall be appointed for two (2) years and one member shall be appointed for one (1) year. The Director and members may be reappointed for one or more successive terms.

C. No person shall be appointed to the Commission unless the Tribal Council is satisfied that:

1. He or she is a person of good character, honesty and integrity, whose prior activities, criminal record if any, reputation, habits and associations do not pose a threat to the public interest of the Tribe and its members or to the effective regulation of alcoholic beverages; and

2. He or she has no interest in any liquor transactions within the Reservation or any activity which may have interests in conflict with the regulation of alcoholic beverages within the Reservation.

D. The Director and members may be removed for good cause, after written notice and opportunity to be heard by the Tribal Council. Good cause shall exist when any condition occurs or is discovered which would exclude a person from appointment.

E. The Director and members, and any employees of the Commission, shall be reasonably compensated as determined by the Tribal Council. The compensation shall be paid from the Tribe's income from liquor transactions within the Reservation.

F. The Commission is hereby empowered to:

1. Promulgate such rules and regulations as may be necessary and desirable for the proper implementation and enforcement of this Ordinance;

2. License, regulate, supervise, inspect and oversee all alcoholic beverage transactions, and premises and persons involved therewith, within the Reservation;

3. Hire such employees as are necessary to carry out the powers and duties of the Commission;

4. Take any action it deems necessary and appropriate to correct and prevent violations of this Ordinance and applicable rules and regulations, including but not limited to license suspension and/or revocation, referral for prosecution, imposition of monetary fines and civil suit; and

5. Take any and all additional actions necessary or incidental to the implementation and enforcement of this Ordinance.

G. Any person aggrieved by a decision or action of the Commission may pursue available administrative remedies pursuant to the provisions of the Fort Mojave Administrative Procedure Ordinance. After exhaustion of administrative remedies, such person may pursue available judicial review in the Tribal Court pursuant to the provisions of the Fort Mojave Administrative Procedure Ordinance and other applicable Tribal law.

H. All hearings before the Commission which are required or permitted to be held shall be open to the public and shall be held only after reasonable notice to all interested persons.

I. All matters pertaining to the implementation or enforcement of this Ordinance and not expressly addressed within this Ordinance shall be subject to orders of the Commission in particular cases. In all such cases, the Commission may proceed in any lawful manner.

Section 1.6. Fort Mojave Tribal Liquor Enterprise

A. The Fort Mojave Tribal Liquor Enterprise is hereby established. The Liquor Enterprise is constituted as an agency of the Fort Mojave Tribal government.

B. The Liquor Enterprise shall be responsible for the importation and wholesale management, distribution, and control of all liquor introduced within the Reservation.

C. The Tribal Council shall appoint a Liquor Enterprise Manager who shall have the following powers and duties:

1. To manage the Liquor Enterprise for the benefit of the Tribe;

2. To purchase, in the name of the Tribe, liquor products from off-Reservation wholesale distributors and distribute them to on-Reservation retailers as appropriate;

3. To report and account to the Tribal Council at least twice a year regarding the operation and financial status of the Liquor Enterprise. The Tribal Council shall establish the dates on which such accounting shall take place. The Council may require more frequent accounting if it deems necessary;

4. With Tribal Council approval, hire and set the salaries of personnel, as the Manager determines is necessary to the successful operation of the Liquor Enterprise;

5. To supervise all Liquor Enterprise employees;

6. With Tribal Council approval, to purchase and maintain Liquor Enterprise real and personal property;

7. To maintain all Liquor Enterprise revenues in a special account, under direction from the Tribal Treasurer. Funds may be withdrawn from this account by the Manager for the wholesale purchase of liquor products to be sold pursuant to this Ordinance, for payment of salaries of employees of the Liquor Enterprise, for payment of routine operating expenses of the Liquor Enterprise and for the purchase and upkeep of real and personal property required for the Liquor Enterprise operations;

8. To obtain and maintain in full force and effect a policy of general liability insurance covering the premises where Liquor Enterprise business is transacted in an amount set by the Tribal Council. The policy shall contain the stipulation that the Tribe shall be given ten (10) days notice of the proposed cancellation or expiration of such policy and shall have available for inspection a complete copy of such policy; and

9. Such other powers and duties as are necessary to the day-to-day management of the Liquor Enterprise and specified by the Tribal Council from time-to-time.

D. The Manager shall be bonded for an amount and for such purposes as the Tribal Council shall determine to be appropriate in managing the Liquor Enterprise.

E. The gross proceeds collected by the Liquor Enterprise for all wholesale sales of alcoholic beverages within the Reservation shall be utilized in the discharge of the powers and duties set forth in Section 1.6(C). The remainder of gross proceeds shall be paid over to the general fund of the Tribe on a monthly or periodic payment schedule established by the Tribal Council to be used for the delivery of Tribal governmental services and continued operation of the Tribal government.

Section 1.7. Liquor Tax

Nothing in this Ordinance is intended nor shall be construed to amend, modify, limit, alter or otherwise affect the terms and requirements of Chapter 204 (''Liquor Tax'') of the Fort Mojave Indian Tribe Tax Ordinance.

Section 1.8. Repeal of Prior Ordinance

Ordinance No. 18 (''Fort Mojave Tribal Liquor Ordinance''), adopted by the Tribal Council on November 8, 1982, pursuant to Resolution No. 83–18, is hereby repealed and of no further force and effect. In addition, any term of a prior Tribal ordinance which is inconsistent with the terms of this Ordinance is hereby repealed and such terms of this Ordinance shall be applied in lieu of any such repealed term of the prior Tribal ordinance.

Section 1.9. Sovereign Immunity Preserved

Nothing in this Ordinance is intended nor shall be construed as a waiver of the sovereign immunity of the Fort Mojave Indian Tribe.

Section 1.10. Severability

If any provision of this Ordinance or the application thereof shall be held to be invalid by a court of competent jurisdiction, the remaining provisions of this Ordinance shall not be affected thereby and shall remain in full force and effect as though no part of this Ordinance had been declared invalid.

Section 1.11. Tribal Court Jurisdiction

The Fort Mojave Tribal Court shall be the exclusive judicial forum for all disputes and matters arising under this Ordinance.

Section 1.12. Effective Date

This Ordinance shall become effective upon adoption by the Tribal Council pursuant to resolution and publication in the Federal Register in accordance with 18 U.S.C. § 1161.

Section 1.13. Computation of Time

In computing any period of time prescribed by this Ordinance, the date of the act, event or default from which the designated period of time begins to run shall not be included. Saturdays, Sundays and legal holidays shall be counted as any other day.

Chapter 2. Importation, Retail Sales and Licensing

Section 2.1. Importation of Liquor

The Tribal Council shall have the sole and exclusive right to authorize the importation of liquor into the Reservation for resale. No liquor shall be imported into the Reservation for resale except by the Fort Mojave Tribal Liquor Enterprise.

Section 2.2. License Requirement

No Retailer shall possess or sell alcoholic beverages within the Reservation unless the Retailer has obtained a license authorizing such possession and/or sale from the Commission, which license is in full force and effect.

Section 2.3. Storage of Beverages

No licensee under this Ordinance shall keep or store any alcoholic beverages at any place within the Reservation other than on the premises where the licensee is authorized to sell alcoholic beverages, except as may be otherwise specified in a license issued by the Commission.

Section 2.4. Cash Sales

All retail sales of alcoholic beverages within the Reservation shall be on a cash only basis and no credit shall be extended to any person for the purchase of alcoholic beverages by any Retailer and/or Vendor, except that this provision does not prevent the payment for purchases by credit cards such as Visa, Master Card, American Express and the like or by check.

Section 2.5. Resale Prohibited

Resale of any alcoholic beverage purchased within the exterior boundaries of the Reservation is prohibited, except as provided with respect to the Liquor Enterprise in Section 1.6 of this Ordinance and as permitted pursuant to a license issued by the Commission.

Section 2.6. Licensing—General Provisions

A. Before granting any license, the Commission shall consider the restrictions which are or may be placed upon the neighborhood by the Tribe.

B. The Commission shall not consider an application for any license to sell alcoholic beverages:

1. if within the two years before the date of the application, the Commission has denied an application at the same location for the reason that the reasonable requirements of the neighborhood were satisfied by the existing outlets;

2. until it is established that the applicant is, or will be, entitled to possession of the premises for which application is made under a lease, rental agreement, or other arrangement for possession of the premises, or by virtue of ownership thereof; and/or

3. for a location in an area where the sale of alcoholic beverages as contemplated is not permitted under the applicable zoning laws.

C. No license shall be refused arbitrarily or without good cause.

D. All licenses granted pursuant to this Chapter shall be good for one year from the date of issuance unless sooner revoked or suspended, except as provided in Section 2.9(A)(5) with respect to Special Event Licenses.

E. Application for the renewal of an existing license shall be made to the Commission not less than forty-five days prior to the date of expiration. No application for renewal of a license shall be accepted by the Commission after the date of expiration, except that the Commission may, for good cause, waive the time requirements set forth in this paragraph. The Commission may cause a hearing on the application for renewal to be held and may refuse to renew any license for good cause.

F. Each license issued under this Chapter is separate and distinct, and it is unlawful for any person to exercise any of the privileges granted under any license other than that which he holds or for any licensee to allow any other person to exercise such privileges granted under the license. A separate license shall be issued for each premise or location at which alcoholic beverages will be sold. At all times a licensee shall possess and maintain possession of the premise for which the license is issued by ownership, lease, rental, or other arrangement for possession of such premises.

G. All licenses issued pursuant to this Chapter shall specify the date of issuance, the character and kind of license, the date of its expiration, the name of the licensee, and the location where the license is to be exercised.

H. Licenses issued pursuant to this Chapter shall at all times be conspicuously placed in the licensed premise where the license is to be exercised.

I. No license granted under the provisions of this Chapter shall be transferable except as provided in this paragraph I.

1. When a license has been issued to a husband and wife, or to general or limited partners, the death of a spouse or partner shall not require the surviving spouse or partner to obtain a new license. All rights and privileges granted under the original license shall continue in full force and effect as to such survivors for the balance of the license period.

2. For any other license transfer, application shall be made to the Commission. In determining whether to permit a license transfer the Commission shall consider the requirements of Section 2.8 of this Chapter. The Commission may cause a hearing on the application for license transfer to be held.

J. A licensee shall provide written notice of each transfer or change of ownership or financial interest in the

licensee to the Commission within ten days after the transfer or change. A detailed report shall be required for transfers of capital stock of a public corporation; except that a detailed report shall not be required for transfers of such stock totalling less than ten percent in any one year. Any transfer of a controlling interest shall be reported, regardless of size. It is a violation for the licensee to fail to report a transfer as required by this paragraph and/or to fail to obtain Commission approval for a license transfer as provided in paragraph (I)(2) hereof.

K. Each licensee shall manage the premise for which he is licensed himself or employ a separate and distinct manager on the premises and shall report the name of the manager to the Commission. The licensee shall report any change in manager to the Commission within ten days after the change. It is a violation for the licensee to fail to report the name of or any change in manager.

Section 2.7. Application to Commission

A. Applications for licenses under the provisions of this Chapter shall be made to the Commission and set forth such information as may be required to enable the Commission to determine whether a license should be granted. At a minimum, the application shall include the name and address of the applicant, and if a partnership, also the names and addresses of all the partners, and if a corporation, association, or other organization, also the names and addresses of the president, vice-president, secretary, and managing officer, together with a description of the premise, and evidence of right to possession thereof, at which the applicant desires to operate. Each application shall be verified by the oath or affirmation of such person or persons as the Commission may prescribe.

B. Each application for a license filed with the Commission shall be accompanied by an application fee in an amount determined by the Commission to cover actual and necessary expenses in processing and acting on the application, subject to the following limitations:

(1) For a new license, not to exceed four hundred dollars;

(2) For a transfer of location or ownership, not to exceed two hundred dollars;

(3) For renewal of license, not to exceed fifty dollars.

The foregoing fees are separate and distinct from the fees charged in Section 2.10 of this Chapter. Said fees shall not be assessed against the Tribe, a governmental agency of the Tribe or a business entity in which the Tribe holds the majority ownership interest. Said fees may be waived by the Commission for good cause.

Section 2.8. Decision to License

A. The Commission may refuse to issue any license if it determines that the applicant has not complied with, or is unlikely to be able to comply with, the terms and conditions of this Ordinance and/or other applicable law.

B. Before any decision approving or denying the application, the Commission shall consider such factors as the reasonable requirements of the neighborhood for the type of license for which application has been made, and the number, type, and availability of retail liquor outlets located in or near the neighborhood under consideration. The Commission shall consider any other pertinent matters affecting the qualifications of the applicant for the proposed conduct and type of activity, including the moral character and reputation of the applicant. In investigating the qualifications of the applicant, the Commission may review criminal history record information furnished by a criminal justice agency subject to any restrictions imposed by such agency. In the event the Commission takes into consideration information concerning the applicant's criminal history record, the Commission shall also consider any information provided by the applicant regarding such criminal history record, including but not limited to evidence of rehabilitation, character references, and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the submission of the license application. Additionally, a representative of the Commission may visit and inspect the premise in which the applicant proposes to conduct the activity.

C. Any decision of the Commission approving or denying an application shall be in writing stating the reasons therefor, and a copy of such decision shall be sent by certified mail to the applicant at the address shown in the application.

D. No license shall be issued by the Commission after approval of an application until the building in which the business is to be conducted is ready for occupancy with such furniture, fixtures, and equipment in place as is necessary to comply with the provisions of this Ordinance and other Tribal law.

E. No license shall be issued to or held by any person until the annual fee therefor has been paid as provided in Section 2.10 hereof.

Section 2.9. Classes of Licenses

A. The licenses to be granted and issued by the Commission pursuant to this Ordinance shall be as follows:

(1) Liquor Store License. A Liquor Store License may be issued to persons desiring to sell alcoholic beverages at retail in sealed containers not to be consumed at the premise or place where sold.

(2) Hotel/Casino and Restaurant License.

(a) A Hotel/Casino and Restaurant License may be issued to persons desiring to sell alcoholic beverages at retail by the drink or serving for consumption on the premise, and/or within the building in which the premise is located, by customers of such hotel/casino or restaurant.

(i) Restaurants may sell alcoholic beverages as provided in this Section only to customers of such restaurant and only if meals are actually and regularly served.

(ii) Hotel/casinos may sell alcoholic beverages as provided in this Section only to customers of such hotel/casino.

(b) Notwithstanding any provision of this Chapter to the contrary, the holder of a Hotel/Casino and Restaurant License may furnish and deliver alcoholic beverages in sealed containers to its registered guests in hotel rooms without holding a Liquor Store License.

(c) Notwithstanding any provision of this Chapter to the contrary, the holder of a Hotel/Casino and Restaurant License may furnish and deliver alcoholic beverages by the drink or serving for consumption in all areas within the building in which gaming is taking place.

(d) It is the intent of this Section to require hotel/casino and restaurant licensees to maintain a bona fide hotel/casino and/or restaurant business and not a mere pretext of such for obtaining a license hereunder.

(3) Tavern License. A Tavern License may be issued to persons desiring to sell alcoholic beverages at retail by the drink or serving for consumption on the premises. Such licensee shall have sandwiches or light snacks available on the premises during business hours.

(4) Optional Premises License. An Optional Premises License may be granted to holders of a Hotel/Casino and Restaurant License for optional premises at which alcoholic beverages are sold at retail by the drink or serving for consumption on the optional premises. For purposes of this Chapter, the term ''optional premises'' means outdoor sports, entertainment and recreational facilities which are adjacent to and under common ownership with

the hotel/casino or restaurant for which the applicant holds a Hotel/Casino and Restaurant License.

(5) Special Events License. A Special Events License may be issued to persons desiring to sell alcoholic beverages by the drink or serving at retail for consumption on the premises to persons who have paid a fee to attend the special event. A Special Events License shall be effective for no longer than the duration of the special event or for forty-eight (48) hours, whichever is shorter. No more than three (3) Special Events Licenses shall be issued to a person per annum.

Section 2.10. License Fees

A. The following license fees shall be paid to the Commission annually in advance:

(1) For each Liquor Store License, five hundred dollars ($500.00);

(2) For each Hotel/Casino and Restaurant License, one thousand dollars ($1,000.00);

(3) For each Tavern License, five hundred dollars ($500.00);

(4) For each Optional Premises License, five hundred dollars ($500.00).

B. A license fee of two hundred fifty dollars ($250.00) shall be paid to the Commission for a Special Events License.

C. The fees provided for in this Section 2.10 shall not be assessed against the Tribe, a governmental agency of the Tribe or a business entity in which the Tribe holds the majority ownership interest. Said fees may be waived by the Commission for good cause.

Section 2.11. Suspension and Revocation

A. In addition to other penalties prescribed by this Ordinance, the Commission has the power, on its own motion or on complaint, after public hearing at which the licensee shall be afforded an opportunity to be heard and reasonable notice, to suspend or revoke any license for any violation by the licensee, or by any of the agents, servants, or employees of such licensee, of the provisions of this Ordinance and/or Commission regulations, or of any of the terms, conditions, or provisions of the license issued by the Commission. In addition, the Commission may revoke or elect not to renew a license if it determines that the licensed location has been inactive for at least one year.

B. Suspension and/or revocation of a license by the Commission shall proceed in accordance with the provisions of the Fort Mojave Administrative Procedure Ordinance.

C. No suspension under this Section shall be for a period longer than six months.

D. Whenever any license is suspended or revoked, no part of the fee paid therefor shall be returned or refunded to the holder of such license.

Section 2.12. Records—Inspection

Each licensee shall keep a complete set of books of account, invoices, copies of orders, shipping instructions, bills of lading, weigh bills, correspondence, and all other records necessary to show fully the business transactions of such licensee, all of which shall be open at all times during business hours for the inspection and examination of the duly authorized representative of the Commission. The Commission may require any licensee to furnish such information as it considers necessary for the proper administration of this Ordinance, and may require an audit to be made of such books of account and records on such occasions as it may consider necessary by an auditor to be selected by said Commission who shall likewise have access to all books and records of such licensee.

Section 2.13. Insurance

Licensees under this Ordinance shall at all times maintain insurance coverage insuring against liability for bodily injury and property damage of a type and in such amounts as is customary with respect to the activities on the licensed premises.

Section 2.14. Access

Licensees under this Ordinance shall at all times during business hours permit agents of the Commission unrestricted access to all areas within licensed premises upon display of proper identification.

Chapter 3. Prohibited Activities; Enforcement

Section 3.1. Prohibited Activities

A. It shall be a violation of this Ordinance:

1. For any person to sell or offer to sell any liquor except as provided in this Ordinance;

2. For any person to possess for resale any liquor except as provided in this Ordinance;

3. For any person to sell liquor to a person apparently under the influence of alcohol, or other deleterious substances;

4. For any person to permit any person under the legal age to consume liquor on premises under his control, except when such liquor is being used in connection with bona fide religious services or practices;

5. For any person to sell liquor to any person under the legal age. Where there may be a question of a person's right to purchase liquor by reason of his age such person shall be required to present any one of the following officially issued cards of identification which shows correct age and bears his signature and photograph:

(a) Liquor Control Authority Card of Identification of any state.

(b) Driver's License of any state or an identification card issued by any state department of motor vehicles.

(c) United States Active Duty Military identification.

(d) Passport;

6. To employ a person under the legal age to sell or possess liquor;

7. For any person to sell liquor:

(a) within the Arizona portion of the Reservation, during hours when such sale would be prohibited by Arizona law if the sale was occurring outside the Reservation;

(b) within the California portion of the Reservation, during hours when such sale would be prohibited by California law if the sale was occurring outside the Reservation; and

(c) within the Nevada portion of the Reservation, during hours when such sale would be prohibited by Nevada law if the sale was occurring outside the Reservation;

8. For any person to sell liquor on the Reservation on Tribal Election Days, during the hours polling places are open for voting;

9. For any person to sell liquor without a license issued by the Commission that is in effect and/or contrary to the terms of a license issued by the Commission and/or without complying with applicable federal law;

10. For any employee at a liquor establishment, when waiting on or serving customers, to consume liquor on the premises;

11. For any person to fail or refuse to make timely payment of Tribal liquor taxes or of monies due the Tribe under this Ordinance;

12. For a person to have in his possession or to transport liquor which is manufactured in a distillery, winery, brewery or rectifying plant contrary to the laws of the United States; or

13. For a person to violate any provision of this Ordinance and/or Commission regulations and/or applicable federal law.

Section 3.2. Enforcement

A. In any administrative or judicial proceeding under this Ordinance, proof of one prohibited sale of liquor shall suffice to establish prima facie the intent or purpose of keeping liquor for sale in violation of this Ordinance.

B. Any person adjudged to be in violation of this Ordinance by the Commission and/or Tribal Court shall be subject to a civil fine of not more than Five Thousand Dollars ($5,000.00) for each such violation. The Commission may adopt by regulation a schedule of fines for each type of violation, taking into account its seriousness and the threat it may pose to the general health and welfare of Tribal members.

C. Alcoholic beverages which are sold and/or possessed contrary to the terms of this Ordinance are declared to be contraband. The Commission and/or any Tribal law enforcement officer may issue a citation or serve a summons under this Ordinance and seize such contraband. The Commission and/or any Tribal law enforcement officer seizing contraband shall preserve the contraband by placing it in a secure area provided for storage of impounded property and shall promptly prepare an inventory of it. Upon entry of judgment in the Tribal Court, a person adjudged to be in violation of this Ordinance shall forfeit all right, title, and interest in the items seized, which shall be disposed of in accordance with the Fort Mojave Law and Order Code: Provided that the items so forfeited shall not be sold to any person not entitled to possess them under applicable law.

D. Any room, house, building, boat, vessel, vehicle, structure, or other place where liquor is sold and/or possessed, in violation of the provisions of this Ordinance or any other Tribal law relating to the sale and/or possession of liquor, and all property kept in and used in maintaining such place, are hereby declared to be a public nuisance. The Commission shall institute and maintain an action in the Tribal Court in the name of the Tribe to abate and perpetually enjoin any nuisance declared under this paragraph. The plaintiff shall not be required to file bond in the action, and restraining orders, temporary injunctions, and permanent injunctions may be granted in the cause as in other injunction proceedings against the defendant. The court may also order the room, house, building, boat, vessel, vehicle, structure, or place closed for a period of one (1) year or until the owner, lessee, tenant, or occupant thereof shall give bond of sufficient surety to be approved by the court in the sum of not less than One Thousand Dollars ($1,000.00), payable to the Tribe, and conditioned that liquor will not be thereafter sold, and/or possessed in violation of the provisions of this Ordinance or any other applicable Tribal law, and that he will pay all civil fines, costs and damages assessed against him for any violation of this Ordinance. If any condition of the bond is violated, the Tribal Court may order all or any part of the bond forfeited to the Tribe.

E. All persons who violate this Ordinance may be summoned or cited into Tribal Court, there to be given a hearing as provided by the Civil Procedures of the Tribal Law and Order Code, for the alleged civil violations. In addition to any fines or other sanctions imposed by the Tribal Court, all alcoholic beverages in possession of the violator at the time of the violation and any funds from the sale thereof may be declared contraband, confiscated and forfeited to the Tribe.

F. Persons not members of the Tribe, who are found to be in repeated violation of this Ordinance or any rules and regulations issued thereunder may be subject to exclusion from the Reservation.

Dated: October 10, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–25886 Filed 10–18–95; 8:45 am]

BILLING CODE 4310–02–P

Bureau of Land Management

[MT–060–06–1990–01]

Extension of Public Comment Period for the Draft Environmental Impact Statement for the Zortman and Landusky Mines Reclamation Plan Modifications and Mine Life Extensions, Phillips County, MT

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Supplement to the notice of availability of the draft environmental impact statement (EIS) for the Zortman and Landusky mines reclamation plan modifications and mine life extensions.

SUMMARY: This notice supplements the ''Availability of the Draft Environmental Impact Statement for the Zortman and Landusky Mines Reclamation Plan Modifications and Mine Life Extensions, Phillips County, MT'' published in the Federal Register, Volume 60, No. 156, page 41895, August 14, 1995. This supplement extends the public comment period to November 1, 1995.

ADDRESSES: Written comments should be addressed to David L. Mari, District Manager, Bureau of Land Management, Lewistown District Office, P.O. Box 1160, Lewistown, Montana 59457–1160.

FOR FURTHER INFORMATION CONTACT: Jim Robinson, Team Leader, Montana Department of Environmental Quality, Hard Rock Bureau, P.O. Box 201601, Helena, Montana 59620–1601 (406–444–2074) or Scott Haight, Team Leader, Bureau of Land Management, Lewistown District Office, P.O. Box 1160, Lewistown, Montana 59457–1160 (406–538–7461).

Dated: October 10, 1995.

David L. Mari,

District Manager.

[FR Doc. 95–25880 Filed 10–18–95; 8:45 am]

BILLING CODE 4310–DN–P

[NM–010–1430–01]

Realty Action on Proposed Land Disposal in Santa Fe County, New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action on proposed land disposal.

SUMMARY: This notice is to advise the public that the Albuquerque District of the Bureau of Land Management, is proposing to dispose of approximately 1.674 acres of public land near the Village of Rio Chiquito within Santa Fe County, State of New Mexico.

SUPPLEMENTARY INFORMATION: The BLM has determined that the acres of public land described below are suitable for disposal under the Color-of-Title Acts of 1928 (45 Stat. 1069), 1932 (47 Stat. 53; 43 U.S.C. 178), and Sales under Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1713 (1976).

New Mexico Principal Meridian

Chimayo IV, New Mexico Public Land Disposal Block

T. 20 N., R. 10 E.,
Sec. 5: lots 38 to 42, inclusive.
Comprising of approximately 1.674 acres.

Disposal of these lands is consistent with: (1) Taos Resource Management Plan approved in October 1988, (2) Their location as well as the physical characteristics and the private ownership of adjoining lands make them difficult and uneconomical to manage as public lands, so disposal would best serve the public interest, (3) This Notice of Realty Action will be published once a week for three weeks in a newspaper of general circulation and will be sent to the New Mexico Congressional Delegation and the relevant congressional committees by BLM. The specific parcels of public land will be disposed of using the following ''Tract Disposal Criteria'' in descending order of priority:

1. Color-of-Title. Color-of-Title disposal will be made to any applicant

within the disposal area who qualifies under the Color-of-Title Acts.

2. Non-Competitive (Direct) Sale. Public lands within the disposal block will be sold without competition at Fair Market Value to those individuals who occupied the parcels before June 11, 1979 (the date land use plans were approved), but who do not qualify for title under the Color-of-Title Act.

The terms and conditions applicable to the disposal are:

1. The patents will contain a reservation to the United States for ditches and canals.

2. All disposals are for surface estate only. The patents will contain a reservation to the United States for all minerals.

3. Tracts which lie within the 100 year floodplain of the Rio Quemado will be subject to EO 11988 which precludes the seeking of compensation from the United States or its agencies in the event existing or future facilities on those tracts are damaged by flood.

4. All disposals will be made subject to prior existing rights.

Additional information pertaining to this disposal including the environmental documents are available for review at the Taos Resource Area Office, 226 Cruz Alta Road, Taos, New Mexico 87571, or telephone (505) 758–8851. For a period of 45 days from the date of this notice, interested parties may submit written comments to the Taos Resource Area Manager. Any adverse comments will be evaluated by the New Mexico State Director, Bureau of Land Management, who may vacate or modify this realty action and issue a final determination.

In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Michael R. Ford,

District Manager.

Dated: Oct. 10, 1995.

[FR Doc. 95–25879 Filed 10–18–95; 8:45 am]

BILLING CODE 4310–FB–P

[OR 52096; OR–080–06–1430–01: G6–001]

Notice of Realty Action; Proposed Direct Sale

October 2, 1995.

The following described public land has been examined and determined to be suitable for transfer out of Federal ownership by direct sale under the authority of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976, as amended (90 Stat. 2750; 43 U.S.C. 1713 and 90 Stat. 2757; 43 U.S.C. 1719), at not less than the appraised fair market value:

Willamette Meridian, Oregon,

T. 10 S., R. 1 E.,

Sec. 21, a parcel of land, which, when surveyed, will likely be described as Lot 1.

The above-described parcel contains 0.19 acre in Linn County.

The parcel will not be offered for sale until at least 60 days after publication of this notice in the Federal Register. The fair market value of the parcel has not yet been determined. Anyone interested in knowing the value may request this information from the address shown below.

The above-described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above-cited statute, for 270 days or until title transfer is completed or the segregation is terminated by publication in the Federal Register, whichever occurs first.

The parcel is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency. No significant resource values will be affected by this transfer. The sale is consistent with the Salem District Resource Management Plan and the public interest will be served by offering this parcel for sale.

The parcel is being offered only to Clement J. Lulay and Jeanette Lulay, fee owners of the adjoining property to the north. Use of the direct sale procedures authorized under 43 CFR 2711.3–3, will avoid an inappropriate land ownership pattern.

The terms, conditions, and reservations applicable to the sale are as follows:

1. Clement J. Lulay and Jeanette Lulay will be required to submit a deposit of either cash, bank draft, money order, or any combination thereof for not less than the appraised value.

2. The mineral interests being offered for conveyance have no known mineral value. A bid will also constitute an application for conveyance of the mineral estate, in accordance with Section 209 of the Federal Land Policy and Management Act. The designated bidders must include with their bid a nonrefundable $50.00 filing fee for the conveyance of the mineral estate.

3. The bargain and sale deed will be subject to:

a. Rights-of-way for ditches or canals will be reserved to the United States under 43 U.S.C. 945; and

b. All valid existing rights and reservations of record.

Detailed information concerning the sale is available for review at the Salem District Office, address above.

By no later than December 4, 1995, interested parties may submit comments to the Cascades Area Manager, Salem District Office, address above. Any adverse comments will be reviewed by the Salem District Manager, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Richard C. Prather,

Cascades Area Manager.

[FR Doc. 95–25209 Filed 10–18–95; 8:45 am]

BILLING CODE 4310–33–M

[OR 52171; OR–080–06–1430–01: G6–002]

Notice of Realty Action; Proposed Recreation and Public Purposes Act Classification

The following described public land has been examined and determined to be suitable for classification for lease or conveyance out of Federal ownership to the Pacific City Water District under the authority of the Recreation and Public Purposes Act, as amended (44 U.S.C. 869 *et seq.*):

Williamette Meridian, Oregon,

T. 4 S., R. 10 W.,

Sec. 19, Lot 18.

The above-described parcel contains 3.00 acres in Tillamook County.

The Pacific City Water District proposes to use the parcel for a maintenance facility associated with its existing municipal water system. The parcel is not required for any Federal purpose or program. Lease or conveyance of the parcel is consistent with current BLM land use planning and will be in the public interest.

The lease/patent, when issued, will be subject to the following terms, conditions, and/or reservations:

1. A reservation to the United States for rights-of-way for ditches or canals under the Act of August 20, 1890 (26 Stat. 391; 43 U.S.C. 945);

2. A reservation to the United States of all mineral deposits, together with the right to prospect for, mine, and remove such deposits under applicable law and such regulations as the Secretary of the Interior may prescribe;

3. A right-of-way reservation for road access to the adjoining public land.

4. The reversionary requirements of 43 CFR 2741.9.

Detailed information concerning this action is available for review at the Salem District Office, 1717 Fabry Road

SE, Salem, Oregon 97306, or at the Tillamook Resource Area Office, P. O. Box 404, Tillamook, Oregon 97141.

Upon publication of this notice in the Federal Register, the land will be segregated from all other forms of appropriation under the public land laws, including the mining laws, except the mineral leasing laws and for lease or conveyance under the Recreation and Public Purposes Act.

By no later than December 4, 1995, interested parties may submit comments to the Tillamook Area Manager, Salem District Office, at the above address.

Classification Comments: Interested parties may submit comments involving the suitability of the land for maintenance facilities associated with a municipal water system. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with state and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a maintenance facility.

Any adverse comments will be reviewed by the Salem District Manager, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: John M. Radosta, Realty Specialist, Salem District Office, 1717 Fabry Road SE, Salem, Oregon 97306. (503) 375–5664.

Dated: October 5, 1995.

Dana R. Shuford,

Tillamook Area Manager.

[FR Doc. 95–25881 Filed 10–18–95; 8:45 am]

BILLING CODE 4310–33–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–6 (Sub-No. 375X)]

Burlington Northern Railroad Company—Abandonment Exemption—in Snohomish County, WA

Burlington Northern Railroad Company (BN) has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon its 1.27-mile line of railroad between BN milepost 6.92 and BN milepost 8.19, and the 1.42-mile Cascade Pole Spur in and near Arlington, a total of 2.69 miles, in Snohomish County, WA.[1]

BN has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 18, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by October 30, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 8, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Sarah J. Whitley, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102–5384.

If the notice of exemption contains false or misleading information, the exemption is void ab initio.

BN filed an environmental report which addresses the effects of the abandonment, if any, on the environment and historic resources. The Commission's Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by October 24, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: October 13, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–25938 Filed 10–18–95; 8:45 am]

BILLING CODE 7035–01–P

[1] BN originally filed this notice of exemption under Docket No. AB–6 (Sub-No. 364X). However, by decision served May 31, 1995, the Director of the Office of Proceedings permitted BN to withdraw the notice of exemption without prejudice.

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request prior to the effective date of this exemption.

[3] See *Exempt. of Rail Abandonment Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[Docket No. AB–167 (Sub-No. 1152X]

Consolidated Rail Corporation—Abandonment Exemption—in Cook County, IL

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon its line of railroad, known as the Bernice Running Track, between milepost 294.30± and milepost 294.90± in Cook County, IL, a total distance of approximately 0.6 miles±.

Conrail has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49

CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 18, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by October 30, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 8, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: John J. Paylor, Two Commerce Square, 2001 Market St., 16–A, P.O. Box 41416, Philadelphia, PA 19101–1416.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

Conrail has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by October 24, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: October 13, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–25939 Filed 10–18–95; 8:45 am]

BILLING CODE 7035–01–P

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[Docket No. AB–290 (Sub-No. 177X)]

Norfolk Southern Railway Company—Abandonment Exemption—Between Kent and Ringgold, VA

Norfolk Southern Railway Company (NS) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon its line of railroad between milepost F–3.3 at Kent and milepost F–5.0 at Ringgold, in Pittsylvania County, VA, a total distance of 1.7 miles.

NS has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line, and if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 18, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by October 30, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 8, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: James R. Paschall, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

NS has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by October 24, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: October 13, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–25942 Filed 10–18–95; 8:45 am]

BILLING CODE 7035–01–P

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[Docket No. AB–457X]

RLTD Railway Corporation—Abandonment Exemption—in Leelanau County, MI

RLTD Railway Corporation (RLTD) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon its entire line of railroad between milepost 5.52 at Hatches Crossing, Elmwood Township, and milepost 29.56 at Northport, in Leelanau County, MI.

RLTD has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

Where, as here, the carrier is abandoning its entire line, the Commission does not normally impose labor protection under 49 U.S.C. 10505(g) unless there is evidence of a corporate affiliate that will: (1) Continue rail operations; or (2) realize significant benefits in addition to being relieved of the burden of deficit operations by its affiliated railroad. See *T and P Rwy.—Aband.—in Shawnee, Jefferson, and Atchison Counties, KS,* Docket No. 381, *et al.* (ICC served Apr. 27, 1993). Because these conditions do not appear to exist here, employee protective conditions will not be imposed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 18, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by October 30, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 8, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: John D. Noonan, P.O. Box 2358, Traverse City, MI 49685–2358.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

Leelanau Trails Association (LTA) seeks issuance of a notice of interim trail use/rail banking (NITU) for a portion of the involved lines (namely between Hatches Crossing and Dumas Road in Suttons Bay Township, MI), under the National Trails System Act (Trails Act), 16 U.S.C. 1247(d). LTA has submitted a statement of willingness to assume financial responsibility for the interim trail use and rail banking in compliance with 49 CFR 1152.29 and acknowledged that the right-of-way as a trail is subject to future reactivation of rail service.

While expressions of interest in interim trail use need not be filed until 10 days after the date the notice of exemption is published in the Federal Register [49 CFR 1152.29(b)(2)], the provisions of the Trails Act are applicable, and all of the criteria for imposing trail use/rail banking have been met. Accordingly, based on RLTD's willingness to enter into negotiations with LTA, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If a mutually acceptable final agreement is reached, further Commission approval is not necessary. If no agreement is reached within 180 days, RLTD may fully abandon the line. See 49 CFR 1152.29(d)(9)(1).

Issuance of this NITU does not preclude other parties from filing interim trail use/rail banking requests. Nor does it preclude RLTD from negotiating with other parties in addition to LTA during the NITU negotiating period. If additional trail use requests are filed, RLTD is directed to respond to them. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

The parties should note that operation of the trail use procedures could be delayed, or even foreclosed, by the OFA process under 49 U.S.C. 10905. As stated in *Rail Abandonments—Use of Rights-of-Way as Trails,* 2 I.C.C.2d 591 (1986) (*Trails*), OFAs to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use conditions.[4] Accordingly, if a formal expression of intent to file an OFA is timely filed under 49 CFR 1152.27(c)(2), the effective date of this notice will be postponed 10 days beyond the effective date indicated here. In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(e)(2) and (f). If the line is sold under the OFA procedures, the notice for abandonment exemption will be dismissed and trail use precluded. Alternatively, if a sale under the OFA procedures does not occur, trail use may proceed.

LTA also requested a 180-day public use condition for that portion of the right-of-way between Hatches Crossing and Dumas Road in Suttons Bay Township, MI, under 49 U.S.C. 10906 as an alternative to interim trail use. When the need for both conditions is established, it is Commission policy to impose them concurrently, subject to the execution of a trail use agreement. See *Trails, supra* at 609. LTA's submission meets the requirements for a public condition prescribed at 49 CFR 1152.28(a)(2) by specifying: (a) the condition sought; (b) the public importance of the condition; (c) the time period for which the condition would be effective; and (d) justification for imposition of the time period. Accordingly, the requested 180-day public use condition will also be imposed. If a trail use agreement is reached for a lesser portion of the right-of-way, RLTD must keep the remaining portion intact for the remainder of the 180-day period to permit public use negotiations. A public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire either the whole or a portion of a right-of-way that has been found suitable for public purposes, including trail use.

RLTD filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

[4] The statement in *Trails* that section 10905 does not apply to abandonment or discontinuance exemptions has since been superseded by the adoption of rules allowing OFAs in these exemption proceedings. See 49 CFR 1152.27.

issue an environmental assessment (EA) by October 24, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

It is ordered:

1. The abandonment of the above described line between Hatches Crossing and Dumas Road in Suttons Bay Township, MI, is subject to the conditions: (1) That RLTD is prohibited from disposing of the corridor, other than the tracks, ties and signal equipment, unless for public use on reasonable terms; and (2) that RLTD keep intact the right-of-way underlying the track, including all of the trail related structures including bridges, trestles, culverts, and tunnels, for a period of 180 days from the effective date of this exemption, to enable any State or local government agency or other interested persons to negotiate the acquisition of the line for public use.

2. Subject to the conditions set forth above, RLTD may discontinue service, cancel tariffs for the line on not less than 10 days' notice to the Commission, and salvage track and material consistent with interim trail use/rail banking after the effective date of this notice of exemption and NITU. Tariff cancellations must refer to this notice by date and docket number.

3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify RLTD from any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way.

4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

5. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Commission a copy of this notice of exemption and NITU and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this notice of exemption and NITU, interim trail use may be implemented. If no agreement is reached by that time, RLTD may fully abandon the line.

Decided: October 10, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–25940 Filed 10–18–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–452 (Sub-No. 1X)]

The Western Stock Show Association—Abandonment Exemption—in Denver, CO

[Docket No. AB–6 (Sub-No. 374)]

Burlington Northern Railroad Company—Adverse Discontinuance—in Denver, CO

[Docket No. AB–33 (Sub-No. 92)]

Union Pacific Railroad Company—Adverse Discontinuance—in Denver, CO

[Docket No. AB–446 (Sub-No. 2)]

Denver Terminal Railroad Company—Adverse Discontinuance—in Denver, CO

AGENCY: Interstate Commerce Commission.

ACTION: Exemption from statutory provisions concerning posting of notice of intent and filing of system diagram map.

SUMMARY: Under 49 U.S.C. 10505, the Commission is exempting The Western Stock Show Association from the requirements (1) that it post a notice of intent to discontinue service in terminals and stations on the subject line, and (2) that it file with the Commission a system diagram map (SDM) identifying and describing the subject line. The Commission is granting an exemption in light of the adverse nature of the involved applications for discontinuance of service.

DATES: The exemption will take effect on October 19, 1995. Petitions to reopen must be filed by November 8, 1995.

ADDRESSES: Send pleadings referring to Docket No. AB–452 (Sub-No. 1X), *et al.*, to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) petitioner's representative: John Broadley, Jenner & Block, 12th Floor, 601 13th Street, N.W., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The Western Stock Show Association (WSSA) has concurrently filed three adverse discontinuance applications and an abandonment exemption petition. WSSA owns land and rail facilities that the Denver Terminal Railroad Company (DTRC) is leasing to provide service in Denver, CO. In addition to DTRC, Burlington Northern, Inc., and the Union Pacific Railroad Company may have trackage rights over the subject line. WSSA does not have access to any of the three carriers' facilities and is unable to cause them to file SDM's. Accordingly, WSSA seeks exemption from the provisions of 49 U.S.C. 10904(a)(3)(B), which requires posting in terminals and stations of a notice of intent to discontinue service, and 49 U.S.C. 10904(e)(3), which allows the Commission to grant an opposed discontinuance application only if the subject line has been identified in an SDM filed with the Commission at least 4 months before the application was filed. The Commission is granting the exemption, finding that a denial is not required to carry out the rail transportation policy of 49 U.S.C. 10101a, the matter is of limited scope, and strict adherence to the statutory requirements is not needed to protect shippers from the abuse of market power. In its decision granting exemption, the Commission also is granting WSSA a waiver of certain regulatory requirements relating to the submission of service and financial information and to the notice and SDM matters discussed above.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: October 11, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–25941 Filed 10–18–95; 8:45 am]

BILLING CODE 7035–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorizes agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATE: Request for copies must be received in writing on or before December 4, 1995. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Record Appraisal and Disposition Division (NIR), National Archives and Records Administration, College Park, MD 20740. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office of program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Agriculture, Animal and Plant Health Inspection Service (N1–463–95–3). Routine and facilitative records concerning research at the Denver Wildlife Center.

2. Department of the Army (N1–AU–95–6). Records relating to life-cycle management of U.S. Army Reserve facilities.

3. Department of Health and Human Services (N1–468–95–1). Records of the Graduate Medical Education Study, Office of Planning and Evaluation.

4. Department of Housing and Urban Development (N1–207–93–5). Program office working papers and background material for Inspector General investigative reports.

5. Department of State, Bureau of Economic and Business Affairs (N1–59–95–15). Routine, facilitative, and duplicative records relating to telecommunications matters. Policy records are scheduled for permanent retention.

6. Department of the Treasury, Bureau of Engraving and Printing (N1–318–93–4). Administrative files accumulated in the Office of Currency Standards.

7. Department of Veterans Affairs, Veterans Benefits Administration (N1–15–93–2). Microfiche copies of letters to veterans providing benefit information.

8. American Battle Monuments Commission (N1–117–95–1). Routine, facilitative and duplicate records.

9. Defense Contract Audit Agency (N1–372–95–3). Files used as input for Department of Defense Annual Report.

10. Federal Aviation Administration (n1–237–95–5). Older records covering various routine and facilitative program activities.

11. Federal Housing Finance Board (N1–485–94–1). Reference materials, general correspondence, and financial records.

12. Federal Trade Commission (N1–122–95–2). Bureau of Economic Studies Coffee Investigation: Background for Final Printed Report.

13. Office of Personnel Management (N1–478–95–4). Training course materials.

14. Social Security Administration (N1–47–95–4). Computer matching records.

15. United States Information Agency (N1–306–95–4). Facilitative records relating to the American National Exhibition in Moscow. Policy Records scheduled as permanent.

Dated: October 2, 1995.

John W. Carlin,

Archivist of the United States.

[FR Doc. 95–25871 Filed 10–18–95; 8:45 am]

BILLING CODE 7515–01–M

Records Schedules; Availability and Request for Comments

AGENCY: Office of Records Administration, NARA.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorizes agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Request for copies must be received in writing on or before December 4, 1995. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National

Archives and Records Administration, College Park, MD 20740. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Transportation, Office of the Secretary (N1–398–95–1). Routine and facilitative files from the Office of Intelligence and Security. Program files are scheduled for permanent retention.

2. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms (N1–436–95–3). Leads, investigations and cases tracking system.

3. National Drug Intelligence Center (N1–523–94–1). Subject files, 1992–94 (files reflecting policy and major operations will be preserved).

Dated: October 10, 1995.

James W. Moore,

Assistant Archivist for Records Administration.

[FR Doc. 95–25872 Filed 10–18–95; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL BANKRUPTCY REVIEW COMMISSION

Public Hearing

AGENCY: National Bankruptcy Review Commission.

ACTION: Notice of public hearing.

DATES: November 1, 1995, Wednesday 1:00 p.m. to 5:00 p.m.

ADDRESSES: J.W. Marriott Hotel, Galerie 3 Conference Room, 2nd Floor, 555 Canal Street, New Orleans, Louisiana 70140.

FOR FURTHER INFORMATION CONTACT: Contact Jarilyn Dupont or Carmelita Pratt at the National Bankruptcy Review Commission, (202) 273–1813, c/o Administrative Office of the U.S. Courts, One Columbus Circle, N.E., Suite 4–170, Washington, D.C. 20544 (mailing address) (or 20002, street address).

SUPPLEMENTARY INFORMATION: The public hearing will be open to any individual or organization who wishes to testify before the National Bankruptcy Review Commission concerning the Commission's statutory responsibilities. The public hearing is being held in conjunction with the National Conference of Bankruptcy Judges Annual Meeting in New Orleans at the J.W. Marriott Hotel. Persons wishing to testify can register either by calling the National Bankruptcy Review Commission, Jarilyn Dupont or Carmelita Pratt, at (202) 273–1813 by Friday, October 27, 1995 before 5:00 p.m. and provide name, organization (if applicable), address and phone number or register to testify in person at the registration desk of the National Conference of Bankruptcy Judges Annual Meeting by 5:00 p.m. on Tuesday, October 31, 1995 by providing name, organization (if applicable), address and phone number.

Oral testimony will be limited to 5 minutes per speaker. The public hearing will end at 5:00 p.m. even if all speakers signed up to testify have not had an opportunity to testify in person. A list of scheduled speakers will be posted at the entrance to the hearing room by noon on Wednesday, November 1, 1995 listing the order in which the speakers will appear. Persons testifying are requested to provide fifteen (15) copies of testimony to the National Bankruptcy Review Commission immediately prior to testifying. Written testimony is not subject to any limitations. Any person can submit written testimony for inclusion in the record of the public hearing up to thirty (30) days after the hearing, December 1, 1995. Such written testimony should be submitted to the National Bankruptcy Review Commission at the address noted above. Persons submitting such testimony should provide fifteen (15) copies of the written testimony to the National Bankruptcy Review Commission.

Jarilyn Dupont,

Executive Director/General Counsel.

[FR Doc. 95–25876 Filed 10–18–95; 8:45 am]

BILLING CODE 6820–36–P

NATIONAL LABOR RELATIONS BOARD

Advisory Committee on Agency Procedure; Meeting

AGENCY: National Labor Relations Board.

ACTION: Notice of meetings.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2 (1972), and 29 CFR 102.136 (1993), the National Labor Relations Board has established a National Labor Relations Board Advisory Committee on Agency Procedure, the purpose of which is to provide input and advice to the Board and General Counsel on changes in Agency procedures that will expedite case processing and improve Agency service to the public. A notice of the establishment of the Advisory Committee was published in the Federal Register on May 13, 1994 (59 FR 25128).

As indicated in that notice, the Committee consists of two Panels which will meet separately, one composed of Union-side representatives and the other of Management-side representatives. Pursuant to Section 10(a) of FACA, the Agency hereby announces that the next meetings of the Advisory Committee Panels will be held on November 6 (Management-side) and November 8, 1995 (Union-side).

TIME AND PLACE: The meeting of the Management-side Panel of the Advisory Committee will be held at 10:00 a.m. on Monday, November 6, 1995, at the National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C., in the Board Hearing Room, Rm 11000. The meeting of the Union-side Panel of the Advisory Committee will he held at 10:00 a.m. on Wednesday, November 8, 1995, at the same location.

AGENDA: The agenda at the meetings of both Advisory Committee Panels will be:

(1) The experience to date with the Board's one-year experimental rule (59 FR 65942) authorizing the use of settlement judges and providing administrative law judges with the discretion to dispense with briefs and issue bench decisions, and whether, in light of that experience, the rule should be extended or made permanent following its January 31, 1996 expiration date.

(2) Whether the Board should eliminate or limit the practice of permitting interlocutory requests for special permission to appeal in unfair labor practice and representation cases.

(3) How the Agency's procedures should otherwise be further streamlined or modified in response to potential budgetary restrictions.

PUBLIC PARTICIPATION: The meetings will be open to the public. As indicated in the Agency's prior notice, within 30 days of adjournment of the later of the Advisory Committee Panel meetings, any member of the public may present written comments to the Committee on matters considered during the meetings. Written comments should be submitted to the Committee's Management Officer and Designated Federal Official, Miguel A. Gonzalez, Executive Assistant to the Chairman, National Labor Relations Board, 1099 14th Street, N.W., Suite 11104, Washington, D.C. 20570–0001; telephone: (202) 273–2864.

FOR FURTHER INFORMATION CONTACT: Advisory Committee Management Officer and Designated Federal Official, Miguel A. Gonzalez, Executive Assistant to the Chairman, National Labor Relations Board, 1099 14th Street, N.W., Suite 11104, Washington, D.C., 20570–0001; telephone: (202) 273–2864.

Dated, October 16, 1995.

By direction of the Board:

John J. Toner,

Acting Executive Secretary.

[FR Doc. 95–25895 Filed 10–18–95; 8:45 am]

BILLING CODE 7545–01–M

PRESIDENTIAL ADVISORY COMMITTEE ON GULF WAR VETERANS' ILLNESSES

Meeting

AGENCY: Presidential Advisory Committee on Gulf War Veterans' Illnesses.

ACTION: Notice of open meeting.

SUMMARY: This notice is hereby given to announce an open meeting of a panel of the Presidential Advisory Committee on Gulf War Veterans' Illnesses. This panel meeting will discuss various research and epidemiological issues and receive comment from members of the public. Dr. Joyce C. Lashof, Advisory Committee chair, will chair this panel meeting.

DATES: November 7, 1995, 9:30 a.m.–5:30 p.m.; November 8, 1995, 8:30 a.m.–1:00 p.m.

PLACE: San Francisco War Memorial, Veterans Building, Green Room, 401 Van Ness, San Francisco, CA 94102.

SUPPLEMENTARY INFORMATION: The President established the Presidential Advisory Committee on Gulf War Veterans' Illnesses by Executive Order 12961, May 26, 1995. The purpose of this committee is to review and provide recommendations on the full range of government activities associated with Gulf War veterans illnesses. The committee reports to the President through the Secretary of Defense, the Secretary of Health and Human Services, and the Secretary of Veterans Affairs. The committee members have expertise relevant to the functions of the committee and are appointed by the President from non-Federal sectors.

Tentative Agenda

Tuesday, November 7, 1995

9:30 a.m. Call to order and opening remarks
9:40 a.m. Public comment
11:00 a.m. Break
11:15 a.m. Public comment (cont.)
12:45 p.m. Lunch
2:30 p.m. Briefings and discussion on research issues
5:30 p.m. Meeting recessed

Wednesday, November 8, 1995

8:30 a.m. Briefings and discussion on research issues (cont.)
10:30 a.m. Break
10:45 a.m. Briefings and discussion on research issues (cont.)
12:30 p.m. Strategies and next steps
1:00 p.m. Meeting adjourned

A final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. Members of the public who wish to make oral statements should contact the Advisory Committee at the address or telephone number listed below at least five business days prior to the meeting. Reasonable provisions will be made to include on the agenda presentations from individuals who have not yet had an opportunity to address the Advisory Committee, and requests to appear at this panel meeting will be accommodated on a first come, first served basis. The Advisory Committee Chair is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. People who wish to file written statements with the Advisory Committee may do so at any time.

FOR FURTHER INFORMATION CONTACT: Michael E. Kowalok, Presidential Advisory Committee on Gulf War Veterans' Illnesses, 1411 K Street, N.W., suite 1000, Washington, DC 20005, Telephone: (202) 761–0066, Fax: (202) 761–0310.

Dated: October 16, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–25947 Filed 10–18–95; 8:45 am]

BILLING CODE 5000–04–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36368; File No. S7–24–89]

Joint Industry Plan; Solicitation of Comments and Orders Approving Amendment No. 5 to Reporting Plan for Nasdaq/National Market Securities Traded on an Exchange on an Unlisted or Listed Basis, Submitted by the National Association of Securities Dealers, Inc., and the Boston, Chicago and Philadelphia Stock Exchanges

October 13, 1995.

On October 12, 1995, the National Association of Securities Dealers, Inc., and the Boston, Chicago, and Philadelphia Stock Exchanges (collectively, ''Participants'')[1] submitted to the Commission proposed Amendment No. 5 to a joint transaction reporting plan (''Plan'') for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis.[2]

[1] The signatories to the Plan, i.e., the National Association of Securities Dealers, Inc. (''NASD''), and the Chicago Stock Exchange, Inc. (''Chx'') (previously, the Midwest Stock Exchange, Inc.), Philadelphia Stock Exchange, Inc. (''Phlx''), and the Boston Stock Exchange, Inc. (''BSE''), are the ''Participants.'' The BSE, however, joined the Plan as a ''Limited Participant,'' and reports quotation information and transaction reports only in Nasdaq/National Market (previously referred to as ''Nasdaq/NMS'') securities listed on the BSE. Originally, the American Stock Exchange, Inc., was a Participant to the Plan, but did not trade securities pursuant to the Plan, and withdrew from participation in the Plan in August 1994.

[2] The Commission notes that Section 12(f) of the Act describes the circumstances under which an exchange may trade a security that is not listed on the exchange, *i.e.*, by extending unlisted trading privileges (''UTP'') to the security. Section 12(f) was amended on October 22, 1994, 15 U.S.C. 78*l* (1991) (as amended 1994). Prior to the amendment,

Continued

The Commission is approving the proposed amendment to the Plan and trading pursuant to the Plan on a temporary basis to expire on November 12, 1995.

I. Background

The Commission originally approved the Plan on June 26, 1990.[3] The Plan governs the collection, consolidation and dissemination of quotation and transaction information for Nasdaq/National Market securities listed on an exchange or traded on an exchange pursuant UTP. The Commission originally approved trading pursuant to the Plan on a one-year pilot basis, with the pilot period to commence when transaction reporting pursuant to the Plan commenced. Consequently, the pilot period commenced on July 12, 1993. As requested by the Participants in Amendment Nos. 1, 2, 3, and 4 to the Plan, the Commission has extended the effectiveness of the Plan four times. Accordingly, the effectiveness of the Plan was scheduled to expire on October 12, 1995.[4]

As originally approved by the Commission, the Plan required the Participants to complete their negotiations regarding revenue sharing during the one-year pilot period. The January 1995 Extension Order approved the effectiveness of the Plan through August 12, 1995, and since that time the Commission has expected the Participants to conclude their financial negotiations promptly (at that time, before January 31, 1995), and to submit a filing to the Commission that reflected the results of the negotiations.[5] To date, the Participants have not completed their financial negotiations.

Proposed Amendment No. 5 to the Plan would extend the effectiveness and the negotiation period for an additional month through November 12, 1995. The Commission believes it is appropriate to extend the effectiveness of the pilot program for an additional month in order to continue the pilot program in place while the Commission awaits the Participants' filing of a proposed Plan amendment concerning revenue sharing pursuant to the Plan.[6]

II. Extension of Certain Exemptive Relief

In conjunction with the Plan, on a temporary basis scheduled to expire on October 12, 1995, the Commission granted an exemption from Rule 11Ac1–2 under the Act regarding the calculated best bid and offer (''BBO''), and granted the BSE an exemption from the provision of Rule 11Aa3–1 under the Act that requires transaction reporting plans to include market identifiers for transaction reports and last sale data. At the request of the Participants, this order extends these exemptions through November 12, 1995, provided that the Plan continues in effect through that date pursuant to a Commission order.[7] The Commission continues to believe that exemptive relief from these provisions is appropriate through November 12, 1995.

III. Comments on the Operation of the Plan

In the January 1995 Extension Order, the August 1995 Extension Order, and the September 1995 Extension Order, the Commission solicited, among other things, comment on: (1) Whether the BBO calculation for the relevant securities should be based on price and time only (as currently is the case) or if the calculation should include size of the quoted bid or offer; and (2) whether there is a need for an intermarket linkage for order routing and execution and an accompanying trade-through rule. The Commission continues to solicit comment on these matters.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. All submissions should refer to File No. S7–24–89 and should be submitted by November 9, 1995.

V. Conclusion

The Commission finds that proposed Amendment No. 5 to the Plan to extend the operation of the Plan and the financial negotiation period for an additional month is appropriate and in furtherance of Section 11A of the Act. The Commission finds further that extensions of the exemptive relief requested through November 12, 1995, as described above, also is consistent with the Act and the Rules thereunder. Specifically, the Commission believes that these extensions should serve to provide the Participants with more time to conclude their financial negotiations and with more information to evaluate the effects of and proposed course of action for the pilot program. This, in turn, should further the objects of the Act in general, and specifically those set forth in Sections 12(f) and 11A of the Act and in Rules 11Aa3–1 and 11Aa3–2 thereunder.

It is therefore ordered, pursuant to Sections 12(f) and 11A of the Act and (c)(2) of Rule 11Aa3–2 thereunder, that Amendment No. 5 to the Joint Transaction Reporting Plan for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis is hereby approved, and trading

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Section 12(f) required exchanges to apply to the Commission before extending UTP to any security. In order to approve an exchange UTP application for a registered security not listed on any exchange (''OTC/UTP''), Section 12(f) required the Commission to determine that various criteria had been met concerning fair and orderly markets, the protection of investors, and certain national market initiatives. These requirements operated in conjunction with the Plan currently under review. The recent amendment to Section 12(f), among other matters, removes the application requirement and permits OTC/UTP only pursuant to a Commission order or rule. The order or rule is to be issued or promulgated under essentially the same standards that previously applied to Commission review of UTP applications. The present order fulfills these Section 12(f) requirements.

[3] See Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (''1990 Approval Order''). For a detailed discussion of the history of UTP in OTC securities, and the events that led to the present plan and pilot program, see 1994 Extension Order, *infra* note 4.

[4] See Securities Exchange Act Release No. 34371 (July 13, 1994), 59 FR 37103 (''1994 Extension Order''). See also Securities Exchange Act Release No. 35221, (January 11, 1995), 60 FR 3886 (''January 1995 Extension Order''), Securities Exchange Act Release No. 36102 (August 14, 1995), 60 FR 43626 (''August 1995 Extension Order''), and Securities Exchange Act Release No. 36226 (September 13, 1995), 60 FR 49029 (''September 1995 Extension Order'').

[5] See January 1995 Extension Order, *id*, at n. 6.

[6] The NASD, in its letter attached to the present filing, states that all Plan Participants have made a good faith effort to reach a final agreement on revenue sharing under the Plan, but that the Chx has requested a limited amount of time to conclude internally its consideration of the most recent draft of the financial plan amendment. See letter from Robert E. Aber, NASD, to Jonathan Katz, Commission, dated October 11, 1995. The Participants are reminded that they currently are in violation of the Commission's August 1995 Extension Order that required the Participants to submit a filing concerning revenue sharing on or before August 31, 1995. The Commission continues to urge the Participants to comply with the Commission's request for the filing promptly.

[7] In the September 1995 Extension Order, the Commission extended these exemptions from September 12, 1995, through October 12, 1995. Pursuant to a request made by the NASD, this order further extends the effectiveness of the relevant exemptions from October 12, 1995, through November 12, 1995. See letter dated October 11, 1995, *id*.

pursuant to the Plan is hereby approved on a temporary basis through November 12, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(29).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–25927 Filed 10–18–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36364; File No. SR–OPRA–95–1]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Amendment to OPRA Fee Schedule Revising the Information Fees Payable by Professional Subscribers to Last Sale and Quotation Information

October 12, 1995.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 (''Exchange Act''), notice is hereby given that on September 15, 1995, the Options Price Reporting Authority (''OPRAS'')[1] submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''Plan''). The amendment revises the information fees payable by professional subscribers to last sale and quotation information. OPRA has designated this proposal as establishing or changing a fee or other charge collected on behalf of all of the OPRA participants in connection with access to or use of OPRA facilities, permitting the proposal to become effective upon filing pursuant to Rule 11Aa3–2(c)(3)(i) under the Exchange Act. The Commission is publishing this notice to solicit comments from interested persons on the amendment.

I. Description and Purpose of the Amendment

The purpose of the amendment is to revise the fees payable to OPRA by professional subscribers for access to securities options market data and related information (''OPRA data''), so that a greater share of the costs of collecting, consolidating, processing and transmitting OPRA data will be covered by these fees.[2] Professional subscribers are those persons that subscribe to OPRA data and do not qualify for the reduced fees charged to nonprofessional subscribers. OPRA's professional subscriber fees were last revised in 1991, over a four year period beginning in January 1992 and ending in January 1995.

The current schedule of professional subscriber fees offers volume discounts to larger subscribers by reducing the fee per device as the total number of devices maintained by a subscriber increases. There are six separate pricing tiers covering the range from one device to 750 or more devices per subscriber. In addition, the schedule provides for discounts to subscribers that are members of one or more of OPRA's participating exchanges.

OPRA is proposing the fee changes because, over the four years that have elapsed since the last professional subscriber fee change was authorized in 1991, the costs of collecting, processing, consolidating and disseminating options last sale and bid/ask information have increased. In large part, the increase is due to the implementation of systems and equipment upgrades and additions that have enhanced the capacity, reliability, and security of the OPRA system. Further, OPRA anticipates that these costs will continue to escalate. OPRA believes that the costs associated with the processing of OPRA data are largely independent of trading volume and, therefore, it has determined that a larger share of such costs should be covered by revenues that also are largely independent of volume. The proposed amendment is intended to achieve this objective, and to allocate market information fees fairly among the different categories of professional subscribers that pay such fees.

OPRA proposes to implement the amendment in four stages. The implementation will take place on January 1 in each of the years 1996, 1997, 1998, and 1999. Over this period, changes will be made both to the structure and level of the fees charged to professional subscribers. Structurally, the proposed amendment retains the concept of a volume discount. Over the course of the four year phase-in, however, the number of tiers will be reduced from six to two. In addition, a member firm discount will be maintained during the first three years of the phase-in, but will be eliminated in the four year. These structural changes are being proposed in order to simplify the administration of the professional subscriber fee for OPRA, its vendors and subscribers.

Changes in the level of OPRA's professional subscriber fees will reduce the fees paid by smaller and medium-size subscribers and increase the fees paid by larger subscribers. By the end of the phase-in period, the fee paid by subscribers having less than 100 devices will be established at a flat monthly rate of $19 per device. This will result in a fee reduction for subscribers that have less than ten devices and currently pay monthly device charges ranging from $22 to $55 ($23 to $55 for nonmembers), and an increase for subscribers that have from 10 to 99 devices and currently pay monthly device charges ranging from $10 to $13 ($11 to $14 for nonmembers). By the end of the same period, the fee paid by subscribers with 100 or more devices will be established at a flat monthly rate of $11 per device. This flat rate compares with current monthly charges from $8 to $10 ($9 to $11 for nonmembers) paid by these larger subscribers. Assuming no change to the size or distribution of OPRA's total professional base, OPRA estimates that the net result of the fee changes in professional subscriber fees over the entire implementation period is estimated to result in an overall increase of 4.9%, 4.8%, 5.4%, and 5.3% at the end of each year respectively.

II. Solicitation of Comments

Pursuant to Rule 11Aa3–2(c)(3), the amendment is effective upon filing with the Commission. The Commission may summarily abrogate the amendment within 60 days of its fling and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3–2(c)(2), if it appears to the Commission that such action is necessary or appropriate in the public interest; for the protection of investors and the maintenance of fair and orderly markets; to remove impediments to, and perfect the mechanisms of, a National Market System; or otherwise in furtherance of the purposes of the Exchange Act.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing.

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[1] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Exchange Act and Rule 11Aa3–2 thereunder. Securities Exchange Act Release No. 17638 (Mar. 18, 1981).

The Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the five member exchanges. The five exchanges which agreed to the OPRA Plan are the American Stock Exchange (''AMEX''); the Chicago Board Options Exchange (''CBOE''); the New York Stock Exchange (''NYSE''); the Pacific Stock Exchange (''PSE''); and the Philadelphia Stock Exchange (''PHLX'').

[2] Concurrently with this filing, OPRA has filed an amendment to the OPRA Plan proposing a new fee payable by subscribers to OPRA's foreign currency option (''FCO'') service, effective January 1, 1996. The separate proposal has been made pursuant to the OPRA Plan as amended effective March 14, 1995, that authorizes OPRA to impose separate fees for access to or for the use of information pertaining solely to FCOs. Upon the effectiveness of the foreign currency option subscriber fee, therefore, OPRA's basic professional and nonprofessional subscriber fees will cover access to all OPRA data except for data pertaining to FCOs.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available at the principal offices of OPRA. All submissions should refer to file number SR–OPRA–95–1 and should be submitted by November 9, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–25928 Filed 10–18–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36365; International Series No. 868, File No. SR–OPRA–95–2]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Amendment to OPRA Fee Schedule Establishing a Fee Payable by Subscribers to Last Sale and Quotation Information Pertaining to Foreign Currency Options

October 12, 1995.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 (''Exchange Act''), notice is hereby given that on September 15, 1995, the Options Price Reporting Authority (''OPRA'')[1] submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''Plan''). The amendment establishes a fee payable by subscribers to last sale and quotation information pertaining to foreign currency options (''FCOs''). OPRA has designated this proposal as establishing or changing a fee or other charge collected on behalf of the OPRA participants in connection with access to or use of OPRA facilities, permitting the proposal to become effective upon filing pursuant to Rule 11Aa3–2(c)(3)(i) under the Exchange Act. The Commission is publishing this notice to solicit comments from interested persons on the amendment.

I. Description and Purpose of the Amendment

The purpose of the amendment is to establish a subscriber fee payable to OPRA for access to last sale and quotation information and related information pertaining to FCOs. OPRA's existing subscriber fee currently covers access to all securities options market information emanating from OPRA's participant exchanges, including information pertaining to FCOs. In accordance with the OPRA Plan as amended,[2] OPRA is authorized to impose separate fees for access to or for the use of information pertaining solely to FCOs, if the participant exchanges that provide a market in FCOs determine to impose separate FCO fees.

A subscriber to OPRA's FCO service will be subject to a monthly fee based upon the number of electronic display or interrogation devices maintained by the subscriber that are capable of displaying or reporting FCO information. The proposed FCO subscriber fee offers volume discounts to larger subscribers by reducing the fee per device as the total number of devices maintained by a subscriber increases. There are four pricing tiers covering the range from one device to 750 or more devices per subscriber.[3]

The proposed FCO subscriber fee is scheduled to take effect on January 1, 1996. Prior to that time, existing OPRA subscribers will be given notice of the new FCO fee, and an opportunity to indicate whether they wish to continue to receive FCO information and thereby subject themselves to the FCO fee.

The PHLX, as the only exchange currently providing a market in FCOs, has duly authorized the proposed subscriber fee in accordance with the OPRA Plan. In addition, the PHLX has notified all other OPRA participant exchanges of the proposed fee change.

II. Solicitation of Comments

Pursuant to Rule 11Aa3–2(c)(3), the amendment is effective upon filing with the Commission. The Commission may summarily abrogate the amendment within 60 days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3–2(c)(2), if it appears to the Commission that such action is necessary or appropriate in the public interest; for the protection of investors and the maintenance of fair and orderly markets; to remove impediments to, and perfect the mechanisms of, a National Market System; or otherwise in furtherance of the purposes of the Exchange Act.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available at the principal offices of OPRA. All submissions should refer to file number SR–OPRA–95–2 and should be submitted by November 9, 1995.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–25929 Filed 10–18–95; 8:45 am]

BILLING CODE 8010–01–M

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[3] 17 CFR 200.30–3(a)(29).

[1] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Exchange Act and Rule 11Aa3–2 thereunder. Securities Exchange Act Release No. 17638 (Mar. 18, 1981).

The Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the five member exchange. The five exchanges which agreed to the OPRA Plan are the American Stock Exchange (''AMEX''); the Chicago Board Options Exchange (''CBOE''); the New York Stock Exchange (''NYSE''); the Pacific Stock Exchange (''PSE'') and the Philadelphia Stock Exchange (''PHLX'').

[2] See Securities Exchange Act Release No. 35487, International Series Release No. 792 (March 14, 1995), 60 FR 14984 (March 21, 1995) (Order approving unbundling services for FCOs and Index options).

[3] The tiers are as follows:

(1) For 1 device, the fee per device is $3.00;

(2) For 2–9 devices, the fee per device is $2.50;

(3) For 10–749 devices, the fee per device is $2.00; and

(4) For 750 or more devices, the fee per device is $1.50.

[4] 17 CFR 200.30–3(a)(29).

[Release No. 34–36367; File No. SR–DGOC–94–06]

Self-Regulatory Organization; Delta Government Options Corp.; Order Approving Implementation of New Procedures Allowing for the Clearance and Settlement of Repurchase Transactions and Reverse Repurchase Transactions

October 13, 1995.

On October 31, 1994, Delta Government Options Corp. (''DGOC'') submitted a proposed rule change (File No. SR–DGOC–94–06) to the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Act'')[1] to permit DGOC to implement a new system to clear and settle repurchase agreements (''repos'') transactions and reverse repurchase agreements (''reverse repos'') transactions. On December 19, 1994, January 10, 1995, January 24, 1995, February 13, 1995, and March 3, 1995, DGOC filed amendments to the proposed rule change.[2] Notice of the proposal appeared in the Federal Register on March 21, 1995, to solicit comment from interested persons.[3] On July 12, 1995, and on August 9, 1995, DGOC filed technical amendments to the proposed rule change.[4] The Commission received two comment letters from one commenter.[5] For the reasons and subject to the conditions discussed below, the Commission is approving the proposed rule change.

[1] 15 U.S.C. 78s(b)(1988).

[2] Letters from: Barry E. Silverman, President, DGOC, to Jerry W. Carpenter, Assistant Director, Office of Securities Processing Regulation (''OSPR''), Division of Market Regulation (''Division''), Commission (December 16, 1994); Barry E. Silverman, President, DGOC, to Jerry W. Carpenter, Assistant Director, OSPR, Division, Commission (January 9, 1995); Kathryn V. Natale, Morgan, Lewis & Bockius, to Jerry W. Carpenter, Assistant Director, OSPR, Division, Commission, (January 20, 1995); Kathryn V. Natale, Morgan, Lewis & Bockius, to Jerry W. Carpenter, Assistant Director, OSPR, Division, Commission (February 10, 1995); and Barry E. Silverman, President, DGOC, to Christine M. Sibille, Senior Counsel, OSPR, Division, Commission (March 2, 1995).

[3] Securities Exchange Act Release No. 35491 (March 15, 1995), 60 FR 14987.

[4] See, *e.g.*, notes 16 and 24. Letter from Kathryn V. Natale, Morgan, Lewis & Bockius, to Jerry W. Carpenter, Assistant Director, OSPR, Division, Commission (July 12, 1995) and letter from Kathryn V. Natale, Morgan, Lewis & Bockius, to Christine M. Sibille, Senior Counsel, OSPR, Division, Commission (August 8, 1995). These amendments were technical amendments that did not require republication of notice.

[5] Letters from Jeffrey Ingber, General Counsel and Secretary, Government Securities Clearing Corporation (''GSCC''), to Jerry W. Carpenter, Assistant Director, OSPR, Division, Commission (June 5, 1995 [''June 5 GSCC letter'']) and July 19, 1995 [''July 19 GSCC letter'']).

I. Description of the Proposal

The proposed rule change establishes a trade matching clearance and settlement system for repos and reverse repos in U.S. Treasury Securities that will be offered to DGOC participants. Repo system participants must be approved by DGOC's executive committee,[6] which will assign to each participant a maximum potential system exposure (''MPSE'') limit[7] and a trading limit[8] and may assign a participant a position limit for a particular CUSIP.[9]

DGOC's system will clear repo and reverse repo transactions that result from direct agreements between two participants and repo and reverse repo transactions that have been agreed to through the facilities of brokers that have been specially authorized by DGOC (''Authorized Brokers'') to offer their services to DGOC participants.[10] Participants may submit to DGOC for clearance only those repos and reverse repos that were entered into as principals with other DGOC repo system participants or Authorized Brokers and may not submit repos or reverse repos executed with or for their customers.

DGOC's rules do not purport to govern trading conventions of Authorized Brokers which will use their own communications networks for the purpose of accepting bids and offers and effecting repo and reverse repo transactions that will be cleared through DGOC. After the repo or reverse repo has been executed, the Authorized Broker then will prepare either one trade report, representing both sides of the transaction, or two trade reports, one for each side of the transaction.[11] The Authorized Broker then will forward the trade report or reports to DGOC. If two participants entered into a repo transaction directly between themselves, each participant will forward a trade report to DGOC indicating its side of the transaction.[12] If DGOC does not receive a trade report from one of the parties to the transaction, DGOC will contact that party within one half-hour to confirm the trade entered against them.

The trade report must show for each transaction (a) the identity of the reporting party and the contraparty, (b) the type of transaction, (c) the CUSIP number for the underlying collateral, (d) the repo rate for the transaction, (e) the par amount of securities for the total transaction, (f) the par amount of securities for each delivery and the associated money, (g) the trade date and time, and (h) the on-date and the off=date of the transaction.[13] DGOC will

[6] The standards for participation are similar to the standards for participation in DGOC's options clearance system. For example, broker-dealer members must have minimum net capital of $25 million, and bank or insurance company members must have total equity capitalization of $500 million.

[7] A participant's MPSE is the sum of the participant's net exposure from repo and reverse repo positions and the net short position in options as offset by the net long position in options, all as adjusted to reflect a six standard deviation movement in the market price of the underlying treasury securities, minus the total margin placed on deposit with DGOC by that participant and margin funds due and owing from such participant at or before the immediate succeeding settlement time. If the MPSE for a participant exceeds its MPSE limit, the participant must deposit additional margin equal to the excess.

DGOC also establishes a total systemic MPSE is the sum of each participant's individual MPSE and is intended to represent the maximum loss DGOC could incur. The total systemic MPSE may not exceed one-third of the letters of credit or surety bonds that DGOC has in place to secure payments in event of participant default (''credit enhancement facility''). Currently, the credit enhancement facility totals $100 million with an additional $50 million in stand-by credit. Before the repo system becomes operational, DGOC will increase its credit enhancement facility to $250 million with $50 million in stand-by credit.

[8] The trading limit will represent DGOC's maximum credit exposure from a participant based on the sum of potential changes (a three standard deviation movement over two days) in a participant's positions that have not been covered by margin on deposit.

[9] If a position limit is exceeded, DGOC may prevent a participant from opening new positions or may require a participant to reduce its outstanding positions.

[10] Currently, Liberty Brokerage, Inc. and RMJ Special Brokerage Inc. are Authorized Brokers. DGOC will file with the Commission a proposed rule change pursuant to Section 19(b)(3)(A) of the Act prior to the addition of each new Authorized Broker. Such rule filing will include a needs assessment addressing the liquidity and operational demands that the increase in the volume of repos and reverse repos to be cleared through DGOC as a result of the new Authorized Broker will make on DGOC's system and the resources that DGOC has to meet the new demands. Letter from Robert Mendelson, Morgan, Lewis & Bockius, to Jonathan Kallman, Associate Director, Division, Commission (September 19, 1995).

[11] Whether the Authorized Broker prepares one trade report or two trade reports is determined by the Authorized Broker's internal procedures and not by any procedure of DGOC.

[12] Pursuant to DGOC's rules, a participant must provide a trade report to DGOC within one half-hour of the time that the transaction occurs if the transaction occurs prior to 1:30 p.m. If the transaction occurs between 1:30 p.m. and 2:15 p.m., a participant must deliver a trade report to DGOC within five minutes of the transaction. If the transaction occurs after 2:15 p.m., a participant must deliver a trade report to DGOC as soon as possible but in no event later than five minutes after the transaction. With respect to transactions for settlement on another day, a trade report must be delivered to DGOC by 6:00 p.m. of the trade date.

[13] On-date is the settlement date for the first leg of the repo or reverse repo transaction (*i.e.*, the date the holder of a repo delivers the securities against delivery by the holder of the corresponding reverse repo of payment for such securities). The off-date is the settlement date for the closing leg of the repo or reverse repo transaction (*i.e.*, the date the holder of a repo receives back its securities in exchange for

Continued

review all trade reports to determine if all required information has been submitted and if their contents are valid.

If two separate trade reports are received for a transaction, DGOC will match the two trade reports. In order to be accepted for clearance, the details of the trade reports must agree. If the details do not match, DGOC will return the trade reports to the sending party or parties until all the terms are reconciled. Matching of transactions will be done continuously throughout the day and at the close of each trading day.[14] All trade reports received through an Authorized Broker also will be confirmed by DGOC either orally or via facsimile with the buying and selling participants.

DGOC will be deemed to have accepted a transaction for clearance when DGOC has matched and verified all the information on the trade report(s). However, DGOC will reject any transaction if it causes a participant to exceed its trading or position limits, if the participant has been suspended from the system, or if the transaction is not designated as delivery versus payment. If the transaction is accepted, DGOC will interpose itself as the contraparty to both sides of the transaction. DGOC then will determine if either party must post additional margin as a result of the transaction. Each day participants will receive a written activity report indicating which trades DGOC accepted the previous business day and all trades due to settle that day.[15]

DGOC will net trades under two circumstances. If a participant has a repo and a reverse repo with the same underlying collateral and same on-date or off-date,[16] the settlement positions will be netted as to par amount, price, and accrued interest. If a participant renews a maturing repo or reverse repo for the same underlying collateral prior to the off-date for such repo, DGOC will report to the participant the net money difference between the two repo transactions, and the deliver and receive obligations will be netted.

The details of the trade will be sent to DGOC's clearing bank[17] along with delivery instructions. Each participant must maintain a bank account in one or more correspondent banks for margin and trade settlements. Because U.S. Treasury securities typically are maintained in book-entry accounts at Federal Reserve Banks and are delivered through the Federal Reserve System's Fed Wire system, the selected correspondent bank must be a depository institution with access to the Fed Wire system.

DGOC will establish delivery cut-off times. For example, in the case of opening repurchase transactions the selling participant must deliver the securities to DGOC's clearing bank against payment no later than one minute prior to the close of the Fed Wire system on the settlement day.[18] DGOC's clearing bank will redeliver such securities to the purchasing participant against payment.

If the selling participant fails to delivery the securities on the settlement day by one minute prior to the close of the Fed Wire system, DGOC has the option to buy-in the securities with the cost of such buy-in being charged to the defaulting selling participant. If DGOC decides to buy-in a defaulting selling participant, DGOC will give the participant written notice of the buy-in which will describe the security, quantity, and price.

If the purchasing participant does not accept all of the securities on the settlement day by one half-hour after the close of the Fed Wire system, DGOC may sell-out the securities with the cost of such sell-out being charged to the defaulting purchasing participant. After the sell-out, DGOC will give the participant written notice of the sell-out which will describe the security, quantity, and the selling price.

DGOC will adapt its existing margining methodology for its options system to incorporate repo transaction and reverse repo transaction exposures. The amount of margin a participant must deposit will be derived from two calculations: Mark-to-market and performance margin.[19] Margin will be calculated every business day based on the difference between the aggregate net price of all repos and reverse repos and the net value of those positions including the repo interest obligation, at the time margin is calculated.[20] Mark-to-market will represent the net amount of the estimated cost to liquidate a participant's under-margined positions offset by the estimated proceeds from liquidation of its over-margined positions. Performance margin will represent an estimate of the net shortfall from the liquidation of a participant's repo positions at the close of the next business day assuming an adverse market movement of three standard deviations based on the last one hundred days closing prices of the underlying Treasury securities.[21]

Prior to 8:00 a.m. of each business day, each participant will be issued a daily margin report which will indicate the participant's margin surplus or deficit. At or before settlement time on each business day, each participant will be obligated to deposit sufficient margin to satisfy the margin deficit shown on the daily report.[22] Margin may be deposited in the form of ''Central Bank funds'' [23] or Treasury bills.[24] Treasury bills will be valued at 95% of their market value. All participants will be required to maintain a minimum margin deposit of $1 million par amount of Treasury bills with a maturity of not greater than 180 days.

In the event of a failure to deliver securities on either the on-leg or off-leg where DGOC does not buy-in the

payment to the holder of the corresponding reverse repo).

[14] The close of each trading day will be at 2:30 p.m.

[15] If the on-leg is scheduled to settle on the trade date, participants will not receive confirmation that DGOC has accepted the trade until the day after the on-leg has settled.

[16] The notice of the proposed rule change stated that only off-date settlements would be netted. The July 12, 1995, amendment provides that on-date settlements also will be netted.

[17] The clearing bank is the commercial bank that performs the clearance and settlement of repos and reverse repos.

[18] Any delivery made by a selling participant after the one minute prior to the close of the Fed Wire System will be accepted on a best efforts basis, and DGOC will return the collateral to the selling participant if DGOC is unable to delivery to the purchasing participant in good delivery time. DGOC must deliver to the purchasing participant prior to the normal close of the Fed Wire system unless the purchasing participant agrees to accept late delivery.

[19] This is a separate obligation from a participant's obligation to deposit additional margin if its exceeds its MPSE limit.

[20] The value of the underlying collateral will be based on an industry accepted source of U.S. Treasury prices. The value of the repo is based on repo broker prices where available and if repo broker prices are not available on a survey of five dealers.

[21] In order to calculate performance margin, each repo is classified in one of nine sectors based on the maturity date of the underlying collateral. Margin is calculated in each sector based on assumptions of an increase and a decrease in security price. A participant must deposit margin based on the sum of the worst case (either a rise or a decline in value) from each sector. In contrast, when calculating the MPSE, DGOC assumes either a rise in value or a decline in value for all positions.

[22] Excess margin deposits will be released to the participant's correspondent bank within six hours after settlement time.

[23] Central Bank Funds is defined as cash balances available for immediate withdrawal in accounts maintained at banks that are members of the Federal Reserve System or any other wire system operated in a similar fashion or possessing similar characteristics or attributes.

[24] The notice of the proposed rule change stated that DGOC would accept Treasury notes and Treasury bonds as margin. The August 9, 1995, amendment clarified that these securities will not be accepted for margin purposes.

participant's securities, DGOC will still calculate and if appropriate collect margin deposits from one or both of the parties to the transaction. DGOC also may elect to collect intraday margin if DGOC deems such collection necessary or advisable to reflect a market price change, the size of the participant's positions, the financial or operational condition of the participant, or otherwise to protect DGOC.

II. Comments

The Commission received two comment letters from one commenter opposing the proposal.[25] This commenter argues that DGOC's services will adversely affect the safety and soundness of the repo marketplace, will pose risks to the commenter's members that use DGOC's services in ways that the commenter cannot control, and may irreparably harm the potential for effective servicing of the marketplace through efficient linkages.[26] DGOC responded, asserting that the commenter has made inaccurate assumptions about DGOC's proposed system,[27] and that the public benefits are substantial.[28]

III. Discussion

Section 17A(a)(2)(A) of the Act directs the Commission to facilitate the establishment of a national system for the clearance and settlement of securities transactions.[29] Section 17A(b)(3)(F) requires that the rules of the clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[30] For the reasons set forth below, the Commission believes DGOC's system for the clearance and settlement of repo and reverse repo transactions meets these requirements. As a result, the Commission is approving DGOC's proposed rule change implementing such system.

The Commission believes that DGOC's proposed repo clearance system will assist in the development of the national clearance and settlement system by providing a centralizing mechanism for transactions that are currently cleared and settled outside the facilities of a registered clearing agency. These trades may well benefit from DGOC's margining and netting systems and other risk reduction procedures which should decrease the likelihood of failure to settle.[31] Furthermore, repo transactions executed with an Authorized Broker will be submitted directly to DGOC by the Authorized Brokers. This should result in increased efficiency connected with the clearance and settlement of repo transactions by eliminating the need for the broker-dealer contraparty to enter transaction data with DGOC.[32] The Commission therefore believes that DGOC's system with the conditions and limitations set forth above is consistent with the purposes of Section 17A of the Act.

The one adverse commenter argues that DGOC's system does not have sufficient capacity and that its manual comparison processes are inefficient. While it is true that DGOC's system is not as fully automated as some other clearance and settlement systems, the Commission has reviewed capacity tests provided by DGOC that indicate that DGOC has sufficient capacity to function appropriately.

Furthermore, DGOC has agreed that it will conduct a needs assessment and an evaluation of liquidity sources and operational capacity upon reaching an average of $10, $20, and $30 billion of outstanding principal amount of repos and reverse repos over a ten day moving period with on time spikes of $25, $35, and $45 billion, respectively. DGOC will provide the Commission with its findings of each of its reviews.[33] When DGOC reaches the $30 billion threshold, it will file a proposed rule change pursuant to Section 19(b)(2) of the Act.[34] It is anticipated that the proposed rule change will request either an increase in DGOC's volume limitations or removal of all volume limitations. The proposed rule change will give the Commission the opportunity to revisit DGOC's systems capacity, operation capability, and liquidity sources. During the Commission's review of DGOC's proposed rule change, the principal amount of outstanding repos and reverse repos in DGOC's system over a ten day moving period may reach but not exceed an average of $45 billion. Based on these limitations, the Commission believes that DGOC has the capacity to facilitate the prompt and accurate clearance and settlement of repo transactions in a safe and sound manner.

The commenter believes that the absence of a clearing fund results in DGOC having insufficient financial strength. At the time of DGOC's initial registration as a clearing agency, the Commission considered whether the absence of a clearing fund created unnecessary financial risks.[35] The Commission determined that, at least initially, DGOC's credit analysis of participants, participant monitoring, margin requirements, credit enhancement facilities, and MPSE limits

[25] *Supra* note 5.

[26] Specifically, GSCC asserts that: (1) DGOC's manual comparison process will create inefficiencies; (2) DGOC has insufficient capacity for the large repo market; (3) DGOC has insufficient financial strength; (4) DGOC's privately-held corporate structure makes it unresponsive to the industry; (5) DGOC's margining system does not pass credits to participants or pay interest on mark-to-market debits; (6) DGOC's system will bifurcate the netting and risk management process for Treasury Securities; and (7) DGOC's filing does not discuss the impact on the national system.

[27] Letter from Barry E. Silverman, President, DGOC, and Steven K. Lynner, President, RMJ, to Jerry W. Carpenter, Assistant Director, OSPR, Division, Commission (July 7, 1995).

[28] DGOC asserts that its comparison process, like GSCC's process, relies on same day batch processing with delivery of reports indicating the confirmations on a next business day basis. DGOC asserts it has sufficient capacity and expertise to handle the repo market based on its experience in options on Treasury Securities gained during the last five years. DGOC believes that its systems are designed to handle any capacity and vulnerability issues that may arise and that its established infrastructure and expertise are suited to conducting clearance, netting, and settlement in the repo market. DGOC believes that it has sufficient financial strength to operate its proposed repo system based on its credit enhancement facility and margining system. DGOC states that even though its corporate structure is for profit, it is still responsive to the industry. For example, DGOC met with many industry members during the development of its repo system.

DGOC believes that its proposed repo system would have a positive effect on the national clearance and settlement system by providing a centralized clearance and settlement facility for repos and reverse repos where government securities are the underlying collateral. DGOC believes that its system will reduce credit risk exposure, decrease capital utilization, reduce transaction flow, and impose efficiency in the marketplace. DGOC also believes that additional systemic benefits will be derived through its imposition of daily margin requirements which will enhance probability of performance on the part of participants and through its netting which will result in the optimal use of collateral. DGOC also states that by acting as the common counterparty to all repo and reverse repo transactions submitted to it for clearance and settlement, its system will provide additional transparency and access to capital markets.

[29] 15 U.S.C. 78q–1(a)(2)(A) (1988).

[30] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[31] The Commission notes that DGOC's netting system is limited in scope. For example, at this time DGOC does not net deliver and receive obligations from options transactions with deliver and receive obligations from repos.

[32] It is important to note that participants are not required to settle all trades through DGOC. Instead, only trades entered into through screens designated for that purpose are submitted directly to DGOC.

[33] Letter from Robert Mendelson, Morgan, Lewis & Bockius, to Jonathan Kallman, Associate Director, Division, Commission (September 19, 1995). DGOC also has agreed to provide semiannual reports on the experiences its has with fails and defaults and liquidity facility usages.

[34] The proposed rule changes will incorporate DGOC's needs assessments and evaluation of liquidity resources and operational capacity undertaken when the system reached the $30 billion threshold. Letter from Barry E. Silverman, President, DGOC, to Larry E. Bergmann, Associate Director, Division, and Jonathan Kallman, Associate Director, Division, Commission (October 10, 1995).

[35] Securities Exchange Act Release No. 26450 (January 12, 1989), 54 FR 2010.

provided sufficient safeguards and liquidity to allow DGOC's system to begin operations. The Commission continues to believe that when coupled with DGOC's commitment to reevaluate its systems and controls at various volume levels, DGOC's risk reduction and monitoring procedures are designed to provide adequate protection from the risks presented by the clearance and settlement of repos and reverse repos.

The commenter further argues that DGOC's organization as a corporation without a user governed board results in DGOC being less responsive to industry concerns. The Act does not prohibit for profit corporations from serving as clearing agencies. In fact, the Division's release outlining its standards for clearing agencies notes that the clearing agencies then in existence included profit making entities.[36] However, the Division in that release stated that notwithstanding a clearing agency's corporate structure, a clearing agency must provide for fair representation by its participants in the selection of its directors and administration of its affairs. In the first order granting DGOC temporary registration, the Commission found that DGOC was providing representation to its participants in the administration of its affairs through the use of a participants advisory committee.[37] However, the Commission recently has been informed that DGOC does not have a participants advisory committee for its options system as required by its rules and by the first order granting DGOC temporary registration.[38] DGOC has represented that in order to provide representation to its repo and reverse repo participants, a participants advisory committee for its repo system will be established.[39] The Commission believes that the establishment of such a committee will result in DGOC being responsive to industry concerns consistent with the purposes of the Act. The Commission intends to review the representation provided DGOC's repo and reverse repo participants in connection with any proposed rule filing DGOC should submit requesting an increase or elimination of its volume limitations.

GSCC also argues that DGOC's margining system is inadequate because, unlike GSCC's system, credits are not passed through to participants and interest is not paid on mark-to-market debits. The Commission believes that different clearing agencies may decide to rely on different types of margining systems, as long as the proposed system provides adequate protection to the clearing agency and its participants. The Commission believes that DGOC's margining system provides sufficient protection consistent with DGOC's need to safeguard securities and funds for which it is responsible by taking into account both current and potential price changes in the underlying collateral. DGOC has further protection through imposition of trading limits and MPSE limits. The Commission therefore believes that DGOC's margining system provides adequate protection from the risks presented by the clearance and settlement of repos and reverse repos.

IV. Conclusion

For the reasons stated above, the Commission finds that DGOC's proposal is consistent with Section 17A of the Act.[40]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[41] that the proposed rule change (File No. SR–DGOC–94–06) be, the hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[42]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–25930 Filed 10–18–95; 8:45 am]

BILLING CODE 8010–01–M

[36] Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41290.

[37] Securities Exchange Act Release No. 26450 (January 12, 1989), 54 FR 2010. The Commission found, however, that DGOC had not met the standard for fair representation in the selection of directors. DGOC is currently operating under a temporary exemption from such requirement.

[38] Letter from Laura R. Silvers, Attorney, Morgan, Lewis & Bockius, to Christine Sibille, Senior Counsel, and Michele Bianco, Staff Attorney, OSPR, Division, Commission (September 20, 1995).

[39] DGOC will provide the Commission with a report on the Participants Committee six months following approval of this proposed rule change. Meeting between Robert Mendelson and Laura Silvers, Morgan, Lewis & Bockius; Barry Silverman, DGOC; Michael Spencer and Declan Kelly, Intercapital Group, Ltd; and Jonathan Kallman, Jerry Carpenter, Gordon Fuller, Christine Sibille, David Turner, and Michele Bianco, Commission.

[40] 15 U.S.C. 78q–1 (1988).

[41] 15 U.S.C. 78s(b)(2)(1988).

[42] 17 C.F.R. 200.30–3(a)(12)(1994).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Logan County, WV

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Logan County, West Virginia.

FOR FURTHER INFORMATION CONTACT: David A. Leighow, Division Environmental Coordinator, Federal Highway Administration, 550 Eagan Street, Suite 300, Charleston, West Virginia 25301, Telephone (304) 347–5329; or, Ben L. Hark, Environmental Section Chief, Roadway Design Division, West Virginia Department of Transportation, 1900 Kanawha Boulevard East, Building 5, Room A–416, Capitol Complex, Charleston, West Virginia 25305–0430, Telephone (304) 558–2885.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the West Virginia Department of Highways (WVDOH), will prepare an Environmental Impact Statement (EIS) for the construction of the Route 10 Man to Logan project in Logan County. The proposed project limits extend from the intersection of WV Route 10 and WV Route 80 at Huff Junction, south of Man, northward approximately 12.5 miles to a connection with the four-lane section of existing WV Route 10 in Logan, West Virginia. The project will be processed as a merged NEPA/404 project.

The proposed highway project is considered necessary to adequately provide for a safe and efficient transportation system to serve the existing and future transportation needs of the area and to address safety concerns associated with existing Route 10.

Alternatives under consideration will include, but are not limited to (1) taking no action, (2) minimal improvement of existing road, (3) where possible, widening the existing two-lane highway to four-lanes, and (4) constructing a four-lane, partially controlled access highway on new location. Additional alignments may be evaluated based upon the results of the preliminary environmental and engineering studies and the public and agency involvement process. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment. Multi-model forms of transportation, such as mass transit, will be considered and addressed as appropriate.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state and local agencies, and to private organizations and citizens who have previously expressed, or are known to have interest in this proposal. A scoping meeting will be scheduled. A field view is also planned. Public meetings and a public hearing will be held during the Draft

Environmental Impact Statement (DEIS) review period. Public notice will be given of the times and places for the meetings and hearing. The DEIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action should be directed to the FHWA at the address provided.

(Catalog of Federal Domestic Assistance Number 20.205, Highway Research Planning and Construction. The regulations implementing executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.)

Issued on October 10, 1995.

David A. Leighow,

Environmental Coordinator, Charleston, West Virginia.

[FR Doc. 95–25875 Filed 10–18–95; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Putnam and Mason Counties, WV

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Putnam and Mason Counties, West Virginia.

FOR FURTHER INFORMATION CONTACT: David A. Leighow, Division Environmental Coordinator, Federal Highway Administration, 550 Eagan Street, Suite 300, Charleston, West Virginia 25301, Telephone: (304) 347–5329, or, Ben L. Hark, Environmental Section Chief, Roadway Design Division, West Virginia Department of Transportation, 1900 Kanawha Boulevard East, Building 5, Room A–416, Capitol Complex, Charleston, West Virginia 25305–0430, Telephone: (304) 558–2885.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the West Virginia Division of Highways, will prepare an environmental impact statement (EIS) on a proposal to improve US Route 35 in Putnam and Mason Counties, West Virginia, for a distance of about 35 miles.

Alternatives under consideration include but are not limited to (1) taking no action, (2) minimal improvement of existing road, (3) where possible, widening the existing two-lane highway to four lanes, and (4) constructing a four-lane, partially controlled access highway on new location. Additional alignments may be evaluated based upon the results of the preliminary environmental engineering studies and the public and agency involvement process. Incorporated into and studies with the various build alternatives will be design variations of grade and alignment. Multi-model forms of transportation, such as mass transit, will be considered and addressed as appropriate.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state and local agencies, and to private organizations and citizens who have previously expressed, or are known to have, interest in this proposal. A formal scoping meeting will be scheduled. The draft EIS will be available for public and agency review and comment prior to a public meeting and public hearing. Public notice will be given of the times and places for the meeting and hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on October 10, 1995.

David A. Leighow,

Environmental Coordinator, Charleston, West Virginia.

[FR Doc. 95–25874 Filed 10–18–95; 8:45 am]

BILLING CODE 4910–22–M

Maritime Administration

[Docket S–925]

Brookville Shipping, Inc.; Notice of Application for Payment of Unused Operating-Differential Subsidy

Brookville Shipping, Inc. (Brookville) is the contractor under an Operating-Differential Subsidy Agreement (ODSA), Contract MA/MSB–272, scheduled to expire April 13, 1996, under which five U.S.-flag dry bulk carriers operated by Liberty Maritime Corporation (Liberty) are eligible for subsidy. Brookville was also the contractor under Contract MA/MSB–166(a), which expired October 9, 1994. Under Contracts MA/MSB–272 and MA/MSB–166(a), 3,638.5 subsidy days were available to, but not used by, Brookville from 1989 to 1994. Contract MA/MSB–272 provides for one ship year of subsidy annually and expired Contract MA/MSB–166(a) also provided for one ship year of subsidy, for an aggregate of two ship years or 720 days of subsidy annually.

Brookville requests that the Maritime Subsidy Board (Board) enable Brookville to obtain the full unused benefits of Contracts MA/MSB–272 and MA/MSB–166(a) by extending those contracts for an additional five years beyond their expiration dates. In the alternative, Brookville requests that the Board enter into a new five-year contract with Brookville for payment of operating-differential subsidy (ODS) for the number of unused subsidy days.

In connection with its request, Brookville further asks the Board (i) to permit Brookville to share the 3,638.5 subsidy days not used under Contracts MA/MSB–272 and MA/MSB–166(a), respectively, among the five dry bulk carriers operated by Liberty without limitation as to the number of days that may be used in any one year; and (ii) to permit Brookville to substitute on a one-for-one basis any or all of four newly constructed Panamax bulk cargo carriers that Brookville or an affiliate would build and operate under the U.S. flag.

According to Brookville, its request would not require the Board to authorize new subsidy days, would further the purposes and policies of the Merchant Marine Act, 1936, as amended (Act), and is within the legal authority of the Board to grant.

Brookville advises that five U.S.-flag dry bulk carriers—the LIBERTY STAR, LIBERTY SUN, LIBERTY WAVE, LIBERTY SPIRIT, and LIBERTY SEA—are eligible to receive subsidy under Contract MA/MSB–272. The Liberty vessels were built in Korea pursuant to section 615 of the Act, were delivered between 1984 and 1986, and are generally regarded as the most modern and efficient in the U.S.-flag dry bulk fleet. Their cargo capacity averages about 64,000 metric tons, with typical cargoes in the 50,000–55,000 metric ton range.

Brookville states that the primary market for the Liberty vessels since their delivery has been transporting U.S. government food aid cargoes reserved to the U.S.-flag under the Cargo Preference Act of 1954, along with cargoes reserved to U.S.-flag vessels under a U.S.-Israel ''Side Letter'' agreement. Brookville advises that although the Liberty vessels by law were entitled to subsidy for

preference voyages, Brookville, as well as other dry bulk ODS contractors, voluntarily agreed—at the Maritime Administration's request—to forego subsidy on these preference voyages.

Brookville states that consequently, Contract MA/MSB–272 has been underused, with only 432.9 subsidy days used in the aggregate in 1989, 1990, and 1991 and no subsidy paid at all during 1992, 1993, and 1994. Brookville also points out that Contract MA/MSB–166(a) was similarly underused, with only 156.6 days of subsidy used in the aggregate during 1989 and 1990 and no subsidy paid during 1991, 1992, 1993, and 1994. Overall, 589.5 subsidy days (includes reduced crew days) were used and 3,638 subsidy days were unused from 1989 to 1994. Brookville states that during this period, the government has had the benefit of substantially reduced subsidy payments to Brookville.

According to Brookville, in the last two years the Liberty vessels' traditional market—food aid transportation—has shrunk because of budget cuts. In addition, funding for the P.L. 480—Food for Peace and section 416 programs has declined from $2.3 billion in fiscal year 1993 to $1.3 billion in fiscal year 1995, with tonnage declining from 7.9 million metric tons to 3.7 million metric tons. Brookville indicates that under the President's fiscal year 1996 budget, food aid spending will decline further to about $1.0 billion, which would generate only about 2.7 million metric tons in exports.

Brookville emphasizes that past spending decreases and proposed decreases for fiscal year 1996 disproportionately affect bulk operators because the cuts have been largely applied to bulk-oriented Titles I and III of Public Law 480 and section 416, as opposed to liner-oriented Title II. Tonnage under Titles I and III and section 416 has declined from 5.8 million metric tons in fiscal year 1993 to a projected 850,000 metric tons in fiscal year 1996. Brookville states that since a Liberty dry bulk carrier, when fully used, can transport 300,000 metric tons of this 850,000 metric ton cargo level per year (based on six voyages with a 50,000 ton cargo), it is evident that the food aid program (even with Israeli Side Letter cargoes) can no longer support the entire existing U.S.-flag bulk fleet.

Brookville advises that as a result, Liberty's vessels increasingly have operated in the foreign commercial trade. In 1995, Liberty vessels so far have used 279 of 365 available subsidy days under Contract MA/MSB–272. (This includes 63 days used by the LIBERTY BELLE, which was scrapped in June 1995.) According to Brookville, although the Liberty vessels are well regarded in the foreign commercial market and have operated successfully, their operating cost structure (resulting from U.S. citizen crews and compliance with U.S. tax, environmental, safety and other requirements) renders them uncompetitive without subsidy.

Brookville states that traditionally, there are very few food aid cargoes shipped between January and March and because of the severe cutbacks in the food aid budget, very little preference activity is expected during the first six months of 1996. Brookville also states that unless the Board extends Brookville's ODS contract to give it the operational flexibility Brookville requests, Liberty will have no choice but to lay up the vessels pending MARAD's approval of a request to re-flag some or all of the Liberty vessels so that they may compete in the foreign market with vessels not subject to costly U.S. laws and regulations. Brookville states that if the Liberty vessels are re-flagged, the American merchant marine will have lost as many as five of its best vessels and their skilled crews—which are always available in an national emergency.

Additionally, Brookville states that if the Board fails to grant Brookville's request, the government's cargo preference costs will also be higher. The Liberty vessels have historically offered the lowest U.S.-flag rates for relatively large cargo lot sizes. According to Brookville, if the Liberty vessels are re-flagged, government cargo preference costs will increase, offsetting at least in part the subsidies Brookville is requesting by this letter.

Brookville states that the Board has ample legal authority to grant Brookville's request, citing *Seatrain Shipbuilding Corp.* v. *Shell Oil Co,* 444 U.S. 572 (1980). According to Brookville, the Board can enter into a new contract that permits full use of the unused days over a five-year period; alternatively, the Board can modify contracts after they are concluded.

Brookville believes that by extending the ODS contracts, the Board will also address an injustice in the ODS program. The standard ODS contract is set for 20 years, to coincide with the life of a tanker. However, as the Act recognizes, dry bulk carriers have a useful life of 25 years. According to Brookville, in essence, the program favors tankers by awarding contracts for their entire useful life, while disadvantaging dry bulk carriers by awarding contracts for only 80 percent of theirs.

Brookville also notes that by granting this application, the Maritime Administration will not be affecting the Administration's proposed liner reform legislation, under which dry bulk carriers would be ineligible for assistance.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7210, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590. Comments must be received no later than 5 p.m. on November 1, 1995. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Subsidy Board will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.805 (Operating-Differential Subsidies)).

By Order of the Maritime Subsidy Board.

Dated: October 13, 1995.

Joel C. Richard,

Secretary.

[FR Doc. 95–25920 Filed 10–18–95; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax on Certain Imported Substances (Methyl methacrylate); Notice of Determination

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice announces a determination, under Notice 89–61, that the list of taxable substances in section 4672(a)(3) will be modified to include methyl methacrylate.

EFFECTIVE DATE: This modification is effective October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4672(a), an importer or exporter of any substance may request that the Secretary determine whether that substance should be listed as a taxable substance. The Secretary shall add the substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce the substance. This determination is to be made on the basis of the predominant method of production. Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process.

Determination

On October 12, 1995, the Secretary determined that methyl methacrylate should be added to the list of taxable substances in section 4672(a)(3), effective October 1, 1995.

The rate of tax prescribed for methyl methacrylate, under section 4671(b)(3), is $10.12 per ton. This is based upon a conversion factor for methane of 0.47, a conversion factor for ammonia of 0.22, a conversion factor for propylene of 0.6, a conversion factor for benzene of 0.94, and a conversion factor for sulfuric acid of 1.63.

The petitioner is Rohm and Haas Texas, Inc., a manufacturer and exporter of this substance. No material comments were received on this petition. The following information is the basis for the determination.

HTS number: 2916.14.00.20

CAS number: 80–62–6

Methyl methacrylate is derived from the taxable chemicals methane, ammonia, propylene, benzene, and sulfuric acid and is a liquid produced predominantly by the catalytic reaction of acetone cyanohydrin and methyl alcohol. The methyl methacrylate is then purified by distillation.

The stoichiometric material consumption formula for this substance is:

3 CH_4 (methane) + NH_3 (ammonia) + C_3H_6 (propylene) + C_6H_6 (benzene) + H_2SO_4 (sulfuric acid) + 2.5 O_2 (oxygen) ——–> $C_5H_8O_2$ (methyl methacrylate) + NH_4HSO_4 (ammonium bisulfate) + C_6H_6O (phenol) + CH_3OH (methanol) + H_2O (water) + 2 H_2 (hydrogen)

Methyl methacrylate has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 77.9 percent by weight of the materials used in its production.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 95–25870 Filed 10–18–95; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances (Poly 1,4 butyleneterephthalate); Notice of Determination

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice announces a determination, under Notice 89–61, that the list of taxable substances in section 4672(a)(3) will be modified to include poly 1,4 butyleneterephthalate.

EFFECTIVE DATE: This modification is effective April 1, 1991.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4672(a), an importer or exporter of any substance may request that the Secretary determine whether that substance should be listed as a taxable substance. The Secretary shall add the substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce the substance. This determination is to be made on the basis of the predominant method of production. Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process.

Determination

On October 12, 1995, the Secretary determined that poly 1,4 butyleneterephthalate should be added to the list of taxable substances in section 4672(a)(3), effective April 1, 1995.

The rate of tax prescribed for poly 1,4 butyleneterephthalate, under section 4671(b)(3), is $3.92 per ton. This is based upon a conversion factor for acetylene of 0.1186, a conversion factor for methane of 0.2920, and a conversion factor for xylene of 0.4816.

The petitioner is GE Plastics, a manufacturer and exporter of this substance. No material comments were received on this petition. The following information is the basis for the determination.

HTS number: 3907.91.00

CAS number: 26062–94–2

Poly 1,4 butyleneterephthalate is derived from the taxable chemicals acetylene, methane, and xylene and is a solid produced predominantly by the melt polycondensation process.

The stoichiometric material consumption formula for this substance is:

176 C_2H_2 (acetylene) + 702 CH_4 (methane) + 175 C_8H_{10} (xylene) + 352 H_2 (hydrogen) + 701 O_2 (oxygen) + 350 H_2O (water) + 0.08 $Ti(OC_3H_7)_4$ (tetra iso-propyl titanate) → $HO(CH_2)_4O(C_8H_4O_2)_{175}(C_4H_8O_2)_{175}$ (poly 1,4 butyleneterephthalate) + 0.08 Ti (titanium) + 0.32 C_3H_8O (isopropanol) + 350 CH_3OH (methanol) + 700 H_2O (water) + 702 H_2 (hydrogen)

Poly 1,4 butyleneterephthalate has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 53.8 percent by weight of the materials used in its production.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 95–25869 Filed 10–18–95; 8:45 am]

BILLING CODE 4830–01–U

Sunshine Act Meetings

Federal Register
Vol. 60, No. 202
Thursday, October 19, 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).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the November 9, 1995 regular meeting of the Farm Credit Administration Board (Board) will not be held and that a special meeting of the Board is scheduled for Thursday, November 16, 1995 at 9:00 a.m. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: October 16, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 95–25981 Filed 10–17–95; 10:53 am]

BILLING CODE 6705–01–P

Corrections

Federal Register
Vol. 60, No. 202
Thursday, October 19, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

7 CFR Part 3017

RIN 0503–AA12

Nonprocurement Debarment and Suspension

Correction

In proposed rule document 95–23508 beginning on page 49519 in the issue of Tuesday, September 26, 1995, make the following corrections:

1. On page 49520, in the first column, in the first paragraph, in the tenth line from the bottom, ''welcome'' should read ''welcomes''.

2. On the same page, in the 3d column, in the 1st paragraph, in the 14th line, ''expected'' should read ''excepted''.

3. On page 59521, in the 1st column, in the 1st paragraph, in the 13th line, ''break'' should read ''bread''.

4. On the same page, in the second column, in the fourth full paragraph, in the sixth line from the bottom, ''conservative'' should read ''conservation''.

BILLING CODE 1505–01–D

DEPARTMENT OF STATE

22 CFR Part 51

[Public Notice 2262]

Bureau of Consular Affairs; Passports for Minors

Correction

In proposed rule document 95–24344 beginning on page 51760 in the issue of Tuesday, October 3, 1995, make the following correction:

§ 51.27 [Corrected]

On page 51761, in the third column, in § 51.27(d)(2), in the fifth line, insert ''terminated by a court order which has been'' after ''been''.

BILLING CODE 1505–01–D

Federal Register

Thursday
October 19, 1995

Part II

Department of Transportation

Coast Guard

46 CFR Parts 1, 2, and 5 et al.

Technical Amendments; Organizational Changes; Miscellaneous Editorial Changes and Conforming Amendments; Final Rules; Corrections

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 1, 2, 5, 6, 10, 12, 14, 16, 25, 28, 30, 31, 32, 33, 34, 35, 39, 50, 52, 53, 54, 56, 57, 58, 59, 61, 62, 63, 69, 70, 71, 72, 75, 76, 77, 78, 90, 91, 92, 93, 94, 95, 96, 97, 98, 107, 108, 110, 147, 148, 150, 151, 153, 154, 160, 161, 162, 164, 167, 169, 170, 174, 175, 180, 181, 182, 183, 184, 188, 189, 190, 192, 193, 196, and 197

[CGD 95–072]

RIN 2115 AF21

Technical Amendments; Organizational Changes; Miscellaneous Editorial Changes and Conforming Amendments; Correction

AGENCY: Coast Guard, DOT.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations [CGD 95–072] which were published Friday, September 29, 1995, (60 FR 50455). The regulations related to organizational and editorial changes throughout Title 46, Code of Federal Regulations.

EFFECTIVE DATE: October 19, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Walton, Project Manager, Standards Evaluation and Development Division (G–MES–2), (202) 267–0257.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of those corrections amend Title 46, Code of Federal Regulations to reflect recent organizational changes. They also make editorial changes throughout the title to correct addresses, update cross-references, and other technical corrections requested by the Federal Register. The rule makes no substantive changes to current regulations.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on September 29, 1995, of the final regulations [CGD 95–072], which were the subject of FR Doc. 95–24176 is corrected as follows:

§ 1.01–10 [Corrected]

1. On page 50459, in the first column, in § 1.01–10, in paragraph (b)(1)(ii)(C), the text beginning with the word ''reviews'' at the end of line 6 through the end of the paragraph is corrected to read ''manages, develops policy for and evaluates domestic and international programs and processes associated with investigations of marine casualties and injuries; manages analysis of casualties and casualty data, civil penalties and other remedial programs (including proceedings to suspend or revoke Coast Guard licenses, documents or certificates held by mariners); and manages marine employer drug and alcohol testing programs''.

§ 25.01–3 [Corrected]

2. On page 50461, in the first column, in § 25.01–3, the word ''(G–MMS)'' is corrected to read ''(G–MCO)''.

§ 69.9 [Corrected]

3. On page 50463, in the first column, in § 69.9, the words ''(G–MVI)'' are corrected to read ''words Commandant (G–MVI)''.

§ 71.65–15 [Corrected]

4. On page 50463, in the second column, in § 71.65–15, in paragraph (a)(2), remove the word ''(G–MSC)''.

§ 110.10–1 [Corrected]

5. On page 50465, in the first column, in § 110.10–1, the words ''Marine Safety, Security and Environmental Protection'' are corrected to read ''Design and Engineering Standards Division''.

§ 153.809 [Corrected]

6. On page 50465, in the third column, in § 153.809, fifth line, delete the word ''(G–MSC)''.

§ 153.902 [Corrected]

7. On page 50465, in the third column, in § 153.902, fourth line, delete the word ''(G–MSC)''.

§ 154.22 [Corrected]

8. On page 50466, in the first column, in § 154.22, fifth line, delete the word ''(G–MSC)''.

§ 154.151 [Corrected]

9. On page 50466, in the first column, in § 154.151, fifth line, delete the word ''(G–MSC)''.

§ 154.1803 [Corrected]

10. On page 50466, in the first column, in § 154.1803, fourth line, delete the word ''(G–MSC)''.

§ 189.55–15 [Corrected]

11. On page 50469, in the second column, in 189.55–15, delete the word ''(G–MSC)''.

Dated: October 12, 1995.

G. N. Naccara,

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

[FR Doc. 95–25799 Filed 10–18–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 1, 16, 31, 57, 153, 160, and 161

[CGD 95-072]
RIN 2115 AF21

Technical Amendments; Organizational Changes; Miscellaneous Editorial Changes and Conforming Amendments

Correction

In rule document 95–24176, beginning on page 50455, in the issue of September 29, 1995, make the following corrections:

§ 1.01-10 [Corrected]

1. On page 50458, 2d column, in § 1.01-10(b)(1), 15th line, ''investigations'' should read ''Investigations,'' and 33d line, ''officers'' should read ''Officers''.

2. On page 50459, 1st column, in § 16.205(b)(1)(ii)(B), 21st line, ''bringing'' should read ''bridging''.

§ 16.205 [Corrected]

3. On page 50461, first column, amendatory instruction 48 to § 16.205, ''(G-MNI)'' should read ''(GMMI)''.

§ 16.500 [Corrected]

4. On page 50461, first column, amendatory instruction 49 to § 16.500, ''(G-MNI)'' should read ''(G-MMI)''.

§ 31.10-21 [Corrected]

5. On page 50461, second column, amendatory instruction 62 to § 31.10-21, ''§ 31.10.-21'' should read ''§ 31.10-21''.

§ 57.201-1 [Corrected]

6. On page 50462, third column, section heading, ''§ 57.201-1'' should read ''§ 57.021-1''.

§ 90.35-5 [Corrected]

7. On page 50464, first column, amendatory instruction 124 to § 90.35-5, ''Eisenhower Drive'' should read ''45 Eisenhower Drive''.

§ 153.7 [Corrected]

8. On page 50465, third column, amendatory instruction 173 to § 153.7, change (a), ''(b)(4)(ii)'' should read ''(b)(4)(iii)''.

§ 160.010-4 [Corrected]

9. On page 50466, third column, amendatory instruction 181 to § 160.010-4, ''(G-MVI)'' should read ''(G-MVI-3)''.

§ 160.060-1 [Corrected]

10. On page 50467, first column, amendatory instruction 187(w) to § 160.060-1, ''Section 160.060-(c)(1)'' should read ''Section 160.060-1(c)(1)''.

§ 161.010-1 [Corrected]

11. On page 50467, second column, amendatory instruction 193 to § 161.010-1, ''§ 161.101-1(a)'' should read ''§ 161.010-1(a)''.

BILLING CODE 1505–01–D

Federal Register

Thursday
October 19, 1995

Part III

Department of the Treasury

Community Development Financial Institutions Fund

12 CFR Chapter XVIII et al.

Community Development Financial Institutions Program, Bank Enterprise Award Program, Environmental Quality; Interim Final Rule

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

12 CFR Chapter XVIII and Parts 1805, 1806 and 1815

RIN 1505–AA71

Community Development Financial Institutions Program, Bank Enterprise Award Program, Environmental Quality

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Interim rule with request for comment.

SUMMARY: The Department of the Treasury is issuing an interim rule implementing two new programs administered by the Community Development Financial Institutions Fund (CDFI Fund or Fund). The initiatives shall be known as the Community Development Financial Institutions Program (CDFI Program) and the Bank Enterprise Award Program (BEA Program). The programs were authorized by the Community Development Banking and Financial Institutions Act of 1994. The interim rule also provides environmental quality procedures related to these programs. The CDFI Fund's programs are designed to facilitate the flow of lending and investment capital into distressed communities and to individuals who have been unable to take full advantage of the financial services industry.

DATES: Interim rule effective October 19, 1995; comments must be received on or before January 15, 1996.

ADDRESSES: All comments concerning this interim rule should be addressed to the Director, Community Development Financial Institutions Fund, Department of the Treasury, 1500 Pennsylvania Avenue N.W., Room 5116, Washington, DC 20220. Comments may be inspected at the above address between 9:30 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Kirsten Moy, Community Development Financial Institutions Fund, at (202) 622–8662. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

I. General

Executive Order (E.O.) 12866

It has been determined that this regulation is a significant regulatory action as defined in E.O. 12866. Because no substantive changes were made to this regulation subsequent to submission to the Office of Management and Budget (OMB), the provisions of section 6(a)(3)(E) of the Order do not apply.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this interim rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Moreover, the Department of the Treasury finds that any economic or other consequence of this interim rule are a direct result of the implementation of statutory provisions.

Paperwork Reduction Act

The Department of the Treasury is issuing these regulations without notice and public comment pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1505–0153 (expires 9/30/98). Comments concerning the collections of information, the accuracy of the estimated average annual burden, and suggestions for reducing such burden should be directed to the Office of Management and Budget, Paperwork Reduction Project (OMB Paperwork control number 1505–0153), Washington, DC 20503, with copies to the Community Development Financial Institutions Fund, Department of the Treasury, 1500 Pennsylvania Avenue N.W., Room 5116, Washington, DC 20220. Any such comments should be submitted not later than January 15, 1996.

Provisions requiring the collection of information can be found in §§ 1805.701, 1805.903, 1806.206, 1806.301, 1806.304, 1806.305 and 1815.105 of these regulations. The information requested in such provisions is necessary to evaluate applications, monitor the performance of entities receiving assistance, and ensure compliance with statutory and program requirements. The anticipated respondents and recordkeepers are financial institutions that may apply for and receive assistance.

Estimated total annual reporting and/or recordkeeping burden:

CDFI Program:

Applicants—30,000 hours

Awardees—2,160 hours.

BEA Program:

Applicants—1,000 hours

Awardees—750 hours.

Total Hours—33,910.

Estimated average annual burden hours per respondent and/or recordkeeper:

CDFI Program:

Applicants—100 hours

Awardees—72 hours.

BEA Program:

Applicants—12 hours

Awardees—25 hours.

Estimated number of respondents and/or recordkeepers: 400.

Estimated annual frequency of responses: CDFI Program: 1–5; BEA Program: 1–2.

National Environmental Policy Act

Pursuant to Treasury Directive 75–02 (Department of the Treasury Environmental Quality Program), the Department has determined that these regulations are categorically excluded from the National Environmental Policy Act and do not require an environmental review.

Administrative Procedures Act

Pursuant to the provisions of 5 U.S.C. 553(a)(2), these regulations are exempt from the proposed rule-making requirements of 5 U.S.C. 553(b) and are being issued as interim regulations without opportunity for notice and public comment prior to their effective date. Furthermore, the Department for good cause finds that notice and public comment prior to effect are impracticable and contrary to the public interest. The statute authorizing the programs was enacted over a year ago. As part of that Act, Congress set up special procedures to make the CDFI Fund operational as soon as possible. Furthermore, Congress appropriated funds for FY 1995 and required such funds to be obligated by September 30, 1996. Such actions clearly indicate Congress' intent that the program be implemented in an expeditious manner. If the Department does not issue these regulations for effect, it will not be feasible to implement the program prior to September 30, 1996 in a manner that achieves the results intended by Congress.

Catalog of Federal Financial Assistance Numbers: Community Development Financial Institutions Program—21.020; Bank Enterprise Award Program—21.021.

II. Background

The CDFI Fund was established as a wholly owned government corporation by the Community Development Banking and Financial Institutions Act of 1994 (the CDFI Act). Subsequent legislation placed the Fund within the Department of the Treasury and gave the Secretary of the Treasury all powers and rights of the Administrator of the Fund as set forth in the authorizing statute.

Consistent with the placement and administration of the Fund within the Department's organizational structure, the Department of the Treasury's Inspector General will serve as the Inspector General for the Fund. Any individual who becomes aware of the existence or apparent existence of fraud, waste or abuse of assistance provided by the Fund is encouraged to report it to the Department of the Treasury's Office of Inspector General in writing or on the Inspector General's Hotline (toll free 1–800–359–3898). All telephone calls will be handled confidentially. Written complaints should be addressed to the U.S. Department of the Treasury, Office of Inspector General, Room 2412, 1500 Pennsylvania Avenue N.W., Washington, DC 20220.

All records and materials pertaining to the selection and award of assistance by the Fund shall be fully subject to the Freedom of Information Act. Interested parties should contact the U.S. Department of the Treasury, Office of the Assistant Secretary for Management, Disclosure Services at (202) 622–1500.

The CDFI Fund's programs are designed to facilitate the flow of lending and investment capital into distressed communities and to individuals who have been unable to take full advantage of the financial services industry. The initiative is an important step in rebuilding poverty-stricken and transitional communities and creating economic opportunity for people often left behind by the economic mainstream.

Access to credit and investment capital is an essential ingredient for creating and retaining jobs, developing affordable housing, revitalizing neighborhoods, unleashing the economic potential of small business, and empowering people. Over the past three decades, community-based financial institutions have proven that strategic lending and investment activities tailored to the unique characteristics of underserved markets are highly effective in improving the economic well-being of communities and the people who live there.

The CDFI Fund was established to facilitate the creation of new, and expansion of existing, financial institutions that are specialized in serving these markets. These institutions—while highly effective—are typically small in scale, too few in number, and often have difficulty raising the equity capital needed to meet the demands for their products and services. The investments of the CDFI Program are intended to provide much-needed capital that will enable existing institutions to expand and facilitate the start-up of new institutions.

The CDFI Fund also recognizes the important role that traditional financial institutions have played, and should continue to play, in serving the credit needs of distressed communities and their residents. As a means of facilitating increased activity and innovation among traditional financial institutions, these regulations will implement the BEA Program. The BEA Program has its roots in the Federal Deposit Insurance Corporation Improvement Act of 1991. The program was significantly modified as part of the CDFI Act to enable it to function as a companion to the CDFI Program. Together, the CDFI Program and BEA Program will promote activity among the spectrum of financial institutions that serve distressed communities.

The following interim regulations permit the Fund to implement the CDFI Program and the BEA Program. Today's Federal Register contains a separate Notice of Funds Availability (NOFA) for each of these programs. It is the intention of the Fund to evaluate the first round of applications for the programs using these regulations and applicable Department of the Treasury regulations. Final regulations will be published after receipt and consideration of public comments. Such public comments are extremely important to the development of the final regulations. The remainder of this background section provides a summary of the major provisions in the regulations and highlights important issues for public comment.

III. Community Development Financial Institutions Program

Under the CDFI Program (12 CFR part 1805), the Fund will provide financial and technical assistance to selected applicants in order to enhance their ability to make loans and investments and provide services for the benefit of designated investment area(s), targeted population(s) or both. The Fund will select awardees through a competitive application process. After selection, each awardee will enter into an assistance agreement with the Fund that will require it to achieve financial, organizational development, and community impact performance goals.

Subpart A—General Provisions

Subpart A contains general provisions of the CDFI Program, including its relationship to other Fund programs (§ 1805.102) and the definitions applicable to this part (§ 1805.104).

Subpart B—Eligibility

Section 1805.200 establishes criteria for qualification as a CDFI. The criteria reflect the requirements stated in the authorizing statute. To be eligible to apply for assistance, an entity must either be, or propose to become, a CDFI. The regulations describe the information needed by the Fund to assess whether, among other things: (1) The applicant has a primary mission of community development; (2) the applicant's predominant business activity is the provision of loans or investments; and (3) the applicant serves an investment area(s) or targeted population(s). The Fund recognizes that there will be significant diversity among applicants with respect to asset size, organizational type, stage of organizational development, products and services offered, and the geographic location. The Fund seeks comments on how effectively the eligibility criteria in the regulations apply to this broad range of organizations.

Section 1805.201 allows an entity to apply to the Fund for certification as a CDFI regardless of whether it is applying for assistance. The Fund believes that such a certification process will recognize the importance of the activities that institutions are engaged in, enhance their credibility with investors, and facilitate participation by CDFIs in other government programs.

Subpart C—Target Markets

As stated in § 1805.300, an applicant must designate one or more investment areas or targeted populations as the target market(s) it intends to serve. Section 1805.301 gives each applicant significant flexibility in designating an investment area provided that certain conditions are met. Investment areas must meet objective criteria of distress. Consistent with its statutory mandate, the Fund has developed objective criteria that are appropriate for identifying distress in metropolitan, non-metropolitan and Native American communities. These criteria were developed in consultation with the Departments of Housing and Urban Development, Agriculture, Interior and Commerce and the Small Business Administration. Investment areas can comprise a variety of different geographic units in order to reflect the neighborhoods, areas, or markets that applicants serve or propose to serve. The Fund seeks input from applicants and other interested parties on whether the Fund's criteria for designation of investment areas are appropriate for the markets and communities that applicants serve.

Section 1805.302 incorporates the statutory requirements for defining a targeted population.

Subpart D—Use of Funds/Eligible Activities

Section 1805.401 lists the eligible activities for which financial assistance must be used and permits the Fund to approve other activities. Section 1805.402 requires that an applicant's use of the Fund's assistance and any corresponding matching funds for purposes approved by the Fund as reflected in an assistance agreement. The regulations place restrictions on such applicant's distribution of monies to affiliates or its community partners. Section 1805.403 provides that technical assistance resources may be allocated at the discretion of the Fund and must be used to build the capacity of CDFIs. Such assistance may be provided regardless of whether an entity receives financial assistance.

Subpart E—Investment Instruments

Section 1805.500 states that the Fund's primary objective in awarding financial assistance is to enhance the stability, performance and capacity of an awardee. Both Fund financial assistance and matching funds must be used to achieve specific performance goals. The Fund retains discretion to provide its assistance in a manner and amount different from an applicant's request.

Section 1805.501 describes the types of investment instruments through which the Fund may provide financial assistance. Section 1805.502 restates the CDFI Act's aggregate assistance limit of $5 million for each applicant in any three-year period (which may be increased by up to $3.75 million under special circumstances). Pursuant to § 1805.503, the Fund has the right to sell its equity investments or loans, but retains the authority to monitor and enforce each awardee's performance goals.

Subpart F—Matching Funds Requirements

Pursuant to § 1805.600, each applicant must obtain matching funds from sources other than the Federal government that are at least equal to the amount of financial assistance provided by the Fund. Community Development Block Grant funds may not be used for the match. As required by the Act and § 1805.601, the matching funds must be comparable in form and value to the Fund's financial assistance. This provision is intended to encourage match providers to offer their resources under the most favorable terms and conditions possible and enable a CDFI to obtain the Fund's assistance in a like manner. Under certain limited circumstances and at the Fund's discretion, an applicant may receive a severe constraints waiver of the matching funds requirements pursuant to § 1805.602. Section 1805.603 permits applicants to use matching funds obtained for up to one year prior to publication of a NOFA for a particular funding round. Each NOFA may establish other conditions or restrictions on the time period for raising matching funds. The Fund seeks comments on how to structure its assistance so that CDFIs may seek matching funds on the most favorable terms possible.

Subpart G—Applications for Assistance

Section 1805.701 specifies the information that must be provided as part of an application. This information describes how an applicant can demonstrate whether it meets the eligibility requirements of subpart B. The section also describes information that an applicant must provide to be evaluated and selected under subpart H. The most significant component of the application is a five-year comprehensive business plan. The plan will provide the basis for evaluating both the applicant's current capacity and its potential for the future. The plan must include, among other things, elements related to financial performance, management policies and capacity, market analysis, coordination efforts, community impact, funding resources, and timing. The application must contain a detailed description of the matching funds to be raised by the applicant for use in conjunction with the Fund's assistance. In developing the application requirements, the Fund has sought to focus on the types of information that private or public investors would expect from such institutions. The Fund seeks comments from applicants and other interested parties on the appropriateness of the comprehensive business plan's contents.

Subpart H—Rating and Selection of Applicants

Section 1805.800 outlines the evaluation and selection process. Section 1805.801 indicates the Fund's intent to seek to fund a geographically diverse group of applicants as required by the CDFI Act. Pursuant to § 1805.802, applicants will be evaluated and selected on a competitive basis using a three-tiered process. Tier I is intended to screen out applicants that do not meet the eligibility requirements or who have submitted inadequate application materials. Tier II is intended to screen out applicants that do not possess the organizational and financial capacity to be a successful CDFI. Tiers I and II will eliminate applications not appropriate for funding and allow the Fund to focus on those applications with the greatest ability to maximize community impact, operate in a sound manner, and achieve the public policy goals of the program. As provided in the CDFI Act, the Fund has sole discretion in selecting applicants for assistance.

Tier III of the process will be used to evaluate the qualitative aspects of the remaining applications. The Fund will examine factors related to organizational capacity, extent of external resources, and community impact. The Fund will seek to implement the evaluation and selection process in a manner that takes into consideration the unique characteristics of applicants that vary by organizational type, total asset size, and stage of organizational development. The process will consider the contributions of community partners in an applicant's efforts. The process will permit the Fund to give additional consideration to applicants that: (1) Have secured all their matching funds; (2) concentrate their activities within target markets; and (3) dedicate the greatest portion of their overall resources to lending, investments and development service activities.

The Fund has dedicated significant efforts toward designing its evaluation and selection process and seeks comments on its effectiveness in directing resources to applicants that can best fulfill the objectives of the program. Comments are also requested to assist the Fund in identifying the best measures of an applicant's organizational and financial capacity—reflecting its desire to direct monies to applicants that can use its resources most effectively. Finally, the Fund seeks comments on other priorities that should be reflected in the evaluation and selection process.

Subpart I—Terms and Conditions of Assistance

While Federal and State agencies will retain responsibility for assuring the safety and soundness of insured CDFIs, pursuant to § 1805.900 the Fund will (to the extent practicable) ensure that unregulated awardees are financially and managerially sound and maintain appropriate internal controls. Prior to receiving assistance, each awardee will execute an agreement with the Fund that describes its performance goals and other terms and conditions of assistance. Section 1805.901 describes the nature and use of the Fund's assistance agreements. The agreement

will contain sanctions for noncompliance. As required by the Act, any proposed sanctions to be imposed on an insured CDFI must be discussed with the appropriate Federal banking agency under specific procedures. Pursuant to § 1805.902, disbursement of assistance from the Fund will be in a lump sum or over a period of time, as determined by the Fund. However, the Fund may provide no financial assistance until the awardee has secured a firm commitment for its corresponding matching funds. This provision is intended to ensure that no Federal funds are released until other resources are leveraged.

Section 1805.903 describes the recordkeeping and reporting requirements applicable to awardees. These requirements are consistent with the Fund's fiduciary and monitoring responsibilities. Awardees are required to submit quarterly data on financial performance and annual reports and audits on its financial and programmatic performance. The Fund will seek to utilize information available through the appropriate Federal banking agencies on insured CDFIs as required by the CDFI Act.

In developing its regulations, the Fund has sought to minimize its recordkeeping and reporting requirements. The Fund requests input on how to further reduce such burden while still meeting its monitoring and enforcement needs. The Fund further seeks suggestions how to best measure and monitor the performance of awardees without imposing onerous reporting requirements.

All awardees shall be subject to legal requirements pertaining to the Fund's assistance, including conflict of interest standards. Section 1805.905 requires each awardee to comply with all other governmental requirements. Section 1805.906 requires awardees to maintain standards of conduct acceptable to the Fund. Section 1805.907 describes lobbying restrictions applicable to awardees.

IV. Bank Enterprise Award Program

Section 114 of the CDFI Act is based on the Bank Enterprise Act and gives the Fund authority to implement, with some modifications, its provisions. The Bank Enterprise Act was enacted in 1991, but had not previously received appropriated funds for implementation.

The purpose of the BEA Program (12 CFR part 1806) is to encourage insured depository institutions to increase loans, services and technical assistance within distressed communities and to make equity investments in CDFIs. The BEA Program rewards participating insured depository institutions for increasing their activities in economically distressed communities and investing in CDFIs. Applicants are selected to participate in the program through a competitive process which evaluates applications based on the value of proposed increases in their specified activities. Program participants receive monies only after successful completion of the specified activities.

Subpart A—General Provisions

Section 1806.102 describes the program's relationship to the CDFI Program (part 1805). To prevent applicants from receiving more than one Federal award for a single activity, no CDFI may receive an award under the BEA Program if it: (1) Has an application pending under the CDFI Program; (2) has received assistance from that program within the preceding 12 months; or (3) has ever received assistance under that program for the same activities proposed in a BEA Program application. Assistance provided to a CDFI by a BEA Program participant may be used by the CDFI as matching funds for the CDFI Program. BEA applicants that propose to make an equity investment in a CDFI must request that the entity be certified as a CDFI under § 1805.201 of the CDFI Program regulations.

Subpart B—Awards

Distressed Community

Section 1806.200 describes the community eligibility and designation process. An insured depository institution applying for an award is required to designate a distressed community or communities if it proposes to carry out certain specified activities (Eligible Development Activities) or make equity investments that support the efforts of a CDFI in a distressed community.

The statute mandates that each designated distressed community meet certain geographic requirements and distress criteria. Under the geographic requirements, the community must be located within certain boundaries, its boundaries must be contiguous and its population must meet certain requirements or it must be located entirely within an Indian Reservation (as defined in the regulations). The distress criteria require that at least 30 percent of the residents have incomes which are less than the national poverty level and the unemployment rate for the area must be at least 1.5 times the national average (as determined by the Bureau of the Statistics' most recent figures). Such criteria will target BEA Program resources to some of the most distressed communities in the nation. The Fund seeks comments from applicants and other interested parties on how, working within the framework of the geographic requirements and distress criteria, it can maximize participation in the program.

Qualified Activities

In § 1806.201 the activities that program participants may engage in are categorized as equity investments in CDFIs or Eligible Development Activities. Eligible Development Activities include certain consumer, commercial real estate, single family, multi-family, business and agricultural loans. Each of these loans is defined and must serve the distressed community. Additional Eligible Development Activities specified are deposit taking activities and providing certain services and technical assistance to specified persons. Certain grants, loans and technical assistance to CDFIs also qualify as Eligible Development Activities. Each Eligible Development Activity is assigned a priority factor based on the Fund's assessment of its degree of difficulty, the extent of innovation involved, and the extent of benefits provided to a distressed community by the activity. The Fund specifically seeks comments about the appropriateness of the priority factors assigned to each activity, as well as other methodologies that could be explored for prioritizing activities.

In developing the categories of Eligible Development Activities, the Fund sought to minimize recordkeeping and reporting burdens. The Fund specifically seeks comments on the extent to which the activity categories correspond to information already collected by insured depository institutions and how the categories (and the manner in which activities are valued) might be modified to reduce reporting burden.

Measuring Activities

Section 1806.202 describes the methodology used to measure activities for the purpose of ranking applications and determining award amounts. All qualified activities will be measured by the increases in value of the activities between a retroactive baseline period (for which the applicant will provide historical data) and a prospective assessment period (for which the applicant must project future activity levels). Dates for the baseline and assessment periods will be published in the NOFA for each funding round.

Estimated Award Amounts

In § 1806.203 procedures are established for calculating estimated award amounts. In general, the estimated award amount for equity investments in CDFIs will be equal to 15 percent of an applicant's anticipated increase in such equity investments. For Eligible Development Activities, a seven step procedure is established under which a total score is calculated. Generally, if the applicant is a CDFI, the total score is multiplied by 15 percent to determine the estimated award. If the applicant is not a CDFI, the total score is multiplied by 5 percent. The Fund specifically seeks comment on whether the award levels are appropriate for prompting applicants to increase their activities within distressed communities. The Fund also requests comments on whether there are other approaches or methodologies that could be explored for facilitating increased activity levels among insured depository institutions.

Selection Process

A selection process is established in § 1806.204 which reflects the funding priorities mandated in statute. First, applications that propose equity investments in CDFIs that support the efforts of those institutions in distressed communities will be selected. Second, applicants that propose equity investments in other CDFIs will be selected. Finally, applicants that propose to undertake Eligible Development Activities will be selected. Applications in the first two categories will be ranked based on the extent to which an applicant proposes to reduce its award below 15 percent. Ties between applicants will be broken using the ratio of proposed equity investments to the asset size of the institution. Applications in the last category of funding priorities will be ranked according to the ratio of an applicant's total score relative to its asset size. Any ties between such applicants will be broken using the poverty rates of the distressed communities.

Actual Award Amounts

Section 1806.205 establishes the funding process. In developing these regulations, the Fund considered three alternative schemes for selecting and funding applicants. A ''prospective'' system was considered which makes selections based on projected achievements and provides incentives at the beginning of the implementation period (with a requirement that the award be returned in the event of nonperformance). A ''ex-post facto'' system was also considered which evaluates and makes awards based on activities that have already been implemented. Finally, a ''hybrid'' system was considered which selects program participants based on projected performance, but provides awards only after the activities have been implemented. The latter approach was selected because it: (1) Provides greater certainty to program participants that they will be rewarded for completing their projected activities; and (2) achieves the public policy objective of utilizing the Fund's limited resources to catalyze new activities. The Fund specifically seeks comments on whether this approach will best maximize community impact and the participation of insured depository institutions. The Fund also seeks suggestions on other approaches that might maximize the impact of its limited resources.

Awards are provided based on activities that are actually carried out. If an awardee carries out 90 percent or more of its projected activities, it will receive the full estimated award amount. If an awardee only partially achieves its projected activities, the Fund may provide a partial award. Partial achievement is set at less than 90 percent but at least 75 percent. The Fund may adjust the percentages used to define partial achievement in certain circumstances. These provisions will allow the Fund to pro-rate award amounts based on actual performance in order to: (1) Prevent applicants from over-estimating projected activities to enhance their competitiveness in the selection process; and (2) recognize that achieving a projected performance goal is not always within the complete control of the program participant. The Fund specifically seeks public comments on whether such a mechanism will accomplish these goals or whether there are alternative mechanisms that should be explored.

Application Process

Section 1806.206 describes the application process for Bank Enterprise Awards. Each funding round will be proceeded by a NOFA published in the Federal Register. The NOFA will contain specific information on requirements or restrictions applicable to such round. As indicated above, the Fund has sought to minimize its application and reporting requirements and seeks comment on how these requirements might be improved.

Subpart C—Terms and Conditions of Assistance

Section 1806.300 requires that each Awardee execute an award agreement with the Fund. The agreement will establish requirements for receiving funds and appropriate sanctions for failure to comply with program requirements. Section 1806.301 specifies that, at the end of the assessment period, each Awardee will submit evidence of its completed activities and an estimate of the benefits they have generated within the distressed community. Upon receipt of these final reports, the Fund will make the appropriate disbursement of funds to the awardee.

V. Environmental Quality

The National Environmental Policy Act (NEPA) directs Federal agencies to interpret and administer the policies, regulations and public laws of the United States in accordance with the environmental policies established in section 101 of NEPA. The Council on Environmental Quality (CEQ) issued regulations to provide uniform standards applicable throughout the Federal government for conducting environmental reviews. The CEQ regulations require that each agency develop its own procedures to supplement the CEQ regulations. The Department of the Treasury's NEPA implementing procedures are contained in Treasury Directive 75–02, Department of the Treasury Environmental Quality Program. The Directive provides that each bureau issue its own supplementary procedures as necessary for the implementation of NEPA.

The regulations in 12 CFR 1815 are the Fund's implementing procedures for compliance with NEPA and the CEQ regulations. These regulations are designed to: (1) Integrate the NEPA process with other planning and decisionmaking processes of the Fund; (2) ensure that the Fund's decisions are made in compliance with NEPA and the CEQ regulations, and (3) involve the public in the NEPA process in an appropriate and responsible manner. These procedures address: (1) the Fund's decisionmaking process related to substantive consideration of environmental factors; (2) the procedural requirements for environmental documentation at critical stages of the decisionmaking process; and (3) establishment of criteria to assist in determining the need for environmental assessments and environmental impact statements. Part 1815 of these regulations have been reviewed by the CEQ for conformance with NEPA and the CEQ regulations.

Section 1815.103 designates the Director of the Fund as the official responsible for implementation of the

Fund's environmental quality policies and procedures. Section 1815.104 sets forth the specific duties of such official.

As indicated in § 1815.105, there are two distinct stages in the decisionmaking process for award of the Fund's assistance: (1) A preliminary approval point at which applications are selected; and (2) a subsequent stage where funding actually occurs. Part 1815 of the regulations have been drafted to take into account this staged process. During its initial application review, the Fund will determine whether an applicant proposes actions which are categorically excluded or that normally require an environmental impact statement (EIS) or an environmental assessment. If any proposed action is not categorically excluded, funding approval will be conditioned upon submission of information by the applicant that is necessary to perform the appropriate environmental review. No Federal funds may be used for such an action until the environmental review is completed and approved by the Fund. If the information provided is not sufficient to perform a meaningful environmental review during the application screening process, § 1815.106 requires a supplemental environmental review prior to taking any action: (1) That is not categorically excluded; (2) that directly uses Federal funds; and (3) for which an environmental assessment or EIS has not been approved by the Fund. The Fund will require that it be informed of any action that would require further environmental review prior to the use of any Federal funds as part of the required application materials and assistance agreements.

Section 1815.108 establishes certain actions that will require an EIS to be performed. Section 1815.109 prescribes procedures to be followed when such an EIS is necessary. Section 1815.110 provides a list of actions that constitute a categorical exclusion (activities that do not individually or collectively have a significant effect on the human environment). Absent extraordinary circumstances, these actions do not require preparation of either an environmental assessment or an EIS. Section 1815.112 outlines procedures for the preparation of an environmental assessment if an action does not normally require an EIS and is not categorically excluded. As indicated in § 1815.113, information collected by the Fund will be available to the public consistent with the CEQ regulations.

The Fund anticipates that most actions to be proposed and carried out by applicants will be categorically excluded. However, if it becomes evident during either the application review or implementation stages that an action does not meet these exclusion standards, the Fund (in cooperation with the program recipient) will diligently perform its environmental review responsibilities under NEPA, the CEQ regulations, and these supplemental procedures.

List of Subjects

12 CFR Part 1805

Community development, Economic development, Grant programs—community development, Loan programs—community development, Reporting and recordkeeping requirements, Small businesses.

12 CFR Part 1806

Banks, banking, Community development, Economic development, Grant programs—community development, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 1815

Environmental impact statements, Environmental protection, Reporting and recordkeeping requirements.

Dated: October 10, 1995.

John D. Hawke, Jr.,

Under Secretary (Domestic Finance).

For the reasons set forth in the preamble, a new chapter XVIII consisting of parts 1805, 1806, and 1815 is established in title 12 of the Code of Federal Regulations to read as follows:

CHAPTER XVIII—COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND, DEPARTMENT OF THE TREASURY

Part
1805 Community development financial institutions program
1806 Bank enterprise award program
1815 Environmental quality

PART 1805—COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS PROGRAM

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Authority: 12 U.S.C. 4703, 4717; chapter X, Pub. L. 104–19, 109 Stat. 237 (12 U.S.C. 4703 note).

Subpart A—General Provisions

§ 1805.100 Purpose.

The purpose of the Community Development Financial Institutions Program is to facilitate the creation of a national network of financial institutions that is dedicated to community development.

§ 1805.101 Summary.

Under the Community Development Financial Institutions Program, the Fund will provide financial and technical assistance to Applicants selected by the Fund in order to enhance their ability to make loans and investments and provide services. An Awardee must serve an Investment Area(s), Targeted Population(s), or both. The Fund will select Awardees to receive financial and technical

assistance through a competitive application process. Each financial assistance Awardee will enter into an Assistance Agreement which will require it to achieve financial, organizational development, and community impact goals.

§ 1805.102 Relationship to other Fund programs.

(a) *Bank Enterprise Award Program.* (1) No Insured CDFI may receive assistance from the Bank Enterprise Award Program (part 1806 of this chapter) if it has:

(i) An application for assistance pending under the Community Development Financial Institutions Program;

(ii) Received assistance under the Community Development Financial Institutions Program within the preceding 12-month period; or

(iii) Received assistance under the Community Development Financial Institutions Program for the same activities as proposed under an application for the Bank Enterprise Award Program.

(2) An Equity Investment (as defined in part 1806 of this chapter) in, or a loan to, a CDFI made by a Bank Enterprise Award Program Awardee may be used to meet the matching fund requirements described in subpart F of this part. Receipt of such Equity Investment or loan does not disqualify a CDFI from receiving assistance under this part.

(b) *Liquidity enhancement program.* No entity that receives assistance through the liquidity enhancement program authorized under section 113 (12 U.S.C. 4712) of the Act may receive assistance under the Community Development Financial Institutions Program.

§ 1805.103 Awardee not instrumentality.

No Awardee (or its Community Partner) shall be deemed to be an agency, department, or instrumentality of the United States.

§ 1805.104 Definitions.

For the purpose of this part:

(a) *Act* means the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 et seq.);

(b) *Affiliate* means any company or entity that controls, is controlled by, or is under common control with another company;

(c) *Applicant* means any entity submitting an application for assistance under this part;

(d) *Appropriate Federal Banking Agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.), and also includes the National Credit Union Administration with respect to Insured Credit Unions;

(e) *Assistance Agreement* means a contract between the Fund and an Awardee which specifies the terms and conditions of assistance under this part;

(f) *Awardee* means an Applicant selected by the Fund to receive assistance pursuant to this part;

(g) *Community Development Financial Institution* (or *CDFI*) means an entity currently meeting the eligibility requirements under § 1805.200;

(h) *Community Development Financial Institutions Program* means the program authorized by sections 105–108 of the Act (12 U.S.C. 4704–4707) and implemented under this part;

(i) *Community Facility* means a facility where health care, child care, educational, cultural, or social services are provided;

(j) *Community-Governed* means an entity in which the residents of an Investment Area(s) or members of a Targeted Population(s) represent greater than 50 percent of the governing body;

(k) *Community-Owned* means an entity in which the residents of an Investment Area(s) or members of a Targeted Population(s) have an ownership interest of greater than 50 percent;

(l) *Community Partner* means a person (other than an individual) that provides loans, equity investments, or Development Services and enters into a Community Partnership with an Applicant. A Community Partner may include a Depository Institution Holding Company, an Insured Depository Institution, an Insured Credit Union, a not-for-profit or for-profit organization, a State or local government entity, a quasi-government entity, or an investment company authorized pursuant to the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.);

(m) *Community Partnership* means an agreement between an Applicant and a Community Partner to collaboratively provide loans, equity investments, or Development Services to an Investment Area(s) or a Targeted Population(s);

(n) *Comprehensive Business Plan* means a document covering not less than the next five fiscal years which meets the requirements described under § 1805.701(d);

(o) *Depository Institution Holding Company* means a bank holding company or a savings and loan holding company as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*);

(p) *Development Investment* means an equity investment made by an Applicant which, in the judgment of the Fund, directly supports or enhances activities that serve an Investment Area(s) or a Targeted Population(s). Such investments must be made through an arms-length transaction with a third party that does not have a relationship with the Applicant as an Affiliate;

(q) *Development Services* means activities that promote community development and are integral to lending and Development Investment activities. Such services shall prepare or assist potential borrowers or investees to utilize the lending or investment products of the Awardee, its Affiliates, or its Community Partners. Such services include:

(1) Financial or credit counseling to individuals for the purpose of facilitating home ownership, promoting self-employment, or enhancing consumer financial management skills; or

(2) Technical assistance to borrowers or investees for the purpose of enhancing business planning, marketing, management, and financial management skills;

(r) *Financial Services* means checking, check-cashing, money orders, certified checks, automated teller machines, deposit-taking, and safe deposit box services;

(s) *Fund* means the Community Development Financial Institutions Fund established under section 104(a) (12 U.S.C. 4703(a)) of the Act;

(t) *Indian Reservation* means any geographic area that meets the requirements of section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), and shall include land held by incorporated Native groups, regional corporations, and village corporations, as defined in and pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), public domain Indian allotments, and former Indian reservations in the State of Oklahoma;

(u) *Indian Tribe* means any Indian Tribe, band, pueblo, nation, or other organized group or community, including any Alaska Native village or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians;

(v) *Insider* means any director, officer, employee, principal shareholder (owning, individually or in combination

with family members, five percent or more of any class of stock), or agent (or any family member or business partner of any of the above) of any Applicant, Affiliate or Community Partner;

(w) *Insured CDFI* means a CDFI that is an Insured Depository Institution or an Insured Credit Union;

(x) *Insured Credit Union* means any credit union, the member accounts of which are insured by the National Credit Union Share Insurance Fund;

(y) *Insured Depository Institution* means any bank or thrift, the deposits of which are insured by the Federal Deposit Insurance Corporation;

(z) *Investment Area* means a geographic area meeting the requirements of § 1805.301;

(aa) *Low-Income* means an income (as reported by the Bureau of the Census in the 1990 decennial census), adjusted for family size, of not more than:

(1) For Metropolitan Areas, 80 percent of the area median family income; and

(2) For non-Metropolitan Areas, the greater of:

(i) 80 percent of the area median family income; or

(ii) 80 percent of the statewide non-Metropolitan Area median family income;

(bb) *Metropolitan Area* means an area designated as such by the Office of Management and Budget pursuant to 44 U.S.C. 3504(d)(3) and 31 U.S.C. 1104(d) and Executive Order 10253 (3 CFR, 1949–1953 Comp., p. 758), as amended;

(cc) *Non-Regulated CDFI* means any entity meeting the eligibility requirements of § 1805.200 which is not a Depository Institution Holding Company, Insured Depository Institution, or Insured Credit Union;

(dd) *State* means any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands;

(ee) *Subsidiary* means any company which is owned or controlled directly or indirectly by another company and includes any service corporation owned in whole or part by an Insured Depository Institution or any Subsidiary of such a service corporation, except as provided in § 1805.200(h)(4); and

(ff) *Targeted Population* means individuals or an identifiable group meeting the requirements of § 1805.302.

§ 1805.105 Waiver authority.

The Fund may waive any requirement of this part that is not required by law upon a determination of good cause. Each such waiver shall be in writing and supported by a statement of the facts and the grounds forming the basis of the waiver. For a waiver in an individual case, the Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the Fund will publish notice of granted waivers in the Federal Register.

§ 1805.106 OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1505–0153 (expires September 30, 1998).

Subpart B—Eligibility

§ 1805.200 Applicant eligibility.

(a) *General requirements.* (1) An entity that meets the requirements described in paragraphs (b) through (h) of this section will be considered a CDFI and will be eligible to apply for assistance under this part. Criteria to establish compliance with such requirements are set forth in § 1805.701(b).

(2) An entity that proposes to become a CDFI is eligible to apply for assistance under this part if the Fund determines that such entity's Comprehensive Business Plan provides a realistic course of action to ensure that it will meet the requirements described in this section within three years of entering into an Assistance Agreement with the Fund.

(3) The Fund, in its sole discretion, shall determine whether an Applicant fulfills the requirements set forth in this section and as set forth in § 1805.701(b).

(b) *Primary mission.* A CDFI shall have a primary mission of promoting community development.

(c) *Target market.* A CDFI shall serve an Investment Area(s) or Targeted Population(s).

(d) *Financing entity.* A CDFI shall be an entity whose predominant business activity is the provision of loans or Development Investments.

(e) *Development Services.* A CDFI, directly or through an Affiliate, shall provide Development Services in conjunction with loans or Development Investments.

(f) *Accountability.* A CDFI must maintain accountability to its Investment Area(s) or Targeted Population(s) through representation on its governing board or otherwise.

(g) *Non-government entity.* A CDFI shall not be an agency or instrumentality of the government of the United States, or any State or political subdivision thereof. An entity that is created by, or that receives substantial assistance from, one or more government entities may be a CDFI provided that it is not controlled by such entities and maintains independent decision-making power over its activities.

(h) *Provisions applicable to Depository Institution Holding Companies and Insured Depository Institutions.* (1) A Depository Institution Holding Company may qualify as a CDFI only if it and its Affiliates collectively satisfy the requirements described in paragraphs (a) through (g) of this section.

(2) No Affiliate of a Depository Institution Holding Company may qualify as a CDFI unless the holding company and all of its Affiliates collectively meet the requirements described in paragraphs (a) through (g) of this section.

(3) No Subsidiary of an Insured Depository Institution may qualify as a CDFI if the Insured Depository Institution and its Subsidiaries do not collectively meet the requirements described in paragraphs (a) through (g) of this section.

(4) For the purposes of paragraphs (h)(1), (2) and (3) of this section, an Applicant will not be considered to be a Subsidiary of any Insured Depository Institution or Depository Institution Holding Company that controls less than 25 percent of any class of its voting shares, and which does not, in any manner, otherwise control the election of a majority of directors of the Applicant.

§ 1805.201 Certification as a Community Development Financial Institution.

An entity may apply to the Fund for certification that it meets the CDFI eligibility requirements (as described under § 1805.200) regardless of whether it is seeking financial or technical assistance from the Fund. Entities seeking such certification shall provide the information described under § 1805.701(b). Certification by the Fund will verify that the entity meets the CDFI eligibility requirements. However, such a certification shall not constitute an opinion by the Fund as to the financial viability of the entity that obtains such certification.

Subpart C—Target Markets

§ 1805.300 Target markets—general.

An Applicant shall designate one or more Investment Area(s) or Targeted Population(s) that it proposes to serve. An Applicant may also choose to serve both an Investment Area(s) and a Targeted Population(s). An Investment

Area shall meet specific geographic and other criteria discussed in § 1805.301. A Targeted Population shall consist of Low-Income persons or those who otherwise lack adequate access to loans or equity investments.

§ 1805.301 Investment area.

(a) *General.* A geographic area will be considered eligible for designation as an Investment Area if it:

(1)(i) Meets at least one of the objective criteria of economic distress as set forth in paragraph (d) of this section and has significant unmet needs for loans or equity investments as described in paragraph (e) of this section; or

(ii) Encompasses or is located in an Empowerment Zone or Enterprise Community designated under section 1391 of the Internal Revenue Code of 1986 (26 U.S.C. 1391); and

(2) Is entirely located within the geographic boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands).

(b) *Geographic units.* An Investment Area shall consist of a geographic unit(s) that is a county (or equivalent area), minor civil division that is a unit of local government, incorporated place, census tract, block numbering area, block group, or American Indian or Alaska Native area (as such units are defined or reported by the U.S. Bureau of the Census). An Applicant can designate one or more Investment Areas as part of a single application.

(c) *Designation.* An Applicant can designate an Investment Area by selecting:

(1) A geographic unit(s) which individually meets one of the criteria in paragraph (d) of this section; or

(2) A group of contiguous geographic units which together meet one of the criteria in paragraph (d) of this section, provided that the combined population residing within individual geographic units not meeting any such criteria does not exceed 15 percent of the total population of the entire Investment Area.

(d) *Distress criteria.* An Investment Area (or the units that comprise an area) must meet at least one of the following objective criteria of economic distress (as reported in the 1990 (or subsequent) decennial Census and published by the U.S. Bureau of the Census):

(1) The percentage of the population living in poverty is at least 20 percent;

(2) In the case of an Investment Area located:

(i) Within a Metropolitan Area, the median family income shall be at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater; or

(ii) Outside of a Metropolitan Area, the median family income shall be at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater;

(3) The unemployment rate is at least 1.5 times the national average;

(4) The percentage of occupied distressed housing (as indicated by lack of complete plumbing and occupancy of more than one person per room) is at least 20 percent; or

(5) In areas located outside of a Metropolitan Area, the county population loss between 1980 and 1990 is at least 10 percent.

(e) *Unmet needs.* An Investment Area will be deemed to have significant unmet needs for loans or equity investments if studies or other analyses provided by the Applicant adequately demonstrate a pattern of unmet needs for loans and equity investments within such area(s).

§ 1805.302 Targeted population.

(a) A Targeted Population shall mean individuals, or an identifiable group of individuals, who: Are Low-Income persons; or lack adequate access to loans or equity investments. An Applicant can serve the members of a Targeted Population directly or through borrowers or investees that directly serve or provide significant benefits to such members.

(b) The members of a Targeted Population shall reside within the boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands).

(c) An Applicant shall provide its products and services in a manner that is consistent with the Equal Credit Opportunity Act (15 U.S.C. 1691), to the extent that the Applicant is subject to the requirements of such Act.

Subpart D—Use of Funds/Eligible Activities

§ 1805.400 Purposes of financial assistance.

The Fund may provide financial assistance through investment instruments described under subpart E of this part. Such financial assistance is intended to strengthen the capital position and enhance the ability of an Awardee to make loans and Development Investments and provide Financial Services.

§ 1805.401 Eligible activities.

Financial assistance provided under this part may be used by an Awardee to serve Investment Area(s) or Targeted Population(s) by developing or supporting:

(a) Commercial facilities that promote revitalization, community stability or job creation or retention;

(b) Businesses that:

(1) Provide jobs for Low-Income persons;

(2) Are owned by Low-Income persons; or

(3) Enhance the availability of products and services to Low-Income persons;

(c) Community Facilities;

(d) The provision of Financial Services;

(e) Housing that is principally affordable to Low-Income persons, except that assistance used to facilitate home ownership shall only be used for services and lending products that serve Low-Income persons and that:

(1) Are not provided by other lenders in the area; or

(2) Complement the services and lending products provided by other lenders that serve the Investment Area(s) or Targeted Population(s);

(f) The provision of Consumer Loans (a loan to one or more individuals for household, family, or other personal expenditures); or

(g) Other businesses or activities as requested by the Applicant and deemed appropriate by the Fund.

§ 1805.402 Restrictions on use of assistance.

(a) An Awardee shall only use assistance provided by the Fund and its corresponding matching funds for the eligible activities approved by the Fund and described in the Assistance Agreement.

(b) An Awardee shall consult with, and obtain the approval of, the Fund for any significant changes in its activities from those approved by the Fund and described in the Assistance Agreement.

(c) An Awardee may not distribute assistance to an Affiliate without the Fund's consent.

(d) Assistance provided upon approval of an application involving a Community Partnership shall only be distributed to the Awardee and shall not be used to fund any activities carried out by a Community Partner or an Affiliate of a Community Partner.

§ 1805.403 Technical assistance.

(a) *General.* The Fund may provide technical assistance to build the capacity of a CDFI. Such technical assistance may include training for management and other personnel; development of programs, products and services; improving financial management and internal operations; enhancing a CDFI's community impact; or other activities deemed appropriate by the Fund. The Fund, in its sole discretion, may provide technical assistance in amounts, or under terms and conditions that are different from those requested by an Applicant. The Fund may not provide any technical assistance to an Applicant for the purpose of assisting in the preparation of an application. The Fund may provide technical assistance to a CDFI directly, through grants, or by contracting with organizations that possess the appropriate expertise.

(b) The Fund may provide technical assistance regardless of whether or not the recipient also receives financial assistance under this part. Technical assistance provided pursuant to this part is subject to the assistance limits described in § 1805.502.

(c) An Applicant seeking technical assistance must meet the eligibility requirements of § 1805.200 and submit an application as described in § 1805.701.

(d) The Fund, in its sole discretion, may select Applicants to receive technical assistance.

Subpart E—Investment Instruments

§ 1805.500 Investment instruments—general.

The Fund's primary objective in awarding financial assistance is to enhance the stability, performance and capacity of an Awardee. The Fund will require each Awardee to utilize such financial assistance and its corresponding matching funds to achieve the performance goals established in its Assistance Agreement. The Fund will provide financial assistance to an Awardee through one or more of the investment instruments described in § 1805.501, and under such terms and conditions as described in this subpart. The Fund, in its sole discretion, may provide financial assistance in amounts, through investment instruments, or under rates, terms and conditions that are different from those requested by an Applicant.

§ 1805.501 Forms of investment instruments.

(a) *Equity.* The Fund may purchase non-voting stock in a for-profit Awardee. The stock shall be transferable and may convert to voting stock upon transfer. The Fund shall not own more than 50 percent of the equity of an Awardee and shall not control its operations.

(b) *Capital grants.* The Fund may award grants.

(c) *Loans.* The Fund may make loans, if permitted by applicable law.

(d) *Deposits and credit union shares.* The Fund may make deposits (which shall include credit union shares) in Insured CDFIs. Deposits in an Insured CDFI shall not be subject to any requirement for collateral or security.

§ 1805.502 Assistance limits.

(a) *General.* Except as provided in paragraph (b) of this section, the Fund may not provide more than $5 million, in the aggregate, in financial and technical assistance to an Awardee and its Affiliates during any three-year period.

(b) *Additional amounts.* If an Awardee proposes to establish a new Affiliate to serve an Investment Area(s) or Targeted Population(s) outside of any State, and outside of any Metropolitan Area, currently served by the Awardee or its Affiliates, the Awardee may receive additional financial assistance up to a maximum of $3.75 million during the same three-year period. Such additional assistance:

(1) Shall only be used to finance activities in the new or expanded Investment Area(s) or Targeted Population(s); and

(2) Must be distributed to a new Affiliate that meets the eligibility requirements described in § 1805.200 and is selected for assistance pursuant to subpart H of this part.

(c) An Awardee may only receive the financial assistance described in paragraph (b) of this section if no other application to serve substantially the same Investment Area(s) or Targeted Population(s) has been selected by the Fund within the previous one-year period, and no other application which meets the minimum requirements of § 1805.802(a) and (b) was submitted within the current funding round.

§ 1805.503 Authority to sell.

The Fund may, at any time, sell its equity investments and loans. Subsequent to such disposition, the Fund shall retain the authority to enforce the provisions of the Assistance Agreement until the performance goals specified therein have been met.

Subpart F—Matching Funds Requirements

§ 1805.600 Matching funds—general.

All financial assistance awarded under this part shall be matched with funds from sources other than the Federal government. Except as provided in § 1805.602, such matching funds shall be provided on the basis of not less than one dollar for each dollar provided by the Fund. Community Development Block Grant Program and other funds provided pursuant to the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*), shall be considered Federal government funds and shall not be used to meet the matching requirements. Matching funds shall be used as provided in the Assistance Agreement.

§ 1805.601 Comparability of form and value.

(a) Matching funds shall be at least comparable in form (e.g., equity investments, deposits, credit union shares, loans and grants) and value to financial assistance provided by the Fund (except as provided in § 1805.602). The Fund shall have the discretion to determine whether matching funds pledged are comparable in form and value to the financial assistance requested.

(b) In the case of an Awardee that raises matching funds from more than one source, through different investment instruments, or under varying terms and conditions, the Fund may provide financial assistance in a manner that represents the combined characteristics of such instruments.

(c) An Awardee may meet all or part of its matching requirements by committing available earnings retained from its operations.

§ 1805.602 Severe constraints waiver.

(a) In the case of an Applicant with severe constraints on available sources of matching funds, the Fund, in its sole discretion, may permit such Applicant to comply with the matching requirements by:

(1) Reducing such requirements by up to 50 percent; or

(2) Permitting an Applicant to provide matching funds in a form to be determined at the discretion of the Fund, if such an Applicant:

(i) Has total assets of less than $100,000;

(ii) Serves an area that is not a Metropolitan Area; and

(iii) Is not requesting more than $25,000 in assistance.

(b) Not more than 25 percent of the total funds available for obligation

under this part in any fiscal year may be matched as described in paragraph (a) of this section.

(c) An Applicant may request a ''severe constraints waiver'' as part of its application for assistance. An Applicant shall provide a narrative justification for its request, indicating:

(1) The cause and extent of the constraints on raising matching funds;

(2) Efforts to date, results, and projections for raising matching funds;

(3) A description of the matching funds expected to be raised; and

(4) Any additional information requested by the Fund.

(d) The Fund will grant a ''severe constraints waiver'' only in exceptional circumstances when it has been demonstrated, to the satisfaction of the Fund, that an Investment Area(s) or Targeted Population(s) would not be adequately served without the waiver.

§ 1805.603 Time frame for raising match.

Applicants may use monies that have been obtained or legally committed for up to one year prior to the publication of a Notice of Funds Availability (NOFA) for an applicable funding round to meet the matching requirements. An Applicant shall raise the balance of its matching requirements within the period set forth in the applicable NOFA.

Subpart G—Applications for Assistance

§ 1805.700 Notice of Funds Availability.

Each Applicant shall submit an application for financial or technical assistance under this part in accordance with these regulations and a NOFA published in the Federal Register. The NOFA will advise Applicants on how to obtain an application packet and will establish deadlines and other requirements. The NOFA may specify any limitations, special rules, procedures, and restrictions for a particular funding round. After receipt of an application, the Fund may request clarifying or technical information on the materials submitted as part of such application.

§ 1805.701 Application contents.

Each application must contain the information specified in the application packet including the items specified in this section.

(a) *Award request.* An Applicant shall indicate:

(1) The dollar amount, form, rates, terms and conditions of financial assistance requested; and

(2) Any technical assistance needs for which it is requesting assistance.

(b) *Eligibility verification.* An Applicant shall provide information necessary to establish that it is, or will be, a CDFI. An Applicant shall demonstrate whether it meets the eligibility requirements described in § 1805.200 by providing the information requested in this paragraph. The Fund, in its sole discretion, shall determine whether an Applicant has satisfied the requirements of this paragraph.

(1) *Primary mission.* (i) A CDFI shall have a primary mission of promoting community development. The Fund will consider an Applicant to have such a mission if the activities of the Applicant and its Affiliates are principally directed:

(A) Within the geographic boundaries of an Investment Area(s);

(B) To members of a Targeted Population(s);

(C) To projects that provide significant benefits to residents of an Investment Area(s) or members of a Targeted Population(s); or

(D) To any combination of the above.

(ii) Using indicators selected by the Applicant that are appropriate given the nature of the products and services it (and its Affiliates) offers, an Applicant shall be deemed to satisfy the requirements of paragraph (b)(1)(i) of this section if it demonstrates that the activities of the Applicant and each Affiliate, when viewed collectively (as a whole), principally benefit such area(s) or population(s).

(iii) An Applicant shall provide the information requested in paragraph (b)(1)(ii) of this section in accordance with paragraph (c) of this section.

(2) *Target markets.* Using the information in paragraph (b)(1) of this section that is submitted for the Applicant (excluding information on any Affiliates), an Applicant shall demonstrate that its total activities predominantly serve Investment Area(s), Targeted Population(s) or both.

(3) *Designation.* An Applicant shall provide a description of the Investment Area(s) or Targeted Population(s) to be served. If an Applicant is serving:

(i) An Investment Area(s), it shall submit:

(A) A completed Investment Area Designation worksheet contained in the application packet;

(B) A map of the designated area(s); and

(C) Studies or other analyses as described in § 1805.301(e);

(ii) A Targeted Population(s), it shall submit:

(A) A completed Targeted Population Designation worksheet contained in the application packet; or

(B) Studies or other analyses that provide adequate evidence of lack of adequate access to loans or equity investments.

(4) *Financing entity.* (i) A CDFI shall be an entity whose predominant business activity is the provision of loans or Development Investments. An Applicant can demonstrate that it is such an entity if it is a:

(A) Depository Institution Holding Company;

(B) Insured Depository Institution or Insured Credit Union; or

(C) Organization which is deemed by the Fund to have such a predominant business activity as a result of analysis of its financial statements, annual reports, organizing documents, and any other information submitted as part of its application. In conducting such analysis, the Fund may take into consideration an Applicant's institutional type, total asset size, and stage of organizational development.

(ii) An Applicant described under:

(A) Paragraph (b)(4)(i)(A) of this section shall submit a copy of its organizing documents that indicate that it is a Depository Institution Holding Company;

(B) Paragraph (b)(4)(i)(B) of this section shall submit a copy of its current certificate of insurance issued by the Federal Deposit Insurance Corporation or the National Credit Union Administration; and

(C) Paragraph (b)(4)(i)(C) of this section shall submit a copy of its balance sheets and income and expense statements (and any notes or other supplemental information to its financial statements) as described in paragraph (d)(2)(i) of this section which clearly document its assets, liabilities, and net worth that are dedicated to lending and Development Investments and an explanation of how such assets, liabilities and net worth support these activities. An Applicant shall provide the information specified in this paragraph (b)(4)(ii)(C) for such periods as specified in paragraph (c) of this section.

(5) *Development Services.* An Applicant shall submit a summary description of the Development Services to be offered, the expected provider of such services, and information on the persons expected to use such services.

(6) *Accountability.* An Applicant shall describe how it has and will maintain accountability to the Investment Area(s) or Targeted Population(s) it serves.

(7) *Non-government.* An Applicant shall submit articles of incorporation (or comparable organizing documents), charter, by-laws, or other legal documentation or opinions sufficient to verify that it is not a government entity.

(8) *Ownership.* An Applicant shall submit information indicating the portion of shares of all classes of voting

stock that are held by each Insured Depository Institution or Depository Institution Holding Company investor (if any).

(9) *Previous Awardees.* In the case of an Applicant that has previously received assistance under this part, the Applicant shall demonstrate that it:

(i) Has substantially met its performance goals and other requirements described in its previous Assistance Agreement(s); and

(ii) Will expand its operations into a new Investment Area(s), serve a new Targeted Population(s), offer new products and services, or increase the volume of its activities.

(10) *Previous history.* An Applicant with a prior history of serving Investment Area(s) or Targeted Population(s) shall describe its activities, operations and community benefits created for such periods as described in paragraph (c) of this section.

(c) *Time of operation.* At the time of submission of an application, an Applicant that has been in operation for:

(1) Three years or more shall submit information on its activities (as described in paragraphs (b) (1), (2) and (10) of this section) and financial statements (as described in paragraph (d)(2)(i) of this section) for the three most recent fiscal years;

(2) For more than one year, but less than three years, shall submit information on its activities (as described in paragraphs (b) (1), (2) and (10) of this section) and financial statements (as described in paragraph (d)(2)(i) of this section) for each full fiscal year since its inception; or

(3) For less than one year (including a start up organization), shall submit information on its activities and financial statements as described in paragraph (d) of this section.

(d) *Comprehensive Business Plan.* An Applicant shall submit a five-year Comprehensive Business Plan that addresses the items described in this paragraph. The Comprehensive Business Plan shall provide that an Applicant is a CDFI and will maintain such status throughout the five-year period, or will become a CDFI within three years of entering into an Assistance Agreement and maintain such status for the balance of the five-year period. The Plan should include projections that are appropriate given an Applicant's current and anticipated organizational type, total asset size, and stage of organizational development.

(1) *Executive summary.* An Applicant shall provide an executive summary of the Comprehensive Business Plan which includes a description of the institution (including relationships to any Affiliates), markets served or to be served, community needs, and other pertinent information.

(2) *Financial performance*—(i) *Historic performance.* An Applicant shall submit historic financial statements for such periods as specified in paragraph (c) of this section. Such statements should include balance sheets, income and expense statements, and a capitalization statement (which includes information on changes in capital structure and funding from outside sources) for the Applicant. The Applicant shall provide information necessary to assess trends in financial and operating performance (e.g., portfolio delinquencies, defaults and charge-offs, origination volume and volume of loans closed, annual or cumulative operating ratios).

(ii) *Future projections.* An Applicant shall submit projections for each of the next five years which includes balance sheet projections, income and expense projections, operating budgets, capitalization projections, estimates of the volume of new activity to be achieved with assistance provided by the Fund and matching funds, and describe any assumptions that underlie its projections.

(iii) *Financial statements.* If available, an Applicant shall submit audited financial statements. If audited statements are not available, an Applicant shall submit financial statements that have been reviewed by a certified public accountant and developed using accrual based accounting methods. All financial statements shall be reported on the basis of the Applicant's fiscal year. If an Applicant is seeking to use retained earnings to meet its match requirements pursuant to § 1805.600, it must submit audited financial statements for the applicable period.

(iv) *Financial management policies.* An Applicant shall submit information on its financial management policies that describe its methodologies for underwriting and approving loans and investments and managing and monitoring its portfolio, internal operations, and capitalization needs.

(3) *Management capacity.* An Applicant shall provide information on the background and capacity of its management team, including the relevant background and expertise of management (such as resumes or statements of personal history), key personnel and governing board members, if appropriate. The Applicant shall also provide information on any training or technical assistance needed to enhance the capacity of the organization to successfully carry out its Comprehensive Business Plan.

(4) *Market analysis.* An Applicant shall provide an analysis of its target markets. An Applicant must:

(i) Describe its proposed target market(s), including a description of the characteristics of the Investment Area(s) (e.g., location, boundaries, economic characteristics, relationships to Metropolitan, non-Metropolitan, or regional markets) or Targeted Population(s) (e.g., number of persons, income, and other socio-economic characteristics), its methodology for selecting such target market(s), the size of the market(s), and any relevant market trends;

(ii) Describe the products and services (and corresponding pricing) it proposes to provide and analyze the competitiveness of such products and services in the target market(s); and

(iii) Identify and analyze any characteristics of the target market(s) that will create opportunities or present impediments for its products, services and overall market strategy (e.g., economic conditions, perceived or documented credit needs or Financial Service needs, market activity, neighborhood perceptions, government services or delivery systems, community institutions, or the strength of the employment base).

(5) *Strategy.* An Applicant shall describe its strategy for delivering its products and services to its target market(s). An Applicant may also describe any product or service development activities that are necessary before undertaking its strategy including the nature, scope, cost, timing, and risks of such activities. An Applicant shall also describe anticipated incremental increases in activity to be achieved with assistance provided by the Fund and matching funds.

(6) *Coordination strategy.* An Applicant shall describe:

(i) Its plan to coordinate use of assistance from the Fund with existing Federal, State, local, and tribal government assistance programs and private sector resources;

(ii) How its proposed activities are consistent with existing economic, community and housing development plans adopted for an Investment Area(s) or Targeted Population(s); and

(iii) How it will coordinate with community organizations, financial institutions, and Community Partners which will provide loans, equity investments, secondary markets, or other services to an Investment Area(s) or a Targeted Population(s).

(7) *Projected community impact.* An Applicant shall provide an estimate of the benefits expected to be created within its Investment Area(s) or Targeted Population(s) over the next five years, as indicated by the extent to which:

(i) The Applicant will concentrate its activities within an Investment Area(s) or among Targeted Population(s);

(ii) The Applicant's activities will expand economic opportunity (e.g., number of jobs created, jobs retained, businesses financed, business ownership opportunities facilitated, residents of Investment Area(s) or members of Targeted Population(s) employed, number or dollar amount of business loans and investment originations);

(iii) The Applicant's activities will facilitate revitalization (e.g., number of square feet of commercial space financed, dollar amount of commercial real estate loan originations, indicators of demand for such commercial space (e.g., market vacancy rates, pre-leased tenants, number of long term leases), number and square feet of Community Facility space financed, number of long term leases, and dollar amount of Community Facility loan originations);

(iv) The Applicant's activities will promote affordable housing (e.g., number of affordable rental units, dollar amount of affordable rental housing loans originated, information on the demand for such housing (e.g., market vacancy rates, number of people on public and assisted housing waiting lists), information on the type of size of units and the people who will reside in such units (e.g., families, special needs populations), number of homes purchased and dollar amount of home ownership loan originations));

(v) The Applicant will provide Development Services (as measured by the number of individuals that will receive Development Services);

(vi) The Applicant will provide Financial Services (as measured by the number of new customers of Financial Services (e.g., individuals opening checking and savings accounts)); and

(vii) Such other indicators as deemed appropriate by the Applicant or the Fund.

(8) *Community need.* An Applicant may provide information on the extent of economic distress within its Investment Area(s) or needs of its Targeted Population(s) to supplement the data required pursuant to subpart C of this part and paragraph (b)(3) of this section. Such information may be from sources other than the 1990 decennial census.

(9) *Funding sources.* An Applicant shall provide information:

(i) On its current and projected sources of capital and other financial support;

(ii) To demonstrate that it has a plan for achieving or maintaining financial viability within the five-year period; and

(iii) To demonstrate that it will, to the maximum extent appropriate, increase self-sufficiency. Such information shall demonstrate that the Applicant will not be dependent upon future awards from the Fund for continued viability.

(10) *Risks and assumptions.* An Applicant shall identify and discuss critical risks (including strategies to mitigate risk) and assumptions contained in its Comprehensive Business Plan, and any significant impediments to the Plan's implementation.

(11) *Schedule.* An Applicant shall provide a schedule indicating the timing of major events necessary to realize the objectives of its Comprehensive Business Plan.

(12) *Community Partnership.* In the case of an Applicant submitting an application with a Community Partner, the Applicant shall:

(i) Describe how the Applicant and the Community Partner will participate in carrying out the Community Partnership and how the partnership will enhance activities serving the Investment Area(s) or Targeted Population(s);

(ii) Demonstrate that the Community Partnership activities are consistent with the Comprehensive Business Plan;

(iii) Provide information necessary to evaluate such an application as described under § 1805.802(c)(4);

(iv) Include a copy of any written agreement between the Applicant and the Community Partner related to the Community Partnership; and

(v) Provide information to demonstrate that the Applicant meets the eligibility requirements described in § 1805.200 and satisfies the selection criteria described in subpart H of this part. (A Community Partner shall not be required to meet the eligibility requirements described in § 1805.200.)

(e) *Matching funds.* (1) An Applicant shall submit a detailed description of its plans for raising matching funds and likely or committed sources of funds to match the amount of financial assistance requested from the Fund. An Applicant shall indicate the extent to which such matching funds will be derived from private, non-government sources.

(2) An Applicant shall submit a description of any matching funds previously obtained or legally committed. Such description shall include the name of the source, total amount of such match, the date the matching funds were obtained or legally committed, percentage that remains available to serve as match, and terms and restrictions on use for each matching source. The Application shall include copies of any agreements, memoranda of understanding, letters of intent, or similar documents pertaining to matching funds. The Applicant shall provide documentation to indicate that the matching fund source(s) has approved the use of the funds for matching purposes and the name, address and telephone number of a contact person for each entity providing matching funds.

(3) If the Applicant intends to use retained earnings to meet the matching requirements, it shall provide the information described in paragraph (d)(2)(iii) of this section and a copy of its tax returns for the same period. The Applicant shall submit a certification from its governing body:

(i) As to the amount and form of retained earnings available as matching funds; and

(ii) That such earnings will be used for the purposes described in its application.

(4) If the Applicant is requesting a ''severe constraint waiver'' of any matching requirements, it shall submit the information requested in § 1805.602.

(f) *Support.* An Applicant shall provide information to demonstrate the extent of support (if any) within the Investment Area(s) or Targeted Population(s) for its activities.

(g) *Community Ownership and Governance.* An Applicant shall provide information to demonstrate whether it is Community-Owned or Community-Governed.

(h) *Conflict of interest.* An Applicant shall submit a copy of its conflict of interest policies that are consistent with the requirements of § 1805.906.

(i) *Environmental information.* The Applicant shall provide sufficient information regarding the potential environmental impact of its proposed activities in order for the Fund to complete its environmental review requirements pursuant to part 1815 of this chapter.

(j) *Applicant certification.* The Applicant and Community Partner (if applicable) shall certify that:

(1) It possesses the legal authority to apply for assistance from the Fund;

(2) The application has been duly authorized by its governing body and duly executed;

(3) It will not use any Fund resources for lobbying activities as set forth in § 1805.907; and

(4) It will comply with all relevant provisions of this chapter and all applicable Federal, State, and local laws, ordinances, regulations, policies, guidelines, and requirements.

Subpart H—Rating and Selection of Applications

§ 1805.800 Rating and selection—general.

Applicants will be rated and selected, at the sole discretion of the Fund, to receive assistance based on a multi-tiered review process that is intended to:

(a) Screen out Applicants that do not meet the basic program requirements or possess adequate capacity to be a successful CDFI;

(b) Take into consideration the unique characteristics of institutions that vary by institution type, total asset sizes, stage of organizational development, markets served, products and services provided, and location; and

(c) Evaluate and select Applicants.

§ 1805.801 Geographic diversity.

In selecting Awardees, the Fund shall seek to fund a geographically diverse group of Applicants serving Metropolitan Areas, non-Metropolitan Areas, and Indian Reservations from different regions of the United States.

§ 1805.802 Tiered review process.

(a) *Tier I Review.* Tier I of the review process is intended to ensure that an Applicant meets the eligibility requirements described under § 1805.200 and has submitted complete application materials. An Applicant that fails to meet the basic eligibility and application requirements will be notified of the reasons for such determination.

(b) *Tier II Review.* Tier II of the review process is intended to ensure that an Applicant meeting the Tier I requirements possesses the financial and organizational capacity to be a successful CDFI.

(1) The Fund will examine several criteria in evaluating financial and organizational capacity and an Applicant's likelihood of success in meeting the goals of its Comprehensive Business Plan. These criteria will include the strength and background of an Applicant's management team and other key personnel, the quality of its financial management policies and practices, breadth and depth of its financial resources, the depth of its market analysis, and trends in financial and operating performance.

(2) An Applicant that fails to meet the minimum requirements of Tier II will be notified of the reasons for such determination.

(c) *Tier III Review.* Tier III of the review process is intended to examine other qualitative aspects of an application. The Fund will rate each application meeting the Tier I and II requirements based on the selection criteria set forth in this part. The selection criteria and ratings will be considered in the following categories:

(1) *Organizational capacity.* The Fund will evaluate the information described in the Tier II review to rate an Applicant's organizational and financial strength and capacity.

(2) *External resources.* The Fund will evaluate the extent of external resources available to an Applicant based on:

(i) The amount of firm commitments to meet or exceed the matching requirements and the likely success of the plan for raising the balance of the matching funds in a timely manner;

(ii) The extent to which the matching funds are, or will be, derived from private sources or new investments;

(iii) Whether an Applicant is, or will become, an Insured CDFI; and

(iv) The extent to which an Awardee will use assistance to expand the funds available for lending and equity investments beyond the sum of the award and the matching funds.

(3) *Community impact.* The Fund will evaluate an application's community impact based on:

(i) The extent of economic distress within the designated Investment Area(s) or the extent to which the designated Targeted Population(s) is Low-Income;

(ii) The extent to which an Applicant will concentrate its activities on serving Investment Area(s) or Targeted Population(s);

(iii) The extent of need for loans, equity investments, Development Services, and Financial Services within the designated Investment Area(s) or Targeted Population(s);

(iv) The extent to which the activities proposed in the Comprehensive Business Plan will expand economic opportunities within the designated Investment Area(s) or Targeted Population(s);

(v) The extent of support from the designated Investment Area(s) or Targeted Population(s);

(vi) The extent to which an Applicant is, or will be, Community-Owned or Community-Governed;

(vii) The extent to which an Applicant will increase its resources through such means as a Community Partnership, participation in the secondary market, and coordination with other institutions (e.g., a local Empowerment Zone or Enterprise Community coordinating entity), particularly other CDFIs; and

(viii) In the case of an Applicant with a prior history of serving Investment Area(s) or Targeted Population(s), the extent of success in serving them.

(4) *Community Partnerships.* Community Partnerships will be rated based on the extent to which the Applicant and Community Partner meet the factors described in paragraphs (c)(1), (2) and (3) of this section and giving consideration to the extent to which:

(i) The Community Partner will participate in carrying out the activities of the Community Partnership;

(ii) The Community Partnership will enhance the likelihood of success of the Comprehensive Business Plan; and

(iii) Service to an Investment Area(s) or Targeted Population(s) will be better performed by a Community Partnership than by an Applicant alone.

(5) *Other factors.* The Fund may consider any other factors with respect to any application as it deems appropriate.

(6) *Priorities.* The Fund may give additional consideration to Applicants that:

(i) Have secured firm commitments for all of the matching funds at the time of submission of an application;

(ii) Concentrate their activities within an Investment Area(s) or Targeted Population(s); or

(iii) Dedicate the greatest portion of their total resources to lending, Development Investments, and Development Services.

(d) *Consultation with Appropriate Federal Banking Agencies.* The Fund shall consult with, and consider the views of, the Appropriate Federal Banking Agency prior to providing assistance to:

(1) An Insured CDFI;

(2) A CDFI that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency; and

(3) A CDFI that has as its Community Partner an institution that is examined by, or subject to, the reporting requirements of an Appropriate Federal Banking Agency.

(e) *Awardee selection.* The Fund will select Awardees based on the criteria described in paragraph (c) of this section and any other criteria set forth in this part or the applicable NOFA.

Subpart I—Terms and Conditions of Assistance

§ 1805.900 Safety and soundness.

(a) *Regulated institutions.* Nothing in this part, or in an Assistance Agreement,

shall affect any authority of an Appropriate Federal Banking Agency to supervise and regulate any institution or company.

(b) *Non-Regulated CDFIs.* The Fund will, to the extent practicable, ensure that Awardees that are Non-Regulated CDFIs are financially and managerially sound and maintain appropriate internal controls.

§ 1805.901 Assistance Agreement; sanctions.

(a) Prior to providing any assistance, the Fund and an Awardee shall execute an Assistance Agreement that requires an Awardee to comply with performance goals and abide by other terms and conditions of assistance. If a Community Partner is part of an application that is selected for assistance, such partner must be a party to the Assistance Agreement if deemed appropriate by the Fund.

(b) An Awardee shall comply with performance goals that have been negotiated with the Fund and which are based upon the Comprehensive Business Plan submitted as part of the Awardee's application. Performance goals for Insured CDFIs shall be determined in consultation with the Appropriate Federal Banking Agency. Such goals shall be incorporated in, and enforced under, the Awardee's Assistance Agreement.

(c) The Assistance Agreement shall provide that, in the event of fraud, mismanagement, noncompliance with the Fund's regulations or noncompliance with the terms and conditions of the Assistance Agreement on the part of the Awardee (or the Community Partner, if applicable), the Fund, in its discretion, may:

(1) Require changes in the performance goals set forth in the Assistance Agreement;

(2) Require changes in the Awardee's Comprehensive Business Plan;

(3) Revoke approval of the Awardee's application;

(4) Reduce or terminate the Awardee's assistance;

(5) Require repayment of any assistance that has been distributed to the Awardee;

(6) Bar the Awardee (and the Community Partner, if applicable) from reapplying for any assistance from the Fund; or

(7) Take any other action as permitted by the terms of the Assistance Agreement.

(d) In the case of an Insured Depository Institution, the Assistance Agreement shall provide that the provisions of the Act, this part, and the Assistance Agreement shall be enforceable under section 8 of the Federal Deposit Insurance Act by the Appropriate Federal Banking Agency and that any violation of such provisions shall be treated as a violation of the Federal Deposit Insurance Act. Nothing in this paragraph precludes the Fund from directly enforcing the Assistance Agreement as provided for under the terms of the Act.

(e) The Fund shall notify the Appropriate Federal Banking Agency before imposing any sanctions on an Insured CDFI or other institution that is examined by or subject to the reporting requirements of that agency. The Fund shall not impose a sanction described in paragraph (c) of this section if the Appropriate Federal Banking Agency, in writing, not later than 30 calendar days after receiving notice from the Fund:

(1) Objects to the proposed sanction;

(2) Determines that the sanction would:

(i) Have a material adverse effect on the safety and soundness of the institution; or

(ii) Impede or interfere with an enforcement action against that institution by that agency;

(3) Proposes a comparable alternative action; and

(4) Specifically explains:

(i) The basis for the determination under paragraph (e)(2) of this section and, if appropriate, provides documentation to support the determination; and

(ii) How the alternative action suggested pursuant to paragraph (e)(3) of this section would be as effective as the sanction proposed by the Fund in securing compliance and deterring future noncompliance.

(f) In reviewing the performance of an Awardee in which its Investment Area(s) includes an Indian Reservation or Targeted Population(s) includes an Indian Tribe, the Fund shall consult with, and seek input from, the appropriate Tribal Government.

(g) Prior to imposing any sanctions pursuant to this section or an Assistance Agreement, the Fund shall, to the maximum extent practicable, provide the Awardee (or the Community Partner, if applicable) with written notice of the proposed sanction and an opportunity to comment. Nothing in this section, however, shall provide an Awardee or Community Partner with the right to any formal or informal hearing or comparable proceeding not otherwise required by law.

§ 1805.902 Disbursement of funds.

Assistance provided pursuant to this part may be provided in a lump sum or over a period of time, as determined appropriate by the Fund. The Fund shall not provide any assistance (other than technical assistance) under this part until an Awardee has satisfied any conditions set forth in its Assistance Agreement and has secured firm commitments for the matching funds required for such assistance. At a minimum, a firm commitment must consist of a binding written agreement between an Awardee and the source of the matching funds that is conditioned only upon the availability of the Fund's assistance and such other conditions as the Fund, in its sole discretion, may deem appropriate. Such agreement must provide for disbursal of the matching funds to an Awardee prior to, or simultaneously with, receipt by an Awardee of the Federal funds.

§ 1805.903 Data collection and reporting.

(a) *Data—general.* An Awardee (and a Community Partner, if appropriate) shall maintain such records as may be prescribed by the Fund which are necessary to:

(1) Disclose the manner in which Fund assistance is used; and

(2) Demonstrate compliance with the requirements of this part and an Assistance Agreement.

(b) *Customer profiles.* An Awardee (and a Community Partner, if appropriate) shall compile such data on the gender, race, ethnicity, national origin, or other information on individuals that utilize its products and services as the Fund shall prescribe in an Assistance Agreement. Such data will be used to determine whether residents of Investment Area(s) or members of Targeted Population(s) are adequately served.

(c) *Access to records.* An Awardee (and a Community Partner, if appropriate) must submit such financial and activity reports, records, statements, and documents at such times, in such forms, and accompanied by such reporting data, as required by the Fund or the U.S. Department of Treasury to ensure compliance with the requirements of this part. The United States Government, including the U.S. Department of Treasury, the Comptroller General, and their duly authorized representatives, shall have full and free access to the Awardee's offices and facilities and all books, documents, records, and financial statements relating to use of Federal funds and may copy such documents as they deem appropriate. The Fund, if it deems appropriate, may prescribe access to record requirements for entities that are borrowers of, or that receive investments from, an Awardee.

(d) *Retention of records.* An Awardee shall comply with all record retention requirements as set forth in OMB Circular A–110 (as applicable).

(e) *Review.* (1) At least annually, the Fund will review the progress of an Awardee (and a Community Partner, if appropriate) in implementing its Comprehensive Business Plan and satisfying the terms and conditions of its Assistance Agreement. During such review, the Fund may consider requests to modify Comprehensive Business Plans or performance goals.

(2) An Awardee shall submit a report within:

(i) 45 days of the end of each calendar quarter with information on the performance of its loans, Development Investments, Development Services, and Financial Services in the previous quarter, and unaudited financial statements. Such report shall include key indicators of portfolio performance, including volume of originations, delinquencies, and defaults, and charge-offs for the previous quarter; and

(ii) 60 days at the end of each Federal fiscal year with:

(A) Information on its customer profile and the performance of its loans, Development Investments, Development Services, and Financial Services for the previous year;

(B) Information on its portfolio performance, including volume of originations, delinquencies, and defaults and charge-offs for the previous year;

(C) Qualitative and quantitative information on an Awardee's compliance with its performance goals and (if appropriate) an analysis of factors contributing to any failure to meet such goals;

(D) Information describing the manner in which Fund assistance and any corresponding matching funds were used. The Fund will use such information to verify that assistance was used in a manner consistent with the Assistance Agreement;

(E) Certification that an Awardee continues to meet the eligibility requirements described in § 1805.200; and

(F) Its most recent audited financial statements prepared by an independent certified public accountant. Such statements shall cover the operations of the Awardee's most recently completed fiscal year. The audit shall be conducted in accordance with generally accepted Government Auditing Standards set forth in the General Accounting Office's Government Auditing Standards (1994 Revision) issued by the Comptroller General and OMB Circular A–133 (''Audits of Institutions of Higher Education and Other Nonprofit Institutions''), as applicable. The independent certified public accountant shall review and attest that an Awardee's use of Federal assistance is in compliance with the Assistance Agreement.

(3) The Fund shall make reports described in paragraph (e)(2) of this section available for public inspection after deleting any materials necessary to protect privacy or proprietary interests.

(f) *Exchange of information with Appropriate Federal Banking Agencies.* (1) Except as provided in paragraph (f)(4) of this section, prior to directly requesting information from or imposing reporting or record keeping requirements on an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency, the Fund shall consult with the Appropriate Federal Banking Agency to determine if the information requested is available from or may be obtained by such agency in the form, format, and detail required by the Fund.

(2) If the information, reports, or records requested by the Fund pursuant to paragraph (f)(1) of this section are not provided by the Appropriate Federal Banking Agency within 15 calendar days after the date on which the material is requested, the Fund may request the information from or impose the record keeping or reporting requirements directly on such institutions with notice to the Appropriate Federal Banking Agency.

(3) The Fund shall use any information provided by the Appropriate Federal Banking Agency under this section to the extent practicable to eliminate duplicative requests for information and reports from, and record keeping by, an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency.

(4) Notwithstanding paragraphs (f)(1) and (2) of this section, the Fund may require an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency to provide information with respect to the institution's implementation of its Comprehensive Business Plan or compliance with the terms of its Assistance Agreement, after providing notice to the Appropriate Federal Banking Agency.

(5) Nothing in this part shall be construed to permit the Fund to require an Insured CDFI or other institution that is examined by or subject to the reporting requirements of a Appropriate Federal Banking Agency to obtain, maintain, or furnish an examination report of any Appropriate Federal Banking Agency or records contained in or related to such report.

(6) The Fund and the Appropriate Federal Banking Agency shall promptly notify each other of material concerns about an Awardee that is an Insured CDFI or that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency, and share appropriate information relating to such concerns.

(7) Neither the Fund nor the Appropriate Federal Banking Agency shall disclose confidential information obtained pursuant to this section from any party without the written consent of that party.

(8) The Fund, the Appropriate Federal Banking Agency, and any other party providing information under this paragraph (f) of this section shall not be deemed to have waived any privilege applicable to the any information or data, or any portion thereof, by providing such information or data to the other party or by permitting such data or information, or any copies or portions thereof, to be used by the other party.

(g) *Availability of referenced publications.* The publications referenced in this section are available as follows:

(1) OMB Circulars may be obtained from the Office of Administration, Publications Office, 725 17th Street, NW., room 2200, New Executive Office Building, Washington, DC 20503; and

(2) General Accounting Office materials may be obtained from GAO Distribution, 700 4th Street, NW., suite 1100, Washington, DC 20548.

§ 1805.904 Information.

The Fund and each Appropriate Federal Banking Agency shall cooperate and respond to requests from each other and from other Appropriate Federal Banking Agencies in a manner that ensures the safety and soundness of the Insured CDFIs or other institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency.

§ 1805.905 Compliance with government requirements.

In carrying out its responsibilities pursuant to an Assistance Agreement, the Awardee shall comply with all applicable Federal, State, and local laws, regulations, and ordinances, OMB Circulars, and Executive Orders.

§ 1805.906 Conflict of interest requirements.

(a) *Provision of credit to Insiders.* (1) An Awardee that is a Non-Regulated CDFI may not use any monies provided to it by the Fund to make any credit (including loans and Development Investments) available to an Insider unless it meets the following restrictions:

(i) The credit must be provided pursuant to standard underwriting procedures, terms and conditions;

(ii) The Insider receiving the credit, and any family member or business partner thereof, shall not participate in any way in the decision making regarding such credit;

(iii) The Board of Directors or other governing body of the Awardee shall approve the extension of the credit; and

(iv) For credit of $10,000 or more, the Awardee shall provide written notice to the Fund at least 30 days prior to initial disbursement and shall receive written approval from the Fund prior to any disbursement.

(2) An Awardee that is an Insured CDFI or a Depository Institution Holding Company shall comply with the restrictions on Insider activities and any comparable restrictions established by its Appropriate Federal Banking Agency.

(b) *Awardee standards of conduct.* An Awardee shall maintain a code or standards of conduct acceptable to the Fund that shall govern the performance of its Insiders engaged in the awarding and administration of any credit (including loans and Development Investments) and contracts using monies from the Fund. No Insider of an Awardee shall solicit or accept gratuities, favors or anything of monetary value from any actual or potential borrowers, owners or contractors for such credit or contracts. Such policies shall provide for disciplinary actions to be applied for violation of the standards by the Awardee's Insiders.

§ 1805.907 Lobbying restrictions.

No assistance made available under this part may be expended by an Awardee to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan or cooperative agreement as such terms as are defined in 31 U.S.C. 1352.

§ 1805.908 Criminal provisions.

The criminal provisions of 18 U.S.C. 657 regarding embezzlement or misappropriation of funds are applicable to all Awardees and Insiders.

§ 1805.909 Fund deemed not to control.

The Fund shall not be deemed to control an Awardee by reason of any assistance provided under the Act for the purpose of any applicable law.

§ 1805.910 Limitation on liability.

The liability of the Fund and the United States Government arising out of any assistance to a CDFI in accordance with this part shall be limited to the amount of the investment in the CDFI. The Fund shall be exempt from any assessments and other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State. Nothing in this section shall affect the application of any Federal tax law.

§ 1805.911 Fraud, waste and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste or abuse of assistance provided under this part should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

PART 1806—BANK ENTERPRISE AWARD PROGRAM

Subpart A—General Provisions

Sec.

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Authority: 12 U.S.C. 4703, 4717; chapter X, Pub. L. 104–19, 109 Stat. 237 (12 U.S.C. 4703 note).

Subpart A—General Provisions

§ 1806.100 Purpose.

The purpose of the Bank Enterprise Award program is to encourage insured depository institutions to make Equity Investments and engage in Eligible Development Activities.

§ 1806.101 Summary.

(a) Under the Bank Enterprise Awards Program, the Fund makes awards to selected Applicants that:

(1) Invest in Community Development Financial Institutions;

(2) Increase lending activities within Distressed Communities; or

(3) Increase the provision of certain services and assistance.

(b) Distressed Communities must meet minimum poverty and unemployment criteria. Applicants are selected to participate in the program through a competitive application process. Generally, awards are based on increases in Qualified Activities that are carried out by the Applicant during an Assessment Period. Bank Enterprise Awards are distributed after successful completion of projected Qualified Activities. All awards shall be made subject to the availability of funding.

§ 1806.102 Relationship to the Community Development Financial Institutions Program.

(a) *Prohibition against double funding.* No CDFI may receive a Bank Enterprise Award if it has:

(1) An application pending for assistance under the Community Development Financial Institutions Program (part 1805 of this chapter);

(2) Received assistance from the Community Development Financial Institutions Program within the preceding 12-month period; or

(3) Ever received assistance under the Community Development Financial Institutions Program for the same activities for which it is seeking a Bank Enterprise Award.

(b) *Matching funds.* Equity Investments and loans provided to a CDFI under this part can be used by the CDFI to meet the matching funds requirements of the Community Development Financial Institutions Program.

(c) *CDFI certification.* Any entity receiving a CDFI certification under § 1805.201 of this chapter within two years of the filing an application for a Bank Enterprise Award shall qualify as a CDFI for the purposes of this part. If an Applicant is proposing to make an

Equity Investment in an entity that has not been certified as a CDFI, the application submitted by the Applicant under this part shall include a letter from the entity requesting certification and the information described in § 1805.701(b) of this chapter.

§ 1806.103 Definitions.

For the purpose of this part:

(a) *Act* means the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*);

(b) *Agricultural Loan* means a new origination (including refinancing) of a loan secured by farm land (including farm residential and other improvements), a loan to finance agricultural production, or a loan to a farmer (other than a Single Family Loan or Consumer Loan);

(c) *Applicant* means any insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813)) that is applying for a Bank Enterprise Award;

(d) *Appropriate Federal Banking Agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act;

(e) *Assessment Period* means an annual or semi-annual period specified in the applicable Notice of Funds Availability (NOFA) in which an Applicant will carry out Qualified Activities;

(f) *Award Agreement* means a contract between the Fund and an Awardee pursuant to § 1806.300;

(g) *Awardee* means an Applicant selected by the Fund to receive a Bank Enterprise Award;

(h) *Bank Enterprise Award* means an award made to an Applicant pursuant to this part;

(i) *Bank Enterprise Award Program* means the program authorized by section 114 of the Act and implemented under this part;

(j) *Baseline Period* means an annual or semi-annual period specified in the applicable NOFA in which an Applicant has previously carried out Qualified Activities;

(k) *Business Loan* means a new origination (including refinancing) of a loan used for commercial or industrial activities (other than an Agricultural Loan, Commercial Real Estate Loan, Multi-Family Loan or Single Family Loan);

(l) *Commercial Real Estate Loan* means a new origination (including refinancing) of a loan (other than a Multi-Family Loan or a Single Family Loan) used to finance:

(1) Construction and land development; or

(2) Commercial real estate in amounts of more than one million dollars and which is secured by real estate;

(m) *Community Development Financial Institution* (or *CDFI*) means an entity certified under § 1805.201 of this chapter and that meets the eligibility requirements under § 1805.200 of this chapter;

(n) *Consumer Loan* means a new origination (including refinancing) of a loan to one or more individuals for household, family, or other personal expenditures;

(o) *Distressed Community* means a geographic community which meets the minimum area eligibility requirements specified in § 1806.200;

(p) *Eligible Development Activities* means activities described in § 1806.201(b)(4) that are carried out by the Applicant or its Subsidiary;

(q) *Equity Investment* means new financial assistance provided by an Applicant or its Subsidiary to a CDFI in the form of a stock purchase, a grant (excluding grants used to support operating costs), or a loan made on such terms that it has characteristics of equity (and is considered as such by the Fund and is consistent with requirements of the Applicant's Appropriate Federal Banking Agency);

(r) *Financial Services* means check-cashing, providing money orders and certified checks, automated teller machines, safe deposit boxes, and other services as may be specified by the Fund;

(s) *Fund* means the Community Development Financial Institutions Fund established under section 104(a) of the Act (12 U.S.C. 4703(a));

(t) *Geographic Units* means counties (or equivalent areas), incorporated places, minor civil divisions that are units of local government, census tracts, block numbering areas, and American Indian or Alaska Native areas (as each is defined by the U.S. Bureau of the Census) or other areas deemed appropriate by the Fund);

(u) *Indian Reservation* means a geographic area that meets the requirements of section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), and shall include land held by incorporated Native groups, regional corporations, and village corporation, as defined in and pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), public domain Indian allotments, and former Indian Reservations in the State of Oklahoma;

(v) *Low- and Moderate-Income* means income that does not exceed 80 percent of the median income of the area involved, as determined by the Secretary of Housing and Urban Development with adjustments for smaller and larger families pursuant to section 102(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(20);

(w) *Metropolitan Area* means an area designated as such (as of the date of the application) by the Office of Management and Budget pursuant to 44 U.S.C. 3504(d)(3), 31 U.S.C. 1104(d) and Executive Order 10253 (3 CFR, 1949–1953 Comp., p. 758), as amended;

(x) *Multi-Family Loan* means a new origination (including refinancing) of a loan secured by a five- or more family residential property;

(y) *Qualified Activities* means Equity Investments and Eligible Development Activities;

(z) *Resident* means an individual domiciled in a Distressed Community;

(aa) *Single Family Loan* means a new origination (including refinancing) of a loan secured by a one-to-four family residential property;

(bb) *Subsidiary* has the same meaning as in section 3 of the Federal Deposit Insurance Act, except that a CDFI shall not be considered a subsidiary of any insured depository institution or any depository institution holding company that controls less than 25 percent of any class of the voting shares of such corporation and does not otherwise control, in any manner, the election of a majority of directors of the corporation; and

(cc) *Unit of General Local Government* means any city, county, town, township, parish, village, or other general purpose political subdivision of a State or Commonwealth of the United States, or general purpose subdivision thereof, and the District of Columbia.

§ 1806.104 Waiver authority.

The Fund may waive any requirement of this part that is not required by law, upon a determination of good cause. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis of the waiver. For a waiver in any individual case, the Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the Fund will publish notice of granted waivers in the Federal Register.

§ 1806.105 OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control

number 1505–0153 (expires September 30, 1998).

Subpart B—Awards

§ 1806.200 Community eligibility and designation.

(a) *General.* If an Applicant proposes to carry out Eligible Development Activities, or Equity Investments that support efforts of a CDFI in a Distressed Community, the Applicant shall designate one or more Distressed Communities in which it proposes to carry out those activities.

(b) *Minimum area eligibility requirements.* A Distressed Community must meet the minimum area eligibility requirements contained in this paragraph.

(1) *Geographic requirements.* A Distressed Community must be a geographic area:

(i) That is located within the boundaries of a Unit of General Local Government;

(ii) The boundaries of which are contiguous; and

(iii)(A) The population of which must be at least 4,000 if any portion of the area is located within a Metropolitan Area with a population of 50,000 or greater;

(B) The population must be at least 1,000 if no portion of the area is located within such a Metropolitan Area; or

(C) Is located entirely within an Indian Reservation.

(2) *Distress requirements.* A Distressed Community must be a geographic area where:

(i) At least 30 percent of the Residents have incomes which are less than the national poverty level, as determined by the U.S. Bureau of the Census in the 1990 decennial census; and

(ii) The unemployment rate is at least 1.5 times greater than the national average, as determined by the U.S. Bureau of Labor Statistics' most recent data.

(c) *Area designation.* An Applicant shall designate an area as a Distressed Community by:

(1) Selecting Geographic Units which individually meet the minimum area eligibility requirements; or

(2) Selecting two or more Geographic Units which, in the aggregate, meet the minimum area eligibility requirements set forth in paragraph (b) of this section provided that no Geographic Unit selected by the Applicant within the area has a poverty rate of less than 20 percent.

(d) *Designation and notification process.* Upon request, the Fund will provide a prospective Applicant with data to help it identify areas eligible to be a Distressed Community. A prospective Applicant may contact the Fund prior to filing an application to determine if an area meets the minimum area eligibility requirements.

§ 1806.201 Qualified Activities.

(a) *Equity Investment.* An Applicant may receive a Bank Enterprise Award for making an Equity Investment during an Assessment Period.

(b) *Eligible Development Activities.*—(1) *General.* An Applicant may receive a Bank Enterprise Award for carrying out Eligible Development Activities during an Assessment Period.

(2) *Service.* The Eligible Development Activities listed in paragraphs (b)(4)(i) through (vii) of this section must serve a Distressed Community. An activity is considered to serve a Distressed Community if it is:

(i) Undertaken in the Distressed Community; or

(ii) Provided to Low- and Moderate-Income Residents or enterprises integrally involved in the Distressed Community.

(3) *Priority factors.* Each Eligible Development Activity is assigned a priority factor. A priority factor represents the Fund's assessment of the degree of difficulty, the extent of innovation, and the extent of benefits accruing to the Distressed Community for each type of activity.

(4) *Eligible Development Activities.* Eligible Development Activities are listed in this paragraph with their corresponding priority factors:

(i) Consumer Loans (priority factor=1.2);

(ii) Commercial Real Estate Loans (priority factor=1.6);

(iii) Single Family Loans (priority factor=1.4);

(iv) Multi-Family Loans (priority factor=1.6);

(v) Business Loans and Agricultural Loans of $100,000 or less (priority factor=1.9);

(vi) Business Loans and Agricultural Loans of more than $100,000 through $250,000 (priority factor=1.8);

(vii) Business Loans of more than $250,000 through $1,000,000 and Agricultural Loans of more than $250,000 through $500,000 (priority factor=1.7);

(viii) Deposit liabilities in the form of savings or other demand or time accounts accepted from Residents at offices located within the Distressed Community (priority factor=1.0);

(ix) Financial Services provided to Low- and Moderate-Income persons in the Distressed Community or provided to enterprises integrally involved in the Distressed Community (priority factor=1.2);

(x) Provision of technical assistance to Residents in managing their personal finances through consumer education programs (either sponsored or offered by the Applicant) (priority factor=1.4);

(xi) Provision of technical assistance and consulting services to newly formed small businesses located in the Distressed Community (priority factor=1.4);

(xii) Provision of technical assistance to, or servicing the loans of, Low- and Moderate-Income home owners and home owners located in the Distressed Community (priority factor=1.4); and

(xiii) Grants used to support the operating costs of, new origination (including refinancing) of loans to, or technical assistance provided to:

(A) A CDFI that supports efforts in the Distressed Community (priority factor=2.2); and

(B) Any other CDFI (priority factor=2.0).

§ 1806.202 Measuring activities.

(a) *General.* Qualified Activities shall be measured by comparing the Qualified Activities carried out during the Baseline Period with the Qualified Activities projected to be carried out during the Assessment Period. Increases in the values of Qualified Activities between the Baseline and Assessment Periods will be used in determining award amounts. Applicants shall report their activities in all categories of Qualified Activities for the Baseline and Assessment Periods. The dates of the Baseline Period and the Assessment Periods will be published in the NOFA for each funding round.

(b) *Value.* The Fund will assess the value of:

(1) Equity Investments, loans and grants at the original amount of such investments, loans or grants;

(2) Deposit liabilities at the face dollar amount of monies deposited; and

(3) Financial Services and technical assistance based on the administrative costs of providing such services.

(c) *Reporting.* An Applicant shall report Qualified Activities:

(1) That were carried out during the Baseline Period; and

(2) Proposed to be carried out during the Assessment Period.

§ 1806.203 Estimated award amounts.

Award amounts will be determined at the sole discretion of the Fund and estimated as described in this section.

(a) *Equity Investments.* The estimated award amount for an Equity Investment will be equal to 15 percent (or such lower percentage as may be requested by the Applicant) of the anticipated increase in the value of such investment

between the Baseline and Assessment Periods.

(b) *Eligible Development Activities.* The estimated award amount for Eligible Development Activities will be calculated as follows:

(1) *Step 1.* For each type of Eligible Development Activity, subtract the value in the Baseline Period from the estimated value for the Assessment Period to yield a remainder;

(2) *Step 2.* Multiply the remainder for each Eligible Development Activity by the assigned priority factor to yield a weighted value for each activity;

(3) *Step 3.* Add the weighted values for deposit liabilities and Financial Services to yield a service score;

(4) *Step 4.* Add the weighted values for all other categories of Eligible Development Activities to yield a development score. If the development score is negative, an Applicant will be ineligible to receive a Bank Enterprise Award. If the development score is positive, go to Step 5;

(5) *Step 5.* If the service score is greater than the development score, reduce the service score to equal the same amount as the development score to yield an adjusted service score. (The Act prohibits an Applicant from receiving more assistance for its deposit taking activities than for other Qualified Activities.);

(6) *Step 6.* Add the service score (or adjusted service score if applicable) and the development score to yield a total score; and

(7) *Step 7.* If the Applicant is:

(i) A CDFI, multiply the total score by 15 percent to yield an estimated award amount; or

(ii) Not a CDFI, multiply the total score by 5 percent to yield an estimated award amount.

§ 1806.204 Selection process.

(a) *Availability of funds.* All awards are subject to the availability of funds. If the amount of funds available during a funding round is insufficient for all estimated award amounts, Awardees will be selected based on the process described in this section.

(b) *Priority of categories.*—(1) *General.* The Fund will rank an Applicant's estimated award amount for Qualified Activities according to the following priority categories:

(i) *First priority.* Equity Investments that support efforts of CDFIs in the Distressed Community;

(ii) *Second priority.* Other Equity Investments; and

(iii) *Third priority.* Eligible Development Activities.

(2) *Ranking among categories.* All Applicants in the first priority category will be selected as Awardees before Applicants in the second priority category, and Applicants in the second priority category will be selected as Awardees before Applicants in the third priority category. Selections within each priority category will be based on the relative rankings within such category, subject to the availability of funds.

(3) *Combined awards.* If an Applicant receives an award for more than one priority category described in paragraph (b)(1) of this section, the award amounts will be combined into a single Bank Enterprise Award.

(c) *Ranking Equity Investments.* Estimated awards for Equity Investments will be ranked within each applicable priority category based on the extent to which an Applicant proposes to reduce the percentage used to calculate its award amount (e.g., an Applicant that chooses to reduce its award to 13 percent will be ranked higher than an Applicant that reduces its award to 14 percent). For Applicants that propose the same percentage, estimated awards will be ranked by the ratio of the proposed Equity Investment to the asset size of the Applicant (as reported in the Applicant's most recent Report of Condition or Thrift Financial Report) at the time of submission of an application.

(d) *Ranking Eligible Development Activities.* Estimated awards for Eligible Development Activities will be ranked by the ratio of the total score to the asset size of the Applicant (as reported in the Applicant's most recent Report of Condition or Thrift Financial Report) at the time of the submission of an application. If the ratios of two Applicants are the same, the estimated awards will be ranked based on the degree of the poverty of each Applicant's Distressed Community.

§ 1806.205 Actual award amounts.

(a) *General.* The Fund will assess an Applicant's success in achieving the Qualified Activities projected in its application. The extent of such success will be measured based on the activities that were actually carried out during the Assessment Period. Subject to § 1806.204, the actual award amount that an Awardee shall receive will be equal to the estimated award previously calculated and (if necessary) adjusted pursuant to this section.

(b) *Substantial achievement.* If an Awardee carries out 90 percent or more of its projected activities, it will be deemed to have substantially achieved those activities. Such Awardee will receive the full estimated award amount.

(c) *Partial achievement.*—(1) *General.* If an Awardee carries out less than 90 percent but at least 75 percent of its projected Qualified Activities, it will be deemed to have partially achieved those activities. In such cases the Fund may, in its sole discretion, provide a partial award based upon (among other things) the Awardee's satisfactory explanation for its failure to substantially achieve the activities projected in its application. Any estimated award amount will be adjusted on a pro rata basis to reflect the activities actually performed.

(2) *Adverse change in condition.* In the case of an adverse change in national or regional economic conditions, the Fund may adjust the percentages used to define partial achievement.

(d) *Non-achievement.* If an Awardee does not satisfy the conditions necessary for substantial or partial achievement, it will be ineligible to receive any award amount.

(e) *Unobligated or deobligated funds.* The Fund, in its sole discretion, may use any deobligated funds or funds not obligated during a funding round:

(1) Using the calculation and selection process contained in this part—

(i) To increase an award amount of an Awardee for achievement in excess of the projected Qualified Activities; or

(ii) To select Applicants not previously selected;

(2) To make additional monies available for a subsequent funding round; or

(3) As otherwise authorized by the Act.

§ 1806.206 Applications for Bank Enterprise Awards.

(a) *Notice of Funds Availability.* An Applicant shall submit an application for a Bank Enterprise Award in accordance with this section and the applicable NOFA published by the Fund in the Federal Register. The NOFA will advise potential Applicants on how to obtain an application packet and will establish submission deadlines. The NOFA also will establish any other requirements or restrictions applicable for the funding round including any restrictions on award amounts. After receipt of an application, the Fund may request clarifying or technical information on materials submitted as part of such application.

(b) *Application contents.* Each application must contain the information required in the application packet, which may include:

(1) A completed Bank Enterprise Award Rating and Calculations worksheet;

(2) A narrative description of each of the Qualified Activities expected to be performed in the Assessment Period;

(3) If applicable, a completed Distressed Community Designation worksheet and a map and narrative description of the Distressed Community;

(4) If applicable, a narrative description of each CDFI that the Applicant proposes to provide an Equity Investment in and the amount, terms, and conditions of the investment;

(5) The asset size of the Applicant, as reported in its most recent Report of Condition or Thrift Financial Report to its Appropriate Federal Banking Agency;

(6) Information necessary for the Fund to complete its environmental review requirements pursuant to part 1815 of this chapter; and

(7) Certifications that the Applicant will comply with all relevant provisions of this chapter and all applicable Federal, State, and local laws, ordinances, regulations, policies, guidelines, and requirements.

Subpart C—Terms and Conditions of Assistance

§ 1806.300 Award Agreement; sanctions.

(a) *General.* After the Fund selects an Awardee, the Fund and the Awardee will enter into an Award Agreement. The Award Agreement shall provide that an Awardee:

(1) Carry out its Qualified Activities in accordance with applicable law, the approved application, and all other applicable requirements;

(2) Shall comply with such other terms and conditions (including record keeping and reporting requirements) that the Fund may establish; and

(3) Not receive any monies until the Fund has determined that the Awardee has fulfilled all applicable requirements.

(b) *Sanctions.* In the event of any fraud, misrepresentation, or noncompliance with the terms of the Award Agreement by the Awardee, the Fund may terminate, reduce, or recapture the Award and pursue any other available legal remedies.

(c) *Notice.* Prior to imposing any sanctions pursuant to this section or an Award Agreement, the Fund shall, to the maximum extent practicable, provide the Awardee with written notice of the proposed sanction and an opportunity to comment. Nothing in this section, however, shall provide an Awardee with the right to any formal or informal hearing or comparable proceeding not otherwise required by law.

§ 1806.301 Records, reports and audits of Awardees.

(a) At the end of an Assessment Period, each Awardee shall submit to the Fund:

(1) *Worksheet.* A Bank Enterprise Award worksheet that reports the Qualified Activities actually carried out during the Assessment Period;

(2) *Estimate of benefits.* An estimate of the benefits generated within the Distressed Community by the Qualified Activities that were carried out during the Assessment Period, as measured by the:

(i) Number of jobs created or retained;

(ii) Type of new financial and technical assistance services available;

(iii) Number and type of businesses created and retained;

(iv) Number of home owners assisted;

(v) Number of affordable housing units financed;

(vi) Number and type of new deposit accounts opened at offices located within the Distressed Community; and

(vii) Other measures deemed appropriate by the Awardee that convey the nature or extent of the benefits created by the Qualified Activities; and

(3) *Certification.* A certification that the information provided to the Fund is true and accurately reflects the Qualified Activities carried out during an Assessment Period.

(b) *Additional information.* At the request of the Fund, the Applicant shall make available any records necessary to assess the validity of the information provided to the Fund.

§ 1806.302 Compliance with government requirements.

In carrying out its responsibilities pursuant to an Award Agreement, the Awardee shall comply with all applicable Federal, state and local laws, regulations and ordinances, OMB Circulars, and Executive Orders.

§ 1806.303 Fraud, waste and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste or abuse of assistance provided under this part should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

§ 1806.304 Books of account, records and government access.

An Awardee shall submit such financial and activity reports, records, statements, and documents at such times, in such forms, and accompanied by such supporting data, as required by the Fund and the U.S. Department of the Treasury to ensure compliance with the requirements of this part. The United States Government, including the U.S. Department of the Treasury, the Comptroller General, and its duly authorized representatives, shall have full and free access to the Awardee's offices and facilitates and all books, documents, records, and financial statements relevant to the award of the Federal funds and may copy such documents as they deem appropriate.

§ 1806.305 Retention of records.

An Awardee shall comply with all record retention requirements as set forth in OMB Circular A–110 (as applicable). This circular may be obtained from Office of Administration, Publications Office, 725 17th Street, NW., room 2200, New Executive Office Building, Washington, DC 20503.

PART 1815—ENVIRONMENTAL QUALITY

Sec.

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Authority: 12 U.S.C. 4703, 4717; 42 U.S.C. 4332; Chapter X, Pub L. 104–19, 109 Stat. 237 (12 U.S.C. 4703 note).

§ 1815.100 Policy.

The Community Development Financial Institution Fund's policy is to ensure that environmental factors and concerns are given appropriate consideration in decisions and actions by the Fund and to reduce any possible adverse effects of Fund decisions and actions upon the quality of the human environment.

§ 1815.101 Purpose.

This part supplements Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended, and describe how the Community Development Financial Institutions Fund intends to consider environmental factors and

concerns in the Fund's decisionmaking process. This part applies only to the Fund and not to any other bureau, office or organization within the Department of the Treasury.

§ 1815.102 Definitions.

(a) For the purpose of this part:

(1) *Act* means the Community Development Banking and Financial Institutions Act (12 U.S.C. 4701 et seq.);

(2) *Application* means a request for assistance from the Fund submitted pursuant to parts 1805 or 1806 of this chapter;

(3) *CEQ regulations* means the regulations for implementing the procedural provisions of the National Environmental Policy Act of 1969 as promulgated by the Council on Environmental Quality, Executive Office of the President, appearing at 40 CFR parts 1500–1508 and to which this part is a supplement;

(4) *Comprehensive Business Plan* means a document submitted as part of an Application pursuant to part 1805 of this chapter which describes an organization's proposed process for offering products or services to a particular market, including organizational requirements needed to serve that market effectively;

(5) *Consumer Loans* means loans to one or more individuals for household, family or other personal expenditures;

(6) *Decisionmaker* means the Director of the Fund, unless an appropriate delegation of authority has been made;

(7) *EIS* means an environmental impact statement as defined in 40 CFR 1508.11 of the CEQ regulations;

(8) *Fund* means the Community Development Financial Institutions Fund, established under section 104(a) of the Act (12 U.S.C. 4703(a));

(9) *NEPA* means the National Environmental Policy Act, as amended, 42 U.S.C. 4321–4335; and

(10) *Project* means all closely related actions relating to a specific site.

(b) Other terms used in this part are defined in 40 CFR part 1508 of the CEQ regulations.

§ 1815.103 Designation of responsible Fund official.

The Director of the Fund is the designated Fund official responsible for implementation and operation of the Fund's policies and procedures on environmental quality and control.

§ 1815.104 Specific responsibilities of the designated Fund official.

The designated Fund official shall:

(a) Coordinate the formulation and revision of Fund policies and procedures on matters pertaining to environmental quality and control;

(b) Establish and maintain working relationships with relevant government agencies (including Federal, state and local) concerned with environmental matters;

(c) Develop procedures within the Fund's planning and decisionmaking processes to ensure that environmental factors are properly considered in all proposals and decisions in accordance with this part;

(d) Develop, monitor, and review the Fund's implementation of standards, procedures, and working relationships for protection and enhancement of environmental quality and compliance with applicable laws and regulations;

(e) Monitor processes to ensure that the Fund's procedures regarding consideration of environmental quality are achieving their intended purposes;

(f) Advise the officers and employees of the Fund of technical and management requirements of environmental analysis, of appropriate expertise available, and, with the assistance of the Department of the Treasury's Office of the General Counsel, of relevant legal developments;

(g) Monitor the consideration and documentation of the environmental aspects of Fund planning and decisionmaking processes by appropriate officers and employees of the Fund;

(h) Ensure that all environmental assessments and, where required, all EISs are prepared in accordance with the appropriate regulations adopted by the Council on Environmental Quality and the Fund;

(i) Ensure that, as required, a legislative EIS is submitted with all proposed legislation;

(j) Consolidate and transmit to appropriate parties the Fund's comments on EISs and other environmental reports prepared by other agencies;

(k) Acquire information and prepare appropriate reports on environmental matters required of the Fund; and

(l) Coordinate the Fund's efforts to make available to other parties information and advice on the Fund's policies for protecting and enhancing the quality of the environment.

§ 1815.105 Major decision points.

(a) The possible environmental effects of an Application, including any Comprehensive Business Plan, must be considered along with technical, economic, and other factors throughout the decisionmaking process. For most Fund actions there are two distinct stages in the decisionmaking process:

(1) Preliminary approval stage, at which point applications are selected for funding; and

(2) Final approval and funding stage.

(b) Environmental review shall be integrated into the decisionmaking process of the Fund as follows:

(1) During the preliminary approval stage, the designated Fund official shall determine whether the Application proposes actions which are categorically excluded, or normally require an environmental assessment or an EIS;

(2) If the designated Fund official determines that the Application proposes actions which normally require an environmental assessment or an EIS, the applicant shall be informed that the final approval and funding, in addition to any other conditions, is contingent upon:

(i) The applicant supplying to the Fund all information necessary for the Fund to perform or have performed any environmental review required by this part;

(ii) The applicant not using any Fund financial assistance to perform any of such proposed actions in the Application that affect the physical environment until Fund approval is received; and

(iii) The outcome of the environmental review required by this part;

(3) The Fund will perform or have performed the environmental reviews required by this part;

(4) A preliminary approval of an Application may be withdrawn or further conditions may be imposed based upon the outcome of an environmental review required by this part; and

(5) If the designated Fund official determines that the Application proposes actions that require an environmental assessment or an EIS, the environmental assessment and/or EIS must be completed and circulated prior to the use of Federal funds for any activity that triggers the need for an environmental assessment and/or EIS.

§ 1815.106 Supplemental environmental review.

(a) The designated Fund official shall determine whether the proposed actions in the Application are sufficiently definite to perform a meaningful environmental review during the preliminary approval stage.

(b) If the designated Fund official determines that the Application is sufficiently definite to perform a meaningful environmental review during the preliminary approval stage, no conditions for supplemental environmental review shall be imposed.

(c) If the designated Fund official determines that the Application, or any part of the Application, is not sufficiently definite to complete a meaningful environmental review during the preliminary approval stage, the Fund shall require a supplemental environmental review prior to the taking of any action directly using Fund financial assistance that is not categorically excluded from environmental review or for which an environmental assessment or EIS has not been approved by the Fund. The applicant shall notify the designated Fund official when proposing any action requiring a supplemental environmental review and shall supply to the Fund all information necessary for the Fund to perform the supplemental environmental review. The Fund shall perform or have performed such a supplemental environmental review. The applicant shall not use any Fund financial assistance to perform any of the proposed actions requiring a supplemental environmental review that affect the physical environment until Fund approval for such action is received.

§ 1815.107 Determination of review requirement.

In deciding whether to prepare an EIS, the designated Fund official shall determine whether the proposal is one that normally:

(a) Requires an EIS;

(b) Requires an environmental assessment, but not necessarily an EIS; or

(c) Does not require either an EIS or an environmental assessment (categorical exclusion).

§ 1815.108 Actions that normally require an EIS.

(a) If necessary, the Fund shall perform or have performed an environmental assessment to determine if an Application, or any portion of an Application, requires an EIS. However, it may be readily apparent that a proposed action in an Application will have a significant impact on the environment; in such cases, an environmental assessment is not required and the Fund shall immediately begin to prepare, or have prepared, an EIS.

(b) An EIS normally is required where an Application proposes to directly use financial assistance from the Fund for any Project that would:

(1) Remove, demolish, convert, or substantially rehabilitate 2,500 or more existing housing units, or would result in the construction or installation of 2,500 or more new housing units, or which would provide sites for 2,500 or more new housing units; or

(2) Remove, demolish, convert, or substantially rehabilitate 1,500,000 square feet or more of commercial space, or would result in the construction or installation of 1,500,000 square feet or more of new commercial space, or which would provide sites for 1,500,000 square feet or more of new commercial space.

§ 1815.109 Preparation of an EIS.

(a) If the Fund determines that an EIS should be prepared, it shall publish a notice of intent in the Federal Register in accordance with 40 CFR 1501.7 and 1508.22 of the CEQ regulations. After publishing the notice of intent, the Fund shall begin to prepare or have prepared the EIS. Procedures for preparing the EIS are set forth in 40 CFR part 1502 of the CEQ regulations.

(b) The Fund may supplement a draft or final EIS at any time. The Fund shall prepare or have prepared a supplement to either the draft or final EIS when:

(1) Substantial changes are proposed to an action contained in the draft or final EIS that are relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; or

(2) Actions are proposed which relate or are similar to other action(s) taken or proposed and that together have a cumulatively significant impact on the environment.

§ 1815.110 Categorical exclusion.

The CEQ regulations provide for the categorical exclusion of actions that do not individually or cumulatively have a significant effect on the human environment (40 CFR 1508.4). Therefore, neither an environmental assessment nor an EIS is required for such actions. An action which falls into one of the categories below may still require the preparation of an EIS or environmental assessment if the designated Fund official determines it meets the criteria stated in § 1815.109 or involves extraordinary circumstances that may have a significant environmental effect. The Fund has determined the following categorical exclusions:

(a) Actions directly related to the administration or operation of the Fund (e.g. personnel actions, including, but not limited to, staff recruitment and training; purchase of goods and services for the Fund, including, but not limited to, furnishings, equipment, supplies and services; space acquisition; property management; and security);

(b) Actions directly related to and implementing proposals for which an environmental assessment or an environmental assessment and EIS have been prepared;

(c) Actions directly related to the granting or receipt of Bank Enterprise Act awards pursuant to part 1806 of this chapter;

(d) Actions directly related to training and/or technical assistance;

(e) Projects for the acquisition, disposition, rehabilitation and/or modernization of 500 existing housing units or less when all the following conditions are met:

(1) Unit density is not increased more than 20 percent;

(2) The Project does not involve changes in land use from nonresidential to residential;

(3) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation; and

(4) The Project does not involve the demolition of one or more buildings containing the primary use served by the project that, together, have more than 20 percent of the square footage of the Project;

(f) Projects for the construction of 200 housing units or less when all the following conditions are met:

(1) The Project does not involve changes in existing land use from nonresidential to residential; and

(2) The Project does not involve the demolition of one or more buildings containing the primary use served by the project that, together, have more than 20 percent of the square footage of the Project;

(g) Projects for the acquisition, disposition, rehabilitation and/or modernization of 200,000 square feet or less of existing commercial space when all the following conditions are met:

(1) The Project does not involve changes in existing land use from residential to nonresidential;

(2) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation; and

(3) The Project does not involve the demolition of more than 10,000 square feet of commercial space containing the primary use served by the Project;

(h) Projects for the construction of 100,000 square feet or less of commercial space when all the following conditions are met:

(1) The Project does not involve changes in existing land use from residential to nonresidential: and

(2) The Project does not involve the demolition of more than 10,000 square

feet of commercial space containing the primary use served by the Project;

(i) Projects for the acquisition of an existing structure, provided that the property to be acquired is in place and will be retained in the same use;

(j) Projects involving Fund financial assistance of $1,000,000 or less;

(k) Actions directly related to the provision of residential tenant-based rental assistance, Consumer Loans, health care, child care, educational, cultural and/or social services;

(l) Actions involving Fund financial assistance that is used to increase the permanent capital and/or liquidity of an applicant;

(m) Actions where no use of Federal funds is involved in the activity or Project; and

(n) Actions directly related to the provision of working capital, the acquisition of machinery and equipment or the purchase of inventory, raw materials or supplies.

§ 1815.111 Actions that require an environmental assessment.

If a Project or action is not one that normally requires an EIS and does not qualify for categorical exclusion, the Fund shall prepare, or have prepared, an environmental assessment.

§ 1815.112 Preparation of an environmental assessment.

(a) The Fund shall begin the preparation of an environmental assessment as early as possible after the designated Fund official has determined that it is required. The Fund may prepare an environmental assessment at any time to assist planning and decisionmaking.

(b) An environmental assessment is a concise public document used to determine whether to prepare an EIS. An environmental assessment aids in complying with the NEPA when no EIS is necessary, and it facilitates the preparation of an EIS, if one is necessary. The environmental assessment shall contain brief discussions of the following topics:

(1) Purpose and need for the proposed action;

(2) Description of the proposed action;

(3) Alternatives considered, including the no action alternative;

(4) Environmental effects of the proposed action and alternative actions; and

(5) Listing of agencies, organizations or persons consulted.

(c) The most important or significant environmental consequences and effects on the areas listed below should be addressed in the environmental assessment. Only those areas which are specifically relevant to the particular proposal should be addressed. Those areas should be addressed in as much detail as is necessary to allow an analysis of the alternatives and the proposal. The areas to be considered are the following:

(1) Natural/ecological features (such as floodplain, wetlands, coastal zones, wildlife refuges, and endangered species);

(2) Air quality;

(3) Sound levels;

(4) Water supply, wastewater treatment and water runoff;

(5) Energy requirements and conservation;

(6) Solid waste;

(7) Transportation;

(8) Community facilities and services;

(9) Social and economic;

(10) Historic and aesthetic; and

(11) Other relevant factors.

(d) If the Fund completes an environmental assessment and determines that an EIS is not required, then the Fund shall prepare a finding of no significant impact. The finding of no significant impact shall be made available to the public by the Fund as specified in 40 CFR 1506.6 of the CEQ regulations.

§ 1815.113 Public involvement.

All information collected by the Fund pursuant to this part shall be available to the public consistent with the CEQ regulations. Interested persons may obtain information concerning any pending EIS or any other element of the environmental review process of the Fund by contacting the Community Development Financial Institutions Fund, Department of the Treasury, 1500 Pennsylvania Avenue N.W., room 5116, Washington, DC 20220, or such other contact entity designated by the Fund.

§ 1815.114 Fund decisionmaking procedures.

To ensure that at major decisionmaking points all relevant environmental concerns are considered by the Decisionmaker, the following procedures are established:

(a) An environmental document, i.e., the EIS, environmental assessment, finding of no significant impact, or notice of intent, in addition to being prepared at the earliest point in the decisionmaking process, shall accompany the relevant proposal or action through the Fund's decisionmaking process to ensure adequate consideration of environmental factors;

(b) The Decisionmaker shall consider in its decisionmaking process only those alternatives discussed in the relevant environmental documents. Also, where an EIS has been prepared, the decisionmaker shall consider all comments received during any comment process and all alternatives described in the EIS. A written record of the consideration of alternatives during the decisionmaking process shall be maintained; and

(c) Any environmental document prepared for a proposal or action shall be made part of the record of any formal rulemaking by the Fund.

§ 1815.115 OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1505–0153 (expires September 30, 1998).

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Federal Register

Thursday
October 19, 1995

Part IV

Department of the Treasury

Community Development Financial Institutions Fund

Community Development Financial Institutions Program; Funds Availability Inviting Applications; Notice

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the Community Development Financial Institutions Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of funds availability inviting applications.

SUMMARY: The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*) (hereafter referred to as the ''Act'') authorizes the Community Development Financial Institutions Fund (hereafter referred to as ''the Fund'') to select and provide financial and technical assistance to eligible applicants under the Community Development Financial Institutions (''CDFI'') Program. The Fund reserves the right to award assistance under this Notice up to the maximum amount authorized by law. As of the date of this Notice and subject to funding availability, the Fund intends to award up to $31 million in CDFI Program funds. The Fund may award in excess of $31 million if more funds become available. The interim rule (12 CFR part 1805) published separately in today's Federal Register provides guidance on the contents of the necessary application materials and program requirements.

DATES: Applications may be submitted at any time after October 19, 1995. The deadline for receipt of an application is 4 p.m. Eastern Standard Time on Friday, December 22, 1995. Applications received after that date and time will not be accepted and will be returned to the sender.

ADDRESSES: Applications may be obtained from the office of the Fund listed below or by telephone at (202) 622–8662. (This is not a toll-free number.) Applications must be sent to: The Community Development Financial Institutions Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Room 5116, Washington, DC 20220. Applications sent by FAX will not be accepted.

FOR FURTHER INFORMATION CONTACT: The Community Development Financial Institutions Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Room 5116, Washington, DC 20220, (202) 622–8662. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Background

Credit and investment capital are essential ingredients in creating and retaining jobs, developing affordable housing, starting or expanding businesses, revitalizing neighborhoods, and empowering people. As a key urban and rural policy initiative, the CDFI Program will facilitate the creation of a national network of financial institutions that are specifically dedicated to community development. This strategy will build sustainable institutions that make loans and investments and provide services to economically distressed investment areas and disadvantaged targeted populations. The Act, enacted to implement this vision, authorizes the Fund to select entities to receive financial and technical assistance. New institutions are eligible to receive start-up assistance. Institutions in operation at the time of application are eligible to receive assistance to expand their activities. This Notice invites applications from eligible applicants for the purpose of promoting community development activities and revitalization.

II. Eligibility

The Act specifies the requirements that each applicant must meet in order to be considered a CDFI. Entities that meet, or propose to meet, these requirements are eligible to apply for assistance. In general, a CDFI must have a primary mission of promoting community development, provide lending or investments, serve an investment area or a targeted population, provide development services, maintain community accountability, and be a non-government entity. The details of these requirements and other program requirements are described in the interim rule governing the CDFI Program (12 CFR part 1805) which is published separately in today's Federal Register.

III. Types of Assistance

The Fund will award up to an estimated $31 million of appropriated funds in CDFI Program assistance. Of assistance amounts available, the Fund may use up to $4 million to cover the costs of direct loans. The funds available to cover the cost of direct loans may be used to support loans with a total principal amount not to exceed $31.6 million. An applicant may submit an application for financial assistance, technical assistance, or both. All applicants must submit the materials described in 12 CFR 1805.700 and the application packet. Applicants for financial assistance shall indicate the dollar amount, form, terms, and conditions of assistance requested. Applicants for technical assistance shall describe the types of technical assistance requested, estimate the cost to obtain such assistance, and provide a narrative justification of its needs for such assistance.

An applicant may seek certification from the Fund that it meets the eligibility requirements of a CDFI regardless of whether it is submitting an application for assistance. Such an applicant shall submit a letter requesting certification and the materials described in 12 CFR 1805.701 and the application packet.

IV. Matching Funds

Applicants selected to receive assistance under this Notice must have firm commitments for the matching funds required pursuant to 12 CFR 1805.600 by not later than July 1, 1996. The Fund may recapture and reprogram funds if an applicant fails to raise the required match by such date.

V. Selection Factors

Applications will be selected on a competitive basis. The interim rule specifies three categories of selection factors: (1) Financial and organizational capacity; (2) strength of external resources; and (3) community impact. Such categories are based on criteria outlined in the Act and will be utilized by the Fund in selecting applications for assistance. Each of the categories is discussed in greater detail in the interim rule. The Fund may give additional consideration to applicants that have secured firm commitments for all of the matching funds at the time of submission of an application. The Fund may also give additional consideration to applicants that dedicate the greatest portion of their total resources to lending, investment, or provision of Development Services. The Fund has sole discretion in the selection of applications for assistance. The anticipated maximum award per applicant under this Notice is $2 million. However, the Fund, in its sole discretion, reserves the right to award amounts in excess of $2 million for applications of exceptional merit.

VI. Workshops

The CDFI Fund will host two workshops to disseminate information to organizations interested in applying for assistance under the CDFI Program and the Bank Enterprise Awards Program (12 CFR part 1806). The

workshops will be held on Monday, November 13, 1995 in Washington, DC and on Friday, November 17, 1995 in Los Angeles, California. To register for a workshop call Skip Cooper at (310) 417–5170.

VII. Other Matters

(a) Paperwork Reduction Act. The reader should refer to the interim rule (12 CFR part 1805) published separately in today's Federal Register for details on the information collection requirements of the rule and this Notice.

(b) Environmental Impact. Pursuant to Treasury Directive 75–02, the Department of the Treasury has determined that implementation of the CDFI Program under the interim rule is categorically excluded from the National Environmental Policy Act of 1969 (42 U.S.C. 4332) and does not require an environmental review. The determination is available for public inspection between 9:30 a.m. and 4:30 p.m. weekdays at the office of the Fund.

Authority: 12 U.S.C. 4703, 4717: Chapter X, Pub. L. 104–19, 109 Stat. 237; 12 CFR 1805.700.

Dated: October 11, 1995.

John D. Hawke, Jr.,

Under Secretary (Domestic Finance).

[FR Doc. 95–25723 Filed 10–18–95; 8:45 am]

BILLING CODE 4810–70–P

Federal Register

Thursday
October 19, 1995

Part V

Department of the Treasury

Community Development Financial Institutions Fund

Bank Enterprise Award Program; Funds Availability Inviting Applications; Notice

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the Bank Enterprise Award Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of funds availability inviting applications.

SUMMARY: The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*) authorizes the Community Development Financial Institutions Fund (hereafter referred to as ''the Fund'') to provide assistance to insured depository institutions for the purpose of promoting investments in Community Development Financial Institutions (''CDFIs'') and facilitating increased lending and provision of financial and other services in economically distressed communities. Insured depository institutions and CDFIs are defined terms in an interim rule (12 CFR part 1806) published elsewhere in today's Federal Register. The Fund reserves the right to award funds under this Notice up to the maximum amount authorized by law. As of the date of this Notice and subject to funding availability, the Fund intends to award up to $15.5 million in Bank Enterprise Award (''BEA'') Program funds. The Fund may award in excess of $15.5 million if more funds become available. The BEA Program shall be subject to the interim rule. The interim rule establishes the program requirements.

DATES: Applications may be submitted at any time after October 19, 1995. The deadline for receipt of an application is 4 p.m. Eastern Standard Time on Friday, December 15, 1995. Applications received after that date and time will not be accepted and will be returned to the sender.

ADDRESSES: Applications may be obtained from the office of the Fund listed below or by telephone at (202) 622–8662. (This is not a toll free number.) Applications must be sent to: The Community Development Financial Institutions Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Room 5116, Washington D.C. 20220. Applications sent by FAX will not be accepted.

FOR FURTHER INFORMATION CONTACT: The Community Development Financial Institutions Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Room 5116, Washington D.C. 20220, (202) 622–8662. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

I. Background

As part of a national strategy to facilitate revitalization and increased availability of credit and investment capital in distressed communities, the Community Development Banking and Financial Institutions Act of 1994 authorizes a portion of funds appropriated to the Fund to be distributed through the BEA Program. The BEA Program is largely based on the Bank Enterprise Act of 1991, although Congress significantly amended the program to facilitate greater coordination with other activities of the Fund. The BEA Program and the Community Development Financial Institutions Program (12 CFR part 1805) are intended to be complementary initiatives that support a wide range of community development activities and facilitate partnerships between traditional lenders and CDFIs. This Notice invites applications from insured depository institutions for the purpose of promoting community development activities and revitalization.

II. Eligibility

The Act specifies that eligible applicants must be insured depository institutions as defined under section (3)(c)(2) of the Federal Deposit Insurance Act.

III. Designation Factors

The interim rule published separately in today's Federal Register (12 CFR part 1806) describes the process for selecting applicants to receive assistance and for calculating assistance amounts. The rating and selection process will give priority to applicants that make equity investments in CDFIs (as defined in the interim rule). After assistance for such priorities has been awarded, any remaining funds will be distributed to applicants pursuing Eligible Development Activities (as defined in the interim rule). Assistance amounts will be calculated based on increases in qualified activities that occur during a 6-month assessment period in excess of activities that occurred during a 6-month baseline period. In general, estimated award amounts for applicants making equity investments in CDFIs will be equal to 15 percent of the anticipated increase in such activities. The interim rule establishes the ranking and selection process. An applicant may also choose to accept less than the maximum amount of assistance in order to increase the ranking of its application. For applicants pursuing Eligible Development Activities, a multi-step procedure is outlined in the interim rule that will be used to calculate the estimated award amount. In general, if an applicant is a CDFI, such estimated award amount will be equal to 15 percent of the total score calculated in the multi-step procedure. If an applicant is not a CDFI, such estimated award amount will be equal to 5 percent of the total score calculated in the multi-step procedure. Applications for such activities will be ranked and funded based on the total score as weighted by the asset size of the applicant. The Fund, in its sole discretion, may adjust the estimated award amount that an applicant may receive prior to the beginning of an assessment period.

The anticipated maximum award under this Notice is $1 million. However, the Fund, in its sole discretion, reserves the right to award amounts in excess of $1 million for applications of exceptional merit.

IV. Baseline and Assessment Period Dates

As part of its application, an applicant shall report the qualified activities that it actually carried out during a 6-month baseline period. Such baseline period will begin on April 1, 1995 and end on September 30, 1995. An applicant shall also project the qualified activities that it expects to carry out during a 6-month assessment period. Such assessment period will begin on January 1, 1996 and end on June 30, 1996. Applicants selected to participate in the program during the assessment period will be required to report the qualified activities that it actually carried out during the assessment period. The Fund will evaluate the performance of applicants in carrying out projected activities to determine actual award amounts. The Fund will make every reasonable effort to announce selected applicants by January 16, 1996.

V. Workshops

The CDFI Fund will host two workshops to disseminate information to organizations interested in applying for assistance under the BEA Program and the CDFI Program (12 CFR part 1805). The workshops will be held on Monday, November 13, 1995 in Washington, DC and on Friday, November 17, 1995 in Los Angeles, California. To register for a workshop call Skip Cooper at (310) 417–5170.

VI. Other Matters

(a) Paperwork Reduction Act. For details on the information collection

requirements of the rule and this Notice, the reader should refer to the interim rule (12 CFR part 1806) published separately in today's Federal Register.

(b) Environmental Impact. Pursuant to Treasury Directive 75–02, the Department of the Treasury has determined that implementation of the BEA Program under the interim rule is categorically excluded from the National Environmental Policy Act of 1969 (42 U.S.C. 4332) and does not require an environmental review. The determination is available for public inspection between 9:30 a.m. and 4:30 p.m. weekdays at the office of the Fund.

Authority: 12 U.S.C. 4703, 4717: Chapter X, Pub.L. 104–19, 109 Stat. 237; 12 CFR 1806.206(a).

Dated: October 11, 1995.

John D. Hawke, Jr.,

Under Secretary (Domestic Finance).

[FR Doc. 95–25724 Filed 10–18–95; 8:45 am]

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Federal Register

Thursday
October 19, 1995

Part VI

Department of Transportation

Maritime Administration

Voluntary Intermodal Sealift Agreement; Notice

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Voluntary Intermodal Sealift Agreement

AGENCY: Maritime Administration, DOT.

ACTION: Notice of Voluntary Intermodal Sealift Agreement (VISA).

SUMMARY: The Maritime Administration (MARAD) announces establishment of the Voluntary Intermodal Sealift Agreement (VISA), pursuant to provision of the Defense Production Act of 1950, as amended. The purpose of the VISA is to make intermodal shipping services/systems, including ships, ships' space, intermodal equipment and related management services, available to the Department of Defense as required to support the emergency deployment and sustainment of U.S. military forces. This is to be accomplished through cooperation among the maritime industry, the Department of Transportation and the Department of Defense.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M.P. Christensen, Director, Office of National Security Plans, Room P1–1303, Maritime Administration, 400 Seventh Street S.W., Washington, DC 20590, (202) 366–5900, Fax (202) 488–0941.

SUPPLEMENTARY INFORMATION: Section 708 of the Defense Production Act of 1950 (50 U.S.C. App. 2158), as implemented by regulations of the Federal Emergency Management Agency (44 CFR Part 332), ''Voluntary agreements for preparedness programs and expansion of production capacity and supply'', authorizes the President, upon a finding that conditions exist which may pose a direct threat to the national defense or its preparedness programs, ''* * * to consult with representatives of industry, business, financing, agriculture, labor and other interests * * *'' in order to provide the making of such voluntary agreements. It further authorizes the President to delegate that authority to individuals who are appointed by and with the advice and consent of the Senate, upon the condition that such individuals obtain the prior approval of the Attorney General after the Attorney General's consultation with the Federal Trade Commission. Section 501 of Executive Order 12919, as amended, delegated this authority of the President to the Secretary of Transportation, among others. By DOT Order 1900.8, the Secretary delegated to the Maritime Administrator the authority under which the VISA is sponsored. Through advance arrangements in joint planning, it is intended that the participants that are party to a VISA will provide capacity to support a significant portion of surge and sustainment requirements in the deployment of U.S. military forces.

A proposed draft text of the VISA was published in the Federal Register on August 17, 1994 (59 FR 42466), with a notice of a public meeting. The meeting was held on August 31, 1994, and a transcript of the proceedings was prepared. Another notice, published in the Federal Register on August 31, 1994 (59 FR 45061), invited the public to submit written comments on the draft VISA text. Several comments were received, considered and placed in a public file that also contains the above mentioned published notices and transcript. Further discussions among MARAD, the United States Transportation Command (USTRANSCOM), and representatives of the U.S. intermodal shipping industry have taken place, resulting in publication of this text of the VISA in which USTRANSCOM, the Department of Justice and the Federal Trade Commission have concurred.

The VISA text being published herein facilitiates the incremental activation of resources in staged response to an emergency, i.e., Stage I, Stage II, and Stage III. MARAD, USTRANSCOM, and industry representatives have recognized that further development is necessary before implementation of Stages I and II. Therefore, only contractual commitments to Stage III will be implemented at this time.

Copies of the VISA and the associated application form are being sent, unsolicited, to U.S.-owned companies which provide intermodal shipping services/systems, accompanied by an invitation to become a participant. Copies will also be made available to the public upon request.

Text of the Voluntary Intermodal Sealift Agreement:

Voluntary Intermodal Sealift Agreement (VISA)

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Abbreviations

''USCINCTRANS''—Commander in Chief, United States Transportation Command
''DoD''—Department of Defense
''DOT''—Department of Transportation
''FTC''—Federal Trade Commission
''FEMA''—Federal Emergency Management Agency
''JPAG''—Joint Planning Advisory Group
''MARAD''—Maritime Administration, DOT
''MSC''—Military Sealift Command
''NDRF''—National Defense Reserve Fleet maintained by MARAD
''RRF''—Ready Reserve Force component of the NDRF
''SecDef''—Secretary of Defense
''SecTrans''—Secretary of Transportation
''USTRANSCOM''—United States Transportation Command (including its sealift transportation component, Military Sealift Command)

Definitions

''Administrator''—Maritime Administrator.

''Agreement''—Agreement means an understanding, arrangement or association (written or oral) and any modification or cancellation thereof. For the purpose of this document, Agreement (proper noun) refers to this actual agreement, the Voluntary Intermodal Sealift Agreement.

''Attorney General''—Attorney General of the United States.

''Availability''—An asset or service is available if it is both suitable and capable of meeting cargo or other requirements within the prescribed delivery or performance date.

''Chairman''—Chairman of the FTC.

''Charter''—A contract between a shipper and shipping company for the use of the entire vessel that details all aspects of the service, including payment, to be performed by each party. Charter contracts may be for the entire vessel, for a specific voyage, or for a specific time period.

''Commercial''—Transportation service provided by a private ocean carrier to a private or government shipper. The type of service may be either common carrier or contract carriage.

''Common carrier''—A person holding itself out to the general public to provide transportation by water of passengers or cargo for compensation which assumes responsibility for transportation from port or point of receipt to port or point of destination, which utilizes a vessel operating on the high seas.

''Contingency''—An emergency involving military forces caused by natural disasters, terrorists, subversives or by required military operations whether or not there is a declaration of war or national emergency.

''Controlling interest''—More than a 50 percent interest by stock ownership or otherwise.

''Director''—Director of FEMA.

''Foreign flag''—A vessel registered and documented under the law of a country other than the United States of America.

''Intermodal equipment''—Containers (including specialized equipment), chassis, trailers, tractors, cranes and other material handling equipment, as well as other ancillary items.

''Liner''—Type of service offered on a definite advertised schedule (i.e., a scheduled common carrier service), given relatively frequent sailing between specific U.S. ports or ranges and designated foreign ports or ranges. The term includes ocean common carrier services within the meaning of the Shipping Act of 1984.

''Management services''—Management expertise and experience, intermodal terminal management, information resources and control and tracking systems.

''Non-liner''—Type of service offered by vessels that are chartered or otherwise hired for special voyages or period. Sailing schedules are not predetermined or fixed.

''Organic sealift''—Ships considered to be under government control or long-term charter—Fast Sealift Ships, Ready Reserve Force and commercial ships under long-term charter to DoD.

''Participant''—A signatory party to this Agreement, and otherwise as defined in this Agreement, VI.A., sometimes referred to as ''Program Participant.''

''Person''—Includes individuals, corporations, partnerships, and associations existing under or authorized by the laws of the United States or of a foreign country.

''Pooling''—An agreement among participants to divide cargo offerings, revenues, losses, assets (e.g., vessels, facilities, material handling equipment, etc.), trade routes, etc., in accordance with an established formula or scheme. Any such agreement shall be between the participants only, and shall NOT be part of a contract with the government. Participants may not discuss their commercial commitments or other commercial information such as their rates, revenues, losses or tonnage with pool participants.

''Prenegotiated Rates''—Rates developed for use during program stages. For rates that are not prenegotiated, a prenegotiated rate methodology will be developed.

''Representative of SecDef''—USCINCTRANS.

''Secretary''—Secretary of Transportation.

''Service contract''—A contract between a shipper and an ocean common carrier or conference in accordance with the provisions of the 1984 Shipping Act.

''Teaming''—A combination of participants to bid and perform under a government contract. Similar to a joint venture, wherein two or more parties form a partnership and bid on a contract under the name of the partnership, vice the name of each individual party. Any teaming arrangement between or among ocean common carriers to concertedly offer rates to DoD may be regarded as an agreement subject to filing and review requirements under the Shipping Act of 1984 or the Shipping Act of 1916.

''U.S. Flag''—A vessel registered and documented under the law of the United States of America.

''Volunteers''—Any ocean carrier (liner or non-liner) or vessel owner/operator who offers to make capacity, resources or systems available under the terms of the Agreement for contract to USTRANSCOM to support military requirements sooner than mandatory under the Agreement.

Preface

The Administrator, pursuant to the authority contained in Section 708 of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2158)(Section 708), in collaboration with representatives of the intermodal shipping industry and USTRANSCOM, has developed this agreement to provide commercial sealift and intermodal shipping services/systems necessary to meet national defense requirements.

USTRANSCOM through its designee(s) procures commercial shipping capacity to meet normal peacetime requirements for ships and intermodal shipping services/systems through arrangements with common carriers, with contract carriers and by charter. DoD (through USTRANSCOM) and MARAD maintain and operate a fleet of ships owned by or under charter to the federal government to meet the logistic needs of the military services which cannot be met by commercial service. Ships of the Ready Reserve Force (RRF) may be selectively activated for peacetime military tests and exercises, and to satisfy military operational requirements which cannot be met by commercial shipping in time of war, national emergency, or military contingency. Foreign-flag shipping is used only in accordance with applicable laws and policies.

This agreement provides DoD a coordinated, seamless transition from peacetime to wartime for the acquisition of commercial sealift and intermodal capability, as necessary, to augment DoD's organic sealift capabilities to meet DoD requirements. It establishes the terms, conditions and general procedures by which sealift carriers or asset managers may become Participants. This Agreement is designed to create close working relationships among MARAD, USTRANSCOM and Participants through which military needs and the needs of the civil economy can be met by cooperative action. Through advance arrangements in joint planning between USTRANSCOM, MARAD and the Participants, it is intended that the Participants will provide predetermined capacity in designated stages to support DoD contingency surge and sustainment requirements.

Participants to this program will be afforded first opportunity to meet DoD peacetime and wartime requirements. In the event program Participants are unable to meet fully the requirements in a contingency, the shipping capacity made available under this Agreement may be supplemented by ships requisitioned, under Section 902 of Merchant Marine Act 1936 (as amended), from non-Participants in this Agreement and from Participants. In addition, containers and chassis made available under this Agreement may be supplemented by services and equipment accessed by the Administrator through the provisions of 46 CFR Part 340.

SecDef will be asked to approve this Agreement as a sealift readiness program for the purpose of Section 909 of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1248) (Section 909).

Voluntary Intermodal Sealift Agreement

I. Purpose

A. The Administrator has found, in accordance with Section 708(c)(1) of the Defense Production Act of 1950, that conditions exist which may pose a direct threat to the national defense of the United States or its preparedness programs and, under the provisions of Section 708, has certified to the Attorney General that a standby agreement where eligible carriers agree to become program Participants and provide utilization of intermodal shipping services/systems is necessary for the national defense. The Attorney General, in consultation with the Chairman, has issued a finding that dry cargo capacity to meet national defense requirements cannot be provided by the industry through a voluntary agreement having less anticompetitive effects or without a voluntary agreement.

B. The purpose of this Agreement is to provide a seamless, time-phased transition from peace to wartime operations through coordinated, prenegotiated contractually assured access to the type and quantity of sealift capability, when and where necessary, to deploy and sustain U.S. forces. It establishes procedures for the commitment of intermodal shipping services/systems to satisfy military requirements. This Agreement will change from standby to active status upon activation of any of the Stages described in Section V.

C. The objectives of this Agreement are to promote and facilitate DoD's use of existing commercial integrated intermodal transportation systems, and to maximize DoD's use of commercial transportation resources, while at the same time attempting to minimize disruption to commercial operations.

D. Participants' capacity in this Agreement may include all intermodal shipping services/systems and all ship types, including container, partial container, container/bulk, container/roll-on/roll-off, roll-on/roll-off (of all varieties), breakbulk ships, and barge carrier (LASH, SeaBee, etc.).

E. It is intended that Participants in this Agreement will contractually provide time-phased, predetermined capacity to support military requirements.

II. Authorities

A. MARAD

1. Sections 101 and 708 of the Defense Production Act, as amended (50 U.S.C. App. 2158); Executive Order 12919, 59 FR 29525, June 7, 1994; Executive Order 12148, 3 CFR 1979 Comp., p. 412, as amended; 44 CFR Part 332; DOT Order 1900.8; 46 CFR Part 340.

2. Section 501 of Executive Order 12919, as amended, delegated the authority of the President under Section 708 to the Secretary, among others. By DOT Order 1900.8, the Secretary delegated to the Administrator the authority under which this Agreement is sponsored.

B. USTRANSCOM

1. Section 113 and Chapter 6 of Title 10 of the United States Code.

2. DoD Directive 5158.4 designating USCINCTRANS to provide air, land, and sea transportation for the DoD.

III. General

A. Concept

1. This Agreement provides arrangements jointly planned by MARAD, USTRANSCOM, and Participants and by which MARAD will allocate U.S. Flag and/or controlled vessels and intermodal services to meet DoD determined requirements. These sealift resources may be incrementally activated in staged response. Activation of Stages I and II will be in accordance with prenegotiated contractual commitments entered into between Participants and USTRANSCOM or its designee. Stage III activation will be in accordance with procedures developed by USTRANSCOM, MARAD and Participants using pre-approved rate methodologies. Stages I and II would require early access to Participants' resources, while Stage III would be activated only after Stage I and II resources are totally committed and adequate shipping services are not available through established transportation practices. In addition to vessels and intermodal equipment, USTRANSCOM may contract for management expertise to operate more than one carrier's resources as complete systems.

a. Stages I and II will be activated by USCINCTRANS. The Administrator will be notified that USTRANSCOM will implement the pre-approved DoD contracts, as necessary, with the Participant carriers to meet the contingency requirements. MARAD will ensure that the necessary Defense Production Act procedures and authorities are in place for the carriers to immediately implement any pooling agreements they may have executed to meet the Program's contract requirements. Arrangements comprising Stages I and II will be pre-approved by MARAD. The contracts, with agreed terms, conditions and rates or rate methodology, will provide guaranteed access to specific carrier capability to be provided within specified time frames. The amount of shipping capacity to be committed by a Participant under such a contract between Participants and USTRANSCOM or its designee will be provided to MARAD during peacetime for pre-approval to ensure that the amount of sealift assets committed to Stages I and II will not have an adverse, national economic impact.

b. Stage III will be activated by SecTrans, upon request by USCINCTRANS (on approval by SecDef), when defense sealift requirements exceed the capabilities provided by Stages I and II and cannot be obtained through established transportation practices, including voluntary commitments outside this Agreement. MARAD will allocate Participants' intermodal shipping services/systems to meet Stage III requirements. Upon allocation, USTRANSCOM or its designee will execute the necessary contracts, using a pre-approved rate methodology, to meet DoD requirements established during joint planning.

2. USTRANSCOM may obtain sealift capacity on a voluntary basis prior to activating Stages I and III. Participants will be given first opportunity to provide capacity voluntarily to meet DoD requirements. If Participant carriers volunteer capacity prior to Stage I, they may request DoD to execute Stage I contracts in order to activate requisite DPA defense. DoD/USTRANSCOM approval of such requests will not be unreasonably withheld. If voluntary capacity from Participants is insufficient and/or shortfalls persist prior to activating Stage III after exhausting the Participants' Stage I and II contractually committed resources, USTRANSCOM may obtain sealift capacity voluntarily from non-Participants, without restriction. Following is the sequence of actions to obtain sealift capacity:

a. Use existing DoD contracts for liner and chartered vessels.

b. Use DoD/DOT organic lift; plus request for shipping capacity committed via Treaty agreement and coalition.

c. Use volunteers from within the Program.

d. Contract outside the Program without restriction to meet specific requirements not contractually

committed or not voluntarily offered by Participants within the Program.

e. Activate Stage I.

f. Activate Stage II.

g. Use all other established transportation practices.

h. Activate Stage III.

3. If sufficient sealift assets are not available through established channels, SecTrans, upon declaration of war or Presidential declaration of national emergency, will requisition necessary sealift capability using the authorities of Section 902, Merchant Marine Act of 1936.

B. Responsibilities

1. USTRANSCOM shall:

a. Define the time-phased requirement for the numbers and types of sealift capacity and resources needed in Stages I and II to augment DoD sealift resources. Define Stage III requirements.

b. Advise MARAD annually of the numbers and types of sealift capacity and resources needed for all three stages.

c. Obtain sealift capacity through the implementation of specific prenegotiated contracts with Program Participants prior to stage activation and/or activate Stages I and II.

d. Provide notice to the Administrator when USTRANSCOM plans to implement the Stage I and II contracts, either in total or as a partial activation, and when sealift resources are required for the activation of Stage III.

e. Co-chair (with MARAD) the Joint Planning Advisory Group.

f. Develop and execute prenegotiated contracts (including rates and rate methodology) with Participants for guaranteed access to time-phased sealift capabilities in Stages I and II. During Stage III, implement contracts with Participants for capacity allocated by MARAD.

2. MARAD shall:

a. Approve the amount of sealift resources committed to Stages I and II and review the information provided by USTRANSCOM stating the amount of shipping capacity under contract to ensure there will be no adverse national, economic impact. Review, with USTRANSCOM, the Stage III requirements, as developed.

b. Ensure that the necessary Defense Production Act procedures and authorities are in place for the carriers to implement any pooling arrangements they may have executed to immediately commit their predetermined level of assets to meet the Program's contract requirements.

c. After request by USCINCTRANS and upon approval by SecTrans to activate Stage III, allocate sealift capacity and intermodal assets to Stage III based on USTRANSCOM requirements after having considered overall DOT/MARAD administrative and statutory responsibilities. DoD shall have priority consideration in any allocation situation.

d. Co-chair (with USTRANSCOM) the Joint Planning Advisory Group.

C. Modification/Amendment of This Agreement

The Attorney General may modify this Agreement, in writing, after consultation with the Chairman, the Administrator and USCINCTRANS. The Administrator, USCINCTRANS and Program Participants (as specified by the JPAG) may modify this Agreement at anytime by mutual agreement and with the approval of the Attorney General. Participants may propose amendments to this Agreement at any time.

D. Administrative Expenses

Administrative and out-of-pocket expenses incurred by a Participant during the standby period shall be borne solely by the Participant. Such expenses may include, among other things, traveling to meetings, making reports of owned, chartered and leased intermodal ships, and equipment.

E. Record Keeping

1. MARAD has primary responsibility for maintaining records in accordance with 44 CFR Part 332.

2. MARAD shall be the official custodian of records related to the carrying out of this Agreement.

3. USTRANSCOM or its designee shall be the official custodian of records related to the contracts to be used under this Agreement.

4. In accordance with 44 CFR 332.3(d), a Participant shall maintain for five (5) years all minutes of meetings, transcripts, records, documents and other data, including any communications with other Participants or with any other member of the industry or their representatives, related to the administration, including planning and activation of this Agreement. Each Participant agrees to make records available to the Administrator, USCINCTRANS, the Attorney General, and the Chairman for inspection and copying at reasonable times and upon reasonable notice any time that the Participant is required hereby to maintain. Any record maintained by MARAD or USTRANSCOM as discussed in this subsection shall be available for public inspection and copying unless exempted on the grounds specified in 5 U.S.C 552(b)(1), (3) and (4) or identified as privileged and confidential information in accordance with Section 708(e).

F. MARAD

Reporting Requirements—Report to the Director, as required, on the status and use of this Agreement.

G. Plan of Action

1. The Administrator and USCINCTRANS, in coordination with the Participants, shall develop plans of action to implement this Agreement. The contracts used by USTRANSCOM for carrier commitment of intermodal shipping services/systems shall not be plans of action.

2. If any necessary Plan of Action has not been adopted at the time of activation of this Agreement, the Joint Planning Advisory Group (JPAG) may be convened to assure completion of such Plan of Action in order to meet DoD requirements.

IV. Joint Planning Advisory Group

A. The JPAG provides USTRANSCOM, MARAD and Program Participants the planning process to:

1. Identify and discuss DoD detailed sealift service and resource requirements.

2. Match peacetime requirements related to exercises and special movements with commercial capacity, as a method for testing wartime arrangements.

3. Recommend concepts of operations to meet peacetime and wartime requirements for use by contracting officials in developing contracts.

4. Provide carriers antitrust defense for pooling and teaming arrangements developed in support of DoD requirements.

B. It will be co-chaired by MARAD and USTRANSCOM, and will convene quarterly in peacetime, and as necessary after activation of any stage of this Agreement as determined by the co-chairs.

C. The JPAG will consist of a designated representative (plus one alternate) from MARAD, USTRANSCOM and each Program Participant (including a representative from maritime labor). These representatives will provide technical advice and support to ensure maximum coordination, efficiency and effectiveness in the use of Participants' resources.

D. The JPAG will not be used for contract negotiations and/or discussions between carriers and the DoD; such negotiations and/or discussions will be in accordance with applicable DoD contracting policies and procedures. However, contracting officials will be guided by the recommendations and

priorities established by the JPAG's concept of operations (CONOPS).

E. The JPAG co-chairs shall:

1. Notify the Attorney General, the Chairman, and all Participants of the time, place and nature of the JPAG meeting.

2. Provide for publication in the Federal Register of a notice of the time, place and nature of the JPAG meeting. If the meeting is open, a Federal Register notice will be published reasonably in advance of the meeting. If a meeting is closed, a Federal Register notice will be published within ten (10) days after the meeting and will include the reasons for closing the meeting.

3. Establish the agenda for each JPAG meeting and be responsible for adherence to the agenda.

4. Provide for a full and complete transcript or other record of each meeting and provide one copy each of transcript or other record to the Attorney General, the Chairman, and all Participants.

F. Security Measures—The co-chairs will develop and coordinate appropriate security measures so that contingency planning information can be shared with Participants to enable them to plan their commitment.

V. Activation of This Agreement

A. Determination of Necessity

1. This Agreement shall be activated in up to three time-phased stages to satisfy DoD contingency sealift requirements in accordance and within the scope of the Agreement.

2. The Administrator shall notify the Attorney General and the Chairman when it has been determined that activation of this Agreement is necessary.

B. Peacetime

1. During peacetime, the Joint Planning Advisory Group (JPAG) will discuss requirements, capabilities, shortfalls and coordinate recommended courses of action.

2. DoD peacetime sealift commercial requirements will be executed via contracts using Participants' ships, intermodal shipping services/systems and sealift resources to the maximum extent feasible or other resources from non-Participants if Participants cannot meet the requirement. Commercial resources owned and operated by U.S. citizens will be given first consideration for peacetime cargo.

3. USTRANSCOM will advise MARAD of agreements and assets under contract so that MARAD can monitor sealift asset status.

4. MARAD will advise USTRANSCOM on industry issues and pre-approve the allocation of carrier commitments for Stages I and II of this Agreement.

C. Stage I

1. Stage I may be activated partially, or in total, when DoD organic sealift capability, commercial sealift under peacetime contract, and voluntary commitments (as specified in Sections III.A.2 and V.G) do not meet DoD sealift requirements.

2. Stage I will be activated by USCINCTRANS. USCINCTRANS will notify the Administrator that it will implement the pre-approved contracts with Participants to meet contingency requirements. MARAD will ensure that the necessary Defense Production Act procedures and authorities are in place for the carriers to implement any pooling arrangements they may have executed to commit their level of assets to meet the Program's contract requirements.

3. USTRANSCOM will implement the prenegotiated contracts with the Participants who have agreed, in accordance with Section VI of this Agreement, to provide assets to meet the approved Stage I requirements.

4. Under Section VI of this Agreement, Participants will be allowed to substitute and pool/team ship capacity and intermodal shipping systems to fulfill their contractual commitments to meet Stage I requirements. Substitutions and pooling/team arrangement for capacity committed to DoD will be approved by USCINCTRANS or its designee.

D. Stage II

1. Stage II will be activated, partially or in total, when the DoD requirement exceeds the capability of the Stage I resources.

2. Activation of Stage II will follow the same procedures as Stage I.

3. Paragraphs 3–4 of Stage I also apply to Stage II.

4. Prior to requesting activation of Stage III, all efforts will be made to meet DoD requirements through commercial means outside this Agreement.

E. Stage III

1. Stage III will be activated when the DoD requirements exceed the capability of the Stage I and II resources and shipping services are not available through established transportation procurement practices.

2. It will be activated by SecTrans, upon request by USCINCTRANS (on approval by SecDef).

3. All Participants' assets committed to this Agreement are subject to use during Stage III. MARAD will allocate sealift resources of Participants to meet the DoD requirements in Stage III.

4. Upon allocation of sealift assets by MARAD, USTRANSCOM will implement contracts, using a pre-approved rate methodology established in the JPAG, to meet the Stage III requirements.

F. Termination of Charters, Leases and Other Contractual Arrangements

1. USTRANSCOM will notify the Administrator as far in advance as possible of the prospective termination of charters, leases, management service contracts or other contractual arrangements under this Agreement.

2. If this Agreement is superseded by the general requisitioning of ships, the Administrator, as a matter of discretion, may replace charters made under this Agreement with charters under requisitioning.

G. Voluntary Capacity

1. Prior to the activation of Stage I of this Agreement, DoD will seek voluntary commitment of capacity or system to meet movement requirements.

2. Requests for volunteer capacity will be extended simultaneously to both Program Participants and other carriers. However, first priority for award of this cargo will be to Program Participants, with compensation as outlined in the USTRANSCOM Implementation Instructions to this Agreement. Program Participants providing voluntary capacity may request the activation of prenegotiated contracts. Volunteered capacity will be credited against Participants' staged commitments, in the event such stages are subsequently activated.

3. In the event USCINCTRANS determines Program Participants are unable, or do not desire, to voluntarily provide required capacity, DoD may attempt to contract with non-Program carriers prior to involuntary activation of Stage I contracts.

4. Once Stage I of this Agreement is activated (unless such activation is at the request of the Participant) by USTRANSCOM, non-Program volunteers will not be utilized until all applicable programmed capacity in Stages I and II, and any additional Participant voluntary capacity, is exhausted.

5. Prior to requesting activation of Stage III of this Agreement, DoD will attempt to obtain capacity from all appropriate sources, to include non-Program Participants.

VI. Terms and Conditions

A. Participation

1. A liner or non-liner operator which is organized under the laws of a state of the United States, or the District of Columbia, may become a Participant by submitting an executed copy of the form referenced in VIII below and by entering into a contractual agreement with DoD or DOT which establishes a legal obligation to perform and which specifies payment or payment methodology for all services rendered.

2. A company which owns, or has obtained through lease, intermodal equipment, and is not also a vessel operator under paragraph 1 above, may become a Participant by submitting an executed copy of the form referenced in VIII below and entering into a contractual agreement which establishes a legal obligation to perform and which specifies payment or payment methodology for all services rendered. Such a company must be organized under the laws of a State of the United States or the District of Columbia.

3. The term ''Participant'' includes the entity signing this Agreement and all United States subsidiaries and affiliates of the entity which own, operate or charter ships, or own or lease intermodal equipment in the regular course of their business and in which the entity holds a controlling interest.

4. The term ''Participant'' also includes specified controlled nondomestic subsidiaries and affiliates of the entity signing this Agreement; provided, that the Administrator, in coordination with USCINCTRANS, grants specific approval for their inclusion.

5. An entity having an operating agreement (ODS or MSP) with the Secretary shall become a ''Participant'' and remain one at all times while receiving payment under such.

6. An ocean carrier participating in the DOT Maritime Security Program will be enrolled in the Program for the duration of its participation.

7. An ocean carrier eligible to participate in this Agreement, but which elects not to do so, is subject to enrollment in the DoD SRP if it: (1) Receives operating-differential subsidy or received construction differential subsidy, or (2) enters into contractual obligation to carry DoD cargo (e.g., World Wide Rate Agreement).

8. A Participant in this Agreement will be subject only to the provisions of this Agreement and not to the provisions of the SRP.

9. Periodically, a list of Participants will be published in the Federal Register.

10. When a specific ship covered by this Agreement is removed from its regular commercial service to meet a DoD requirement, the Participant may replace the ship taken from regular service with a foreign flag ship upon notice to the Administrator, and such approval of the Administrator as required by law.

11. The Administrator retains the right under law to requisition ships of Participants. A Participant's ships which are directly requisitioned by the United States or which are under other U.S. Government voluntary arrangements shall be credited against the Participant's contribution under this Agreement.

B. Agreement of Participant

1. Each Participant agrees to provide commercial sealift and/or intermodal shipping services/systems in accordance with the prenegotiated contracts with USTRANSCOM.

2. In general, the concept for allocation of a Participant's resources to the Agreement's stages is as follows:

a. *Stages I and II:* As reflected in the USTRANSCOM Implementation Instructions, mobilization commitment is linked to the award of DoD peacetime business. Mobilization commitment will be a consideration in determining the level of contract award and long-term (i.e., one year or longer) contracts will include a requirement for a minimum commitment to Stages I and/or II. In addition, a Participating carrier may voluntarily offer additional capacity to these stages. Such additional commitment will be considered as a factor in determining contract award. The level of carrier commitment for each stage will be based on the DoD capacity requirement set for those stages. Given that Stages II and III requirements are cumulative of Stage I, a carrier's capacity committed to Stage I will also be considered contractually committed to meet Stage II and Stage III requirements. Capacity activated during Stages I and II will be paid at the Program's prenegotiated contract rate.

b. *Stage III:* Carriers receiving DOT subsidies (and not in the SRP program) will have subsidy specified capacity enrolled in Stage III. Additional capacity will be as specified in DoD peacetime contracts and in the USTRANSCOM Implementation Instructions to this Agreement. Carriers utilized during Stage III will be paid based on a pre-approved rate methodology developed by MARAD and USTRANSCOM in the JPAG.

3. Subject to the terms of USTRANSCOM contracts implementing this Agreement, the Participant which owns, operates, or controls a ship or ship capacity contributed will provide the intermodal equipment and management services needed to utilize the ship at Participant's normal efficiency.

C. Effective Date and Duration of Participation

Participation in this Agreement is effective upon execution of the Program application form (Sec. VIII) by both the Participant and the Administrator, or their designees. Participation remains in effect until completion of the agreed upon obligation (Sec. VI.A.) to DoD or DOT or both. Termination will be by the Administrator (or USCINCTRANS, if appropriate), the Attorney General, the Chairman, or the Director on due notice by letter, telegram, publication in the Federal Register, or until the Participant withdraws.

D. Withdrawal From this Agreement

A Participant may withdraw from this Agreement, subject to fulfillment of obligations incurred under this Agreement prior to the date such withdrawal becomes effective, by giving 30 days written notice, or as specified with the Administrator. However, a Participant having an MSP operating agreement with SecTrans shall not withdraw from this Agreement during the period the operating agreement is in effect. Withdrawal from this Agreement will not deprive a Participant of an antitrust defense otherwise available to it in accordance with DPA Section 708. A Participant otherwise subject to the DoD SRP that voluntarily withdraws from this Agreement will become subject again to the DoD SRP.

E. Standby Period

The ''standby period'' is the interval between the effective date of a Participant's acceptance into the Agreement and the activation of any Stage.

F. Rules and Regulations

A Participant acknowledges and agrees to abide by all provisions of DPA Section 708, and regulations related thereto which are promulgated by the Secretary, the Attorney General, and the Chairman. Standards and procedures pertaining to voluntary agreements have been promulgated in 44 CFR Part 332. Note is taken that 46 CFR Part 340 establishes procedures for assigning the priority for use and the allocation of shipping services, containers and chassis. The JPAG will inform Participants of new and amended rules and regulations as they are issued.

G. Pooling Resources

When this agreement is activated, Participants may pool their assets to meet the needs of the Department of Defense and to minimize the assets withdrawn from the civil economy to meet those needs.

H. Enrollment of Ships and Equipment

1. The Administrator will maintain a record of ships and intermodal equipment enrolled under this Agreement according to a Plan of Action. A schedule of Participants' ships and intermodal equipment will be enrolled on the date the carrier becomes a Participant. Participants will notify the Administrator of all changes, as required.

2. The Administrator will make the enrollment data and all changes available to USTRANSCOM.

3. Information which a Participant identifies as privileged or business confidential/proprietary data shall be withheld from public disclosure in accordance with Section 708(h)(3) and Section 705(e) of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2155), and 44 CFR Part 332.

4. Enrolled ships are required to comply with 46 CFR Part 307, Establishment of Mandatory Position Reporting System for Vessels.

I. War Risk Insurance

1. SecDef will reimburse carriers for additional commercial war risk insurance. DOT will provide no-premium government war risk insurance, subject to the provisions of Section 1205 of the Merchant Marine Act, 1936, as amended [46 App. U.S.C. 1285(1)].

2. Each ship enrolled under this Agreement shall be eligible for U.S. Government war risk insurance and for an interim insurance binder under the provisions of 46 CFR Part 308, notwithstanding restrictions on eligibility set out in subparts thereof.

J. Antitrust Defense

1. Under the provisions of DPA Section 708, each Participant in this Agreement shall have available as a defense to any civil or criminal action brought under the antitrust laws (or any similar law of any State) with respect to any action taken to develop or carry out this Agreement or a Plan of Action, that such act was taken in the course of developing or carrying out this Agreement or a Plan of Action and that the Participant complied with the provisions of DPA Section 708 and any regulation thereunder, and acted in accordance with the terms of this Agreement or a Plan of Action.

2. This defense shall not be available to the Participant for any action occurring after termination of this Agreement. Nor shall it be available upon the modification of this Agreement with respect to any subsequent action that is beyond the scope of the modified text of this Agreement, except that no such modification shall be accomplished in a way that will deprive the Participant of antitrust defense for the fulfillment of obligations incurred.

3. The defense shall be available only if and to the extent that person asserting it demonstrates that the action, which includes a discussion or agreement, was within the scope of this Agreement or a Plan of Action.

4. The person asserting the defense bears the burden of proof.

5. The defense shall not be available if the person against whom it is asserted shows that the action was taken for the purpose of violating the antitrust laws.

6. As appropriate, the Administrator will support applications by Participants to the Federal Maritime Commission or the Interstate Commerce Commission to exempt this Agreement and any Plan of Action from the operation of statutes administered by either agency.

K. Breach of Contract Defense

Under the provisions of DPA Section 708, in any action in any Federal or State court for breach of contract, there shall be available as defense that the alleged breach of contract was caused predominantly by action taken by a Participant during or in imminent anticipation of an emergency to carry out this Agreement or a Plan of Action. Such defense shall not release the party asserting it from any obligation under applicable law to mitigate damages to the greatest extent possible.

VII. Plan of Action: Development Meeting

The Administrator, in coordination with USCINCTRANS shall convene the JPAG within 90 days of the effective date of the first Participant's application. The purpose shall be to develop Plans of Action to implement this Agreement.

VIII. Application and Agreement

The Administrator, in coordination with USCINCTRANS has adopted a form on which intermodal ship operators and intermodal-equipment leasing companies may apply to become a Participant in this Agreement (''Application and Agreement to Participate in the Voluntary Intermodal Sealift Agreement''). The form incorporates, by reference, the terms of this Agreement.

United States of America

Department of Transportation

Maritime Administration

Application to Participate in the Voluntary Intermodal Sealift Agreement

The applicant identified below hereby applies to participate in the Maritime Administration's agreement entitled ''Voluntary Intermodal Sealift Agreement.'' The text of said Agreement is published in Federal Register _____, _____, 19____. This Agreement is authorized under Section 708 of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2158). Regulations governing this Agreement appear at 44 CFR Part 332 and are reflected at 49 CFR Subtitle A.

The applicant, if selected, hereby acknowledges and agrees to the incorporation by reference into this Application and Agreement of the entire text of the Voluntary Intermodal Sealift Agreement published in Federal Register _____, _____, 19____, as though said text were physically recited herein.

The Applicant, as a Participant, agrees to comply with the provisions of Section 708 of the Defense Production Act of 1950, as amended, the regulations of 44 CFR Part 332 and as reflected at 49 CFR Subtitle A, and the terms of the Voluntary Intermodal Sealift Agreement. Further, the applicant, if selected as a Participant, hereby agrees to contractually commit to make specifically enrolled vessels, intermodal equipment and management of intermodal transportation systems available for use by the Department of Defense and to other Participants as discussed in this Agreement and the subsequent contract for the purpose of meeting national defense requirement.

Attest:

_____

(Corporate Secretary)

(CORPORATE SEAL)

_____

(Applicant-Corporate Name)

By: _____

(Signature)

_____

(Position Title)

Effective Date: _____

_____

(Secretary)

(SEAL)

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
MARITIME ADMINISTRATION

By: _____

Maritime Administrator

By Order of the Maritime Administrator:

Dated: October 13, 1995.

Joel C. Richard,

Secretary.

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